RECEIVED
Jun 29 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2018-CP-10-4083
Appellate Case No.: 2022-001114

Charleston Carriage Works, L.L.C., Appellant,

v.

Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc., Respondents.

RECORD ON APPEAL
Volume 2 of 4

June 21, 2023

/s/Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar No. 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554 4291 (843) 554 5566 (fax)
tgoldstein@cobblaw.net
Attorneys for Appellant

Other counsel of record:
Elizabeth J. Palmer
Saxton & Stump
151 Meeting Street
Charleston, S. C. 29401
(843)
EP@saxtonstump.com

Attorneys for Charleston Animal Society
Jenkins M. Mann
Rogers, Lewis, Jackson, Mann & Quinn, L.L.C.
P. O. Box 11803
Columbia, S. C. 29211
(803) 978 2831
jmann@rogerslewis.com

Attorneys for Charleston Carriage Horse Advocates and Ellen Harley

Joseph Thompson
Spencer C. Gill
Hall, Booth & Smith, P.C.
111 Coleman Boulevard
Suite 301
Mt. Pleasant, S. C. 29464
(843) 720 3460
jthompson@hallboothsmith.com
sgill@hallboothsmith.com

Attorneys for Charleston Carriage Horse Advocates and Ellen Harley

ORDERS

August 2, 2022	Order denying motions for reconsideration	1
May 12, 2022	Order granting summary judgment	4
May 12, 2022	Order denying amended scheduling Order	40
May 12, 2022	Order denying motion to amend	43
May 5, 2022	Order denying sanctions for failure to provide discovery	51
July 8 &May 27, 2021	Consent Orders for Reference	58
July 30, 2020	Order Resolving Cross Motions To Compel	65
June 17, 2020	Order granting motion to compel	68
June 2, 2020	Confidentiality Order	71
July 16, 2019	Consent Scheduling Order	75

PLEADINGS

August 17, 2018	Complaint	77
October 19, 2018	Joint Motions to Dismiss & Summary Judgment	87
July 5, 2019	Plaintiffs Motion to Compel as to Harley, CCHA	89
July 22, 2019	Defendant's Chas. Animal Society's Motion to Compel	101
September 27, 2019	Plaintiff's Amended Motion to Compel	143
November 20, 2019	Defendants' Joint Motions for Summary Judgment (2)	177
November 20, 2019	Defendants' Answers (3)	182
November 20 2019	C.C.H.A.'s Motion to Strike Damages	204
January 30, 2020	C.C.H.A.'s Motion to Quash 30(b)(6) deposition	206
January 30, 2020	C.C.H.A.'s Motion to Compel	208
January 30, 2020	C.C.H.A.'s Motion for Protective Order	218
January 20, 2020	C.C.H.A.'s Motion to Compel Responses to Production	232
April 6, 2020	Motion to Amend Complaint	242
May 27, 2020	Chas. Animal Society Motion for Summary Judgment [including aff. of J. Elmore, Vol. II, pg. 79 Christoff dep.]	244
August 17, 2020	C.C.H.A.'s Motion to Compel discovery responses	272
August 19, 2020	C.C.H.A.'s Motion to Quash Deposition	327
September 11, 2020	C.C.H.A's Motion for summary judgment	329
September 11, 2020	Harley's Motion for summary judgment	331
October 2, 2020	Plaintiff's Motion for Sanctions	334

October 20, 2020	Motion to Enlarge Time and extend scheduling Order	336
April 6, 2022	Mediation at Impasse (Proof of ADR)	338
May 12, 2022	Motion for Reconsideration	339
May 20, 2022	Motion for Reconsideration	341
May 23, 2022	Notice of filing corrected exhibit	343
August 11, 2022	Notice of Appeal	345

AFFIDAVITS

February 25, 2020	Affidavit of Broderick Christoff	349
December 2, 2020	Supplemental Affidavit of Broderick Christoff	360
August 19, 2021	Second Supplemental Affidavit of Broderick Christoff	372
September 24, 2021	Third Supplemental Affidavit of Broderick Christoff	388
April 22, 2022	Fourth Supplemental Affidavit of Broderick Christoff	416
September 11, 2020	Affidavit of Joe Elmore (attached to Motion for S. J. page 246)	
August 20, 2021	Affidavit of Ellen Harley	430
September 28, 2021	Affidavit of Katherine Vaughn	434
April 22, 2022	Affidavit of Steve Abrams	440

MEMORANDA and EXHIBITS

February 18, 2020	Memo in opposition to motion to limit damages	450
February 25, 2020	Memo in opposition to motion for summary judgment	457
May 1, 2020	Joint memo in opposition to motion to amend	462
May 22, 2020	Memo in opposition to plaintiff's motion to compel	470
May 26, 2020	Reply Memo in support of motion to amend	522
October 2, 2020	Memo in support of motion for sanctions	531
December 2, 2020	Memo in support of status conference	543
August 19, 2021	Memo in opposition to summary judgment	563
August 20, 2021	C.A.S. Memo in support of summary judgment	588
August 20, 2021	C.A.S. Memo in opposition for amended scheduling order	748
August 20, 2021	C.C.H.A. Memo in opposition to application for sanctions	752
September 29, 2021	C.A.S. Memo in opposition to application amend complaint	797
January 26, 2022	Supplemental Memorandum of Law (*Erickson* factors)	833
May 12, 2022	Memorandum in support of reconsideration (sanctions)	873

May 20, 2022	Memorandum in support of reconsideration (s.j., etc.)	932
May 23, 2022	Notice of filing corrected exhibits	979

TRANSCRIPTS

Dec. 7, 2018	Transcript of Broderick Christoff (attached to memorandum in support of summary judgement, including March 28, 2019 at page 271)	
May 3, 2019	Transcript of Elizabeth Fort	981
October 13, 2019	Transcript of Tara Little, D.V.M.	1068
December 18, 2019	Transcript of Dan Riccio Vol. I	1090
March 11, 2020	Transcript of Dan Riccio Vol. II	1172
January 31, 2020	Transcript of 30(b)(6) deposition (Ellen Harley)	1230
February 11, 2020	Transcript of Justin Miller, D.V.M.	1506
May 28, 2020	Transcript of Judge Price hearing on motion to compel	1546
June 16, 2020	Transcript of Judge Price hearing on 2d motion to compel	1567
September 29, 2021	Transcript of hearing before Master in Equity	1587

VIDEO

Video of incident—filed electronically only

ORDINANCES

Article V of Section 29 of City Code	1707

MISCELLANEOUS

E-mail June 16, 2020	1717
E-mails October 6 and October 26, 2020	1719
Correspondence December 11, 2020 (Bank statements)	1722
Notice of Removal	1727
Motion for Remand and Notice of Dismissal	1731

ELECTRONICALLY FILED - 2020 Feb 18 10:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON))	IN THE COURT OF COMMON PLEAS CASE NO.: 2018-CP-10-4083
Charleston Carriage Works, L.L.C.,)) Plaintiff,)) vs.)) Charleston Animal Society, Ellen) Harley and Charleston Carriage) Horse Advocates, Inc.,)) Defendants.))	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO ELLEN HARLEY AND CHARLESTON CARRIAGE HORSE ADVOCATES, INC.'s MOTION TO LIMIT DAMAGES**

TO: Joseph D. Thompson and Jenkins M. Mann, Attorneys for Ellen Harley and Charleston Carriage Horse Advocates, Inc. and Elizabeth Palmer as to Charleston Animal Society:

The Charleston Carriage Horse Advocates' motion to limit damages is at best premature, at worst obfuscation. There is no dispute that the General Assembly provides a cap on damages for charities, but there are exceptions to this cap. In this case, the plaintiff contends that the Charleston Carriage Horse Advocates is not a charity. During the plaintiff's numerous attempts to discover how it works, the Charleston Carriage Horse Advocates has been cagey and secretive about its activities as a putative charity. For example, when the plaintiff took the deposition of one of its alleged directors, at least she was honest about the unsettled nature of the entity:

Q. Were you ever an officer of [Charleston Carriage Horse Advocates]; president, vice president, secretary, treasurer?

A. No sir.

Q. But you were on the board of directors? You'd have—y'all did have a board of directs?

A. I don't think we had necessarily a board of directors. It was my understanding I was on the board, but I never—I just I never felt like I was –I didn't have a specific role.

Q. Did y'all have regular meetings?

A. We had like—we gathered, the four of us, at Ellen's house. And so if that was like a formalized meeting, yes, but it was nothing like a board that I've been on in the past in terms of like we had a space. We'd just go to Ellen's. It was probably, I mean, if I remember correctly, I was over maybe twice.

Q. And when you say the four of us, who are you talking about?

A. I'm talking about, if I remember, it was Beth Shvgal (ph), I think is how you pronounce her last name. Catherine Pogue (ph), myself, and Ellen. And then there was a time where we gathered where there were a couple other people, but again, it never felt like we were kind of gaveling into this formal board. It was more people who were sharing information about concerns they had, so yes.

Q. But the organization did fundraise, it did—it did bring in money?

A. Yes, like we had—there was something like a chili cook off. And then the organization had like bumper stickers, but they didn't say the organization. And so it was just like a, you know, humane treatment for animals. Like it didn't formally have—it's my understand, it didn't have formal board?

Q. Who was in charge of the money that y'all raised?

A. I think it was Ellen, but I think was, but I don't—I mean, again—

Deposition of Ellen Fort, May 3, 2019, page 5—15, line 22

This testimony is important because it demonstrates how the Charleston Carriage Horse Advocates is nothing more than an alter ego of Ellen Harley whose capacity for fraud and opaqueness is unbounded. For two years, the defendant has blocked, delayed and employed every dilatory tactic at her disposal to deny the plaintiff's access to a putative charity's organizational structure and financial information. Here is a typical example:

ELECTRONICALLY FILED - 2020 Feb 18 10:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 Feb 18 10:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

On June 24, 2019, the Plaintiff sent this supplemental interrogatory to the Carriage Horse Advocates:

> Give the names and addresses of the [persons] who prepare the defendant's financial and tax records.

A month later, the Charleston Carriage Horse Advocates replied as follows:

> Defendant objects to this interrogatory as it is overly broad, unduly burdensome and not calculated to lead to the discovery of admissible evidence.

The Carriage Horse Advocates answers to basic discovery are all the same and that issue is already before the Court on a motion to compel. Even a casual observer knows that the heart of this case involves the question of the defendants' financial information because it goes to the essential question as to whether the Carriage Horse Advocates is or is not a charity. The South Carolina damages cap protection for charities is neither a cover for fraudulent activities nor an absolute shield. It does not provide protection for either intentional or grossly negligent acts, and it prohibits fraudulent fundraising. The charitable protection in S. C. Code Ann. §§ 33-56-10 to -200 (2006) (CFA). Section 33-56-180(A) provides:

A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant. A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent

ELECTRONICALLY FILED - 2020 Feb 18 10:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

manner. If the charitable organization for which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as a party defendant the employee, and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.

Moreover, South Carolina law makes it illegal for any charity to promulgate false information to generate donations. § 33-56-120, South Carolina Code, ann. says in applicable part:

(A) In connection with the solicitation of contributions or the sale of goods or services for charitable purposes, a person shall not misrepresent or mislead, knowingly and willfully, a person by any manner, means, practice, or device.

This case is still remains in the early stages of discovery because not only has the Charleston Carriage Horse Advocates refused to produce documents or respond to discovery requests (a matter subject to a pending Motion to Compel), but also because plaintiff's counsel donated most of 2019 to the cardiac surgeons at M.U.S.C. to correct the damage of practicing law. However, the plaintiff makes serious allegations against the Charleston Carriage Horse Advocates and specifically named Ellen Harley as a party defendant for the reasons set forth in § 33-56-120, S. C. Code. Whether Ms. Harley and/or her organization is/are eligible to receive the protection of the charitable cap is a highly contested factual dispute that cannot be resolved summarily on a pre-trial motion, especially where the defendant seeking protection of the charitable cap statute has obstructed discovery and blocked access to the very information that will shed light on whether the Charleston Carriage Horse Advocates is a charity or merely the alter ego of Ellen Harley.

Finally, the defendant urges this court, by way of motion, to limit prematurely the plaintiff's claim for damages on the assumption that the plaintiff can prove only one occurrence of gross negligence and intentional acts. This is a highly contested state of facts. The Charitable Immunity statute is both premised upon and construed with the State Tort Claims Act, which provides:

ELECTRONICALLY FILED - 2020 Feb 18 10:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Except as provided in Section 15-78-120(a)(3) , no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.
§ 15-78-120(1)

The facts in this case will reveal that rather than modify their behavior after plaintiff filed this suit, the defendants, Ellen Harley and the Charleston Carriage Horse Advocates, accelerated their dissemination of false information to cast the plaintiff in a false light and further damage the business. The Charleston Carriage Horse Advocates intentionally unleashed the power of social media to cast the power of social media to destroy the plaintiff. The defendants promulgated their false narrative that the plaintiff worked his horse to death to millions of people, resulting in death threats, arson threats, personal encounters with agitated citizens. At one point, the plaintiff had to block access to its Facebook page to entire countries to stem the volume of threats of violence. Every time the defendants republished their false narrative; every time they deleted a truthful correction and blocked the poster; every time they made a spurious complaint against the plaintiff was a separate occurrence. The plaintiff intends to demonstrate multiple acts of fraud and harassment, and thus the number of occurrences becomes a question of fact for a jury:

Number of Occurrences

Defendants also argue that the Court erred in submitting the number of occurrences to the jury. Defendants contend that there was a single occurrence when Plaintiff was placed at BHOTS [Boys Home of the South]—which would provide a cap on the monetary liability for SCDSS of $300,000.00. They assert that the jury should not have been required to find the number of occurrences. The Court disagrees.

The Court finds the Honorable Cameron McGowan Currie's discussion of the relevant South Carolina law on occurrences in *Knox v. United States*, No. 0:17-cv-36-CMC, 2018 WL 3241931 (D.S.C. July 3, 2018), is applicable here. Judge Currie thoroughly discussed the holdings in *Chastain v. AnMed Health Foundation,* 694 S.E.2d 541 (S.C. 2010) , and *Boiter v. South Carolina Department of Transportation*, 712 S.E.2d 401 (S.C. 2011) She determined that, "[i]f Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence."

Here, the Court determined that there was evidence to support a finding that there had been more than one occurrence; accordingly, the jury was instructed on the definition of occurrence and

asked to determine how many occurrences Plaintiff had proved. Defendants have failed to demonstrate that this procedure was flawed sufficient to grant the relief requested in this motion.

Thus, viewing the evidence presented at trial in the light most favorable to Plaintiff, the Court simply cannot conclude that "a reasonable jury could only rule in favor of" Defendants. *Dennis*, 290 F.3d at 644. At the very least, reasonable minds could differ on the outcome, meaning that the Court must affirm the jury's decision.

W.S., v. Cassandra Daniels, Ursula Best, South Carolina Department of Social Services, Defendants, C/A No. 8:16-cv-01032-DCC, C/A No. 8:16-cv-01280-DCC

See also *Larry Lee Boiter v. South Carolina Department of Transportation*, 393 S.C. 123 712 S.E.2d 401 (2011):

The Boiters argue that the circuit court erred in failing to find two separate occurrences in the two separate acts of negligence committed by SCDOT and SCDPS. We agree.

Under Section 15–78–30(g) of the South Carolina Code (2005), "occurrence" is defined as an "unfolding sequence of events which proximately flow from a single act of negligence." In its order denying the Boiters' arguments that there were two separate occurrences, the circuit court stated:

The Plaintiffs present a logical argument as to the statutory construction of the term 'occurrence,' but under the facts of this case, where the jury's verdict has to be read as finding both Defendants as concurrently at fault in bringing about the damages to the Plaintiffs, the definition of occurrence limits the award to the statutory cap.

We disagree and find the facts here present a classic case of two occurrences.

At numerous times prior to the plaintiff filing its lawsuit, both the plaintiff and others informed the defendant, Charleston Carriage Horse Advocates, that the information it was putting out was both false and causing harm. At any time, the Charleston Carriage Horse Advocates could have issued a correction; instead, it pushed its false narrative harder. Whether each publication of a knowingly false statement is a single occurrence or multiple occurrences is a question of fact that a jury will have to decide. Likewise, it is up to a jury to decide if the knowing publication of a false statement is an act that reaches the level of gross recklessness to take it outside of the protection of the cap. After all, the General Assembly put exceptions to the cap to guard against the very acts that give rise to this action.

ELECTRONICALLY FILED - 2020 Feb 18 10:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Based on the foregoing, the defendants' motion to limit damages is premature at best and seeks to prevent a jury from deciding the facts that only a jury can determine.

Respectfully submitted,

February 17, 2020

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554 4291
(843) 554 5566 (fax)
tgoldstein@cobblaw.net

ELECTRONICALLY FILED - 2020 Feb 18 10:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 Feb 25 9:24 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-04083
Charleston Carriage Works, L.L.C.,)	
)	
Plaintiff,)	**MEMORANDUM OF LAW**
)	**IN OPPOSITION TO**
vs.)	**MOTIONS FOR SUMMARY JUDGMENT**
)	
Charleston Animal Society, Ellen)	
Harley and Charleston Carriage)	
Horse Advocates, Inc.,)	
)	
Defendants.)	
)	

On November 20, 2019, the defendants, Charleston Carriage Horse Advocates and Ellen Harley filed their Answers to the Complaint and at the same time, their motions for summary judgment. These motions are not accompanied by any supporting affidavits or explanation as to how there are no genuine issues of material fact. To say that the defendants' motions are premature is an understatement.

Since the plaintiff originally filed this action, the defendants, Carriage Horse Advocates and Ellen Harley, remain steadfast in their refusal to engage in discovery as may be seen by the pending motion to compel in this case.[1] Those two defendants have made it as difficult as possible to get basic information, even refusing to identify where documents are kept. While its motions to compel were pending, the Plaintiff attempted to break the logjam by scheduling and completing a 30(b)(6)

[1] To be fair to the defendants, the plaintiff filed its original motion to compel on July 5, 2019. The Clerk of Court scheduled the motion for disposition several times, but continued the matter following counsel's April heart attack, which required open heart surgery in August. Between April and August, M.U.S.C. scheduled pre-surgery testing and treatment.

ELECTRONICALLY FILED - 2020 Feb 25 9:24 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

deposition of the defendants on January 31, 2020. The defendants produced Ellen Harley as the designated witness most knowledgeable about the operation of the Charleston Carriage Horse Advocates. Mrs. Harley sets the high-water mark for evasion and contumacious conduct. Here is an example from her January 31, 2020, deposition:

Q. Who writes the checks for Charleston Carriage Horse Advocates?

A. A-1 Bookkeeping.

Q. Where are they located?

A. In the State of South Carolina.

Deposition page 21, lines 16-22

Leaving aside that, according to Google search, there is no entity in South Carolina called "A-1 Bookkeeping," Mrs. Harley also reports to the Internal Revenue Service, under penalty of perjury, that all the books and records are maintained in her residence at 23 Wentworth Street. This is what Line 42(a) of both her 2017 and 2018 return says:

The organizations books are in care of Ellen Harley, 23 Wentworth Street Charleston, S. C. 29401, telephone no. 843-xxx-8174. (See Charleston Carriage Horse Advocates Returns, line 42(a).)

Ms. Harley's contempt for the legal process runs throughout the discovery process. In her October 24, 2018, Answer to Plaintiff's Requests to Admit, she answered the following about the Big John incident:

ELECTRONICALLY FILED - 2020 Feb 25 9:24 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

3. Please admit that while on the scene, Ellen Harley filmed part or all of the video that she later posted on the Charleston Carriage Horse Advocates (CCHA) "Facebook" page.

RESPONSE: Denied

By contrast, when she appeared as a 30(b)(6) witness on January 31, 2020, she gave the opposite answer in regard to the Big John incident:

> Q. Did you take a video of the incident that day?
>
> A. I did.
> Deposition p.77, lines 4-6.

From the same deposition when asked about who was responsible for the actual publishing on the Charleston Carriage Horse Advocates social media, she answered as follows:

> Q. Oh, okay. Well, now we're getting somewhere. Who do you use to do your social media?
>
> A. In 2016, 2017, and 2018, we used Domangue Consulting.
>
> . . .
>
> A. They maintain and -- they maintained and produced all of our social media.
> Deposition p.17 line 15 – p.18 line8

And then later:

> Q All right. Now, you told us earlier that you rely on the consultants, but the information maintained by Charleston Carriage Horse Advocates are on the laptops owned by the people that you've previously identified?
>
> MR. THOMPSON: Objection.
>
> THE WITNESS: They are maintained by the -- by the consultants so that they are given – the consultants write those -- those posts. They come up with them and they write them. They sometimes consult with us; they did not do that in 2016, '17 and '18. We gave them general parameters, truthfulness, check your facts, rely on nationally-recognized animal welfare organizations, journals, extracts, general information, but the -- the posts

ELECTRONICALLY FILED - 2020 Feb 25 9:24 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

themselves that -- what appears on social media comes from those consulting firms, that's why we hire them.

Deposition page 55, line 11 – page 56, line 2

Q. Q But the relationship between you and the consultants is not in writing anywhere, it's just an oral agreement, "hey, look after our thing and do what you think is right"?

. . .

A. We just -- you know, we talk about it. And -- and in -- if we have -- if we have photographs or if we have videos that we have taken, we will send them to the social media consultants. If we have --if we -- the -- well, let's do it this way: 2016, 2017, and 2018, Domangue Consulting, we gave her just an overall sort of, you know, set of parameters, and then she would -- she had complete and only access to social media, and so she would write these things, and we would give her very broad overarching instructions.

Deposition page 63, line 6 – page 64 line 13

Not only does this testimony contradict the Defendants' subsequent submission of a 2016 written contract with Domangue Consulting at the same deposition, but also it is in stark contrast to the Charleston Carriage Horse Advocates' October 24, 2018, answer (emphasis added) to Plaintiff's Requests to Admit:

13. Please admit that Ellen Harley published the video of the April 19, 2017, at or near 8:12p.m. Charleston Carriage Horse Advocates (CCHA) published a video of the event on its "Facebook" page along with a statement that the images depicted the horse known as "Big John" who "collapsed".

Response: Denied that Ellen Harley published a video as described in this Request. **Admitted that on April 19, 2017, Charleston Carriage Horse Advocates (CCHA) posted a video on its Facebook page.** The post stated, in part, "Horse Collapsed at 3:30 PM today on Meeting Street at Hassell [*sic*] Street (in front of FIG Restaurant)." To the extent that the request calls for the admission of different or other facts, denied.

ELECTRONICALLY FILED - 2020 Feb 25 9:24 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

In short, as may be seen by the Plaintiff's previously filed Motions to Compel, the defendants, Charleston Carriage Horse Advocates and Ellen Harley, have thwarted the Plaintiff's discovery efforts at every turn. As the Supreme Court said in *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003): "Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery, nonetheless, the non-moving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition."

Here, the plaintiff has received nothing in response to its requests for discovery. To permit the defendants, Carriage Horse Advocates and Ellen Harley, to end the case on summary judgment without being required to provide the most basic discovery responses would be a gross miscarriage of justice. In addition, in her 30(b)(6) deposition testimony, the Defendants' designated witness disclosed for the first time the name of two entities who she claims is responsible for the content of their Internet postings. While such an assertion seems implausible, the plaintiff is required to investigate, and if appropriate, join the two recently identified parties as party defendants. Thus, due to the refusal of the defendants to participate in discovery, which the Court has not previously addressed because of counsel's serious health issues that wiped out much of 2019, this case remains in the earliest stages of discovery and not appropriate for disposition by way of summary judgment.

Respectfully submitted,

February 23, 2020

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29405
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net

ELECTRONICALLY FILED - 2020 May 01 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Charleston Carriage Works, L.L.C., Plaintiff, vs. Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2018-CP-10-04083 **DEFENDANTS' JOINT MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT** **(Jury Trial Demanded)**

INTRODUCTION

This is a defamation case in which Plaintiff Charleston Carriage Works, LLC, claims that on or about April 19, 2017, Defendant Charleston Animal Society, Ellen Harley, and Charleston Carriage Horse Advocates (collectively "Defendants"), published photographs and videos of a horse named Big John, who tripped, falsely representing that the horse "collapsed" from overwork and heat exhaustion. While the pleadings suggest Plaintiff's claims for defamation predate the April 2017 event, Plaintiff's principal's deposition testimony did not suggest proof of any such events, incidences or defamatory publications that predate the Big John event in April 2017.

PROCEDURAL HISTORY

This case has a tortured procedural history. Plaintiff filed its *first* lawsuit on May 29, 2018, Civil Action No.: 2018-CP-10-02704, in the Charleston County Court of Common Pleas against Defendants Charleston Animal Society, Ellen Harley, and Charleston Carriage Horse Advocates, Inc., asserting causes of action for: (1) Civil Conspiracy; (2) Intentional Infliction of Mental Distress; (3) Violation of Animal Enterprise Terrorism Act; (4) Section 1983 Violation of Substantive Due Process Under Color of Law & Article I, § 3, South Carolina Constitution; (5) Tortious Interference with Business Relations; and (6) Slander/Libel/Defamation *Per Se*.

On July 19, 2018, Defendants removed the case to the USDC as Plaintiff alleged causes of action arising under the Constitution and laws of the United States. On July 23, 2018, Plaintiff filed a Motion to

ELECTRONICALLY FILED - 2020 May 01 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Remand. Plaintiff also filed a Notice of Dismissal pursuant to Rule 41(a)(1), voluntarily dismissing its case and limiting its constitutional claims to those authorized under state law. On July 26, 2018, Defendants filed a Joint Motion for More Definite Statement. On July 31, 2018, Plaintiff filed a Response to Motion for More Definite Statement. On August 6, 2018, Defendants filed a Joint Motion in Opposition to Plaintiff's Motion to Remand and Reply in Further Support of their Joint Motion for More Definite Statement. On August 15, 2018, Plaintiff filed an Amended Notice of Dismissal and Memorandum in Support, arguing the rules permitted Plaintiff to dismiss without a Court Order provided that responsive pleadings had not been filed. Importantly, the case was not remanded to state court; it was dismissed, albeit without prejudice.

Plaintiff filed a *second* lawsuit on August 17, 2018, Civil Action No.: 2018-CP-10-04083, in the Charleston County Court of Common Pleas against the same Defendants, asserting causes of action for: (1) Civil Conspiracy; (2) Violation of Plaintiff's Civil Rights, Article I, § 3, South Carolina Constitution; (3) Gross Negligence & Recklessness; (4) Tortious Interference with Business Relations; and (5) Slander/Libel/Defamation *Per Se*. Essentially, Plaintiff filed the exact same lawsuit, just removing the references to federal law from the Complaint. On October 19, 2018, Defendants filed a Joint Motion to Dismiss and/or Motion for Summary Judgment or, Alternatively, for a More Definite Statement. The parties began conducting discovery almost immediately. On November 20, 2019, Defendants filed Answers to Plaintiff's Complaint and a Motion for Summary Judgment and Motion to Limit Liability and Strike Plaintiff's Claim for Punitive Damages. On February 18, 2020, Plaintiff filed a Memorandum in Opposition to Defendants' Motion to Limit Liability, and on February 25, 2020, Plaintiff filed a Memorandum in Opposition to Defendants' Motion for Summary Judgment and an Affidavit of Broderick Christoff. On February 25, 2020, Defendants withdrew their Motions. On April 6, 2020, two (2) months after the close of discovery[1], Plaintiff filed a Motion to Amend the Complaint.

LEGAL STANDARD

[1] By Consent Scheduling Order filed July 16, 2019, the parties agreed on a discovery deadline of February 7, 2020, a mediation deadline of March 9, 2020, and a trial not before date of May 11, 2020.

ELECTRONICALLY FILED - 2020 May 01 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Rule 15(a) of the South Carolina Rules of Civil Procedure allows a party to amend his pleading "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice the other party." SCRCP 15(a). Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action. Ball v. Canadian Am. Exp. Co., Inc., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994); Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 543 (2000). The power to amend "shall not be used indiscriminately or to prejudice or surprise another party, [and] and the decision to allow an amendment is within the sound discretion of the trial court. Duncan v. CRS Sirrine Engineers, Inc., 337 S.C. 537, 541 (Ct. App. 1999). "A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion." Skydive Myrtle Beach, Inc. v. Horry Cty., 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019); Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (stating "a proper reason" to deny a motion to amend could be "bad faith, undue delay, or prejudice"); Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235-36, 754 S.E.2d 714, 719 (Ct. App. 2014) (affirming the denial of a proposed amendment after the conclusion of discovery and the case had been placed on the trial roster because it would cause significant delay and impose substantial additional discovery costs that would not have been necessary if the plaintiff had timely made the motion to amend); Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010), rev'd on other grounds, 401 S.C. 1, 736 S.E.2d 242 (2012) (amendment properly denied where the proposed amendment would be futile).

ARGUMENT

I. Rule 15, SCRCP, Does Not Allow The Addition Of New Parties.

Pursuant to Rule 15, SCRCP, Plaintiff has moved to amend its Complaint to add two (2) plaintiffs and five (5) defendants. However, Rule 15, SCRCP, does not allow an existing plaintiff to make such an amendment.

> Rule 15, SCRCP, does not allow an existing plaintiff do add a new plaintiff to the case to assert a claim against the defendant. ***Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change***

ELECTRONICALLY FILED - 2020 May 01 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

> ***claims against an existing defendant.*** Rule 15(b) addresses amendments to conform to the evidence presented at trial. Rule 15(c) deals with relation back of amendments. None of these subsections addresses a motion to add a plaintiff as contemplated in this case.

Valentine v. Davis, 319 S.C. 169, 171, 460 S.E.2d 218, 219 (Ct. App. 1995) (emphasis added) ("We are unwilling to torture the rules in such a way to correct possible mistakes in the filing of motions or misjudgments in strategic procedural decisions."); Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992) (the rules of procedure, like statutes, should be given their plain meaning). Accordingly, the Court should deny Plaintiff's motion to add any additional parties, whether party-plaintiff or party-defendant.

II. Plaintiff's Motion To Amend Should Be Denied Because It Is Untimely And Would Cause Prejudice to Defendants.

Plaintiff's proposed amendment, occurring almost two years after the first Complaint was filed and after almost all written discovery has taken place,[2] would prejudice Defendants. The amendment, seeking to add seven (7) parties and four (4) causes of action, would result in this case effectively starting over, and would significantly delay the resolution of a case that has already been pending for almost two years. Discovery would have to be served by and to the new parties, and depositions will need to be taken again so that the additional parties will have a full and fair opportunity to question the witnesses. Additionally, at this late stage, if Plaintiff's proposed amendment were permitted, Defendants would be compelled to reexamine their defenses and strategies to defend the additional causes of action. The defense of these claims would require additional or different evidence than that which Defendants have previously identified. There is simply no justification for allowing an amendment which would essentially restart the case based on facts which have been known for well over three (3) years. See Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014), reh'g denied (amendment seeking to add claims against defendant following conclusion of discovery denied would have been prejudicial to defendant, where plaintiff had already obtained one amendment, had all knowledge necessary to alert him

[2] Any remaining written discovery is subject to pending Motion(s) to Compel.

ELECTRONICALLY FILED - 2020 May 01 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

as to the claim prior to the close of discovery, and the new claim would have required defendant to conduct additional discovery).

III. Plaintiff's Motion To Amend Should Be Denied Because It Is Futile.

A. "Fraud/Slander/Libel/Defamation *Per Se*"

Plaintiff's Amended Complaint states a new cause of action for "Fraud/Slander/Libel/Defamation *Per Se* ("Fifth Cause of Action"). (See Prop. Am. Compl.). This cause of action fails to comply with Rules 8 and 10, SCRCP. See Rule 8, SCRCP, Notes ("The Rule does not allow 'jumbling' of two or more causes of action."); see also, Rule 10, SCRCP ("[e]ach cause of action and each defense shall be stated in a separate cause of action or defense"). Additionally, it fails to comply with Rule 9, SCRCP, which requires that fraud be pled with specificity. See Rule 9, SCRCP ("in all averments of fraud, or mistake, the circumstances constituting fraud or mistake shall be stated with particularity").

To recover in an action for fraud and deceit, based on misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. M. B. Kahn Const. Co. v. S.C. Nat. Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980). A complaint is fatally defective if it fails to allege all nine elements of fraud. Inman v. Ken Hyatt Chrysler Plymouth, Inc., 294 S.C. 240, 363 S.E.2d 691 (1988). Where the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. Id. Here, Plaintiff has failed to allege that Defendants' alleged misrepresentations were communicated with an intent that they be acted upon, that Plaintiff was ignorant of the falsity of the statements, that Plaintiff relied on the truth of the statements, that Plaintiff had a right to rely, or that Plaintiff was damaged by such reliance. Accordingly, Plaintiff's Motion to Amend the Complaint to include a cause of action for fraud should be denied.

To the extent Plaintiff's Fifth Cause of Action alleges defamation, it also fails as a matter of law and, therefore, should be denied. Specifically, it fails to state the "who, what, where, when" of the

ELECTRONICALLY FILED - 2020 May 01 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

defamation. Defamation claims under South Carolina law are statement-specific; the plaintiff must point to a specific statement made by the defendant and published to a third party that is false. See Fleming v. Rose, 350 S.C. 3488, 494, 567 S.E.2d 857, 860 (2002). South Carolina courts have been clear that a defendant is liable only for its *own* publication of defamatory statements. "The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of *the defendant's* communications to others of a false message about the plaintiff." Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 485, 514 S.E.2d 126, 134 (1999). Thus, the plaintiff bears the burden of pleading and, later, establishing, that *each* named defendant published false information and separately acted with actual malice. Id. (examining whether the person who made the alleged defamatory statement acted with actual malice). Plaintiff's Amended Complaint, therefore, fails to allege a plausible claim for relief because it fails to identify the statements made by each Defendant concerning Plaintiff. Because the proposed Amended Complaint fails to identify at a minimum the content of each allegedly defamatory statement, the speaker of the statement, and how each plaintiff was allegedly damaged by the statement, it fails to state a cause of relief upon which relief can be granted and an amendment would be futile.

Further, Plaintiff's Fifth Cause of Action appears to state a new claim for violation of the S.C. Solicitation of Charitable Funds Act, S.C. Code Ann. §§ 33-56-10, et. seq. However, that Act does not explicitly provide for any private right of action. Georgetown Cnty. League of Women Voters v. Smith Land Co., 393 S.C. 350, 353, 713 S.E.2d 287, 289 (2011) (legislative intent to grant or withhold a private right of action for a violation of the statute is determined primarily from the language of the statute). Rather, it provides that all penalties and fines imposed due to violations of the act are to be transmitted to the State. S.C. Code Ann. § 33-56-160. Finally, the "damages" alleged appear to be those sustained by the public at large, which Plaintiff lacks standing to assert. Accordingly, Plaintiff's Motion to Amend the Complaint should be denied as it is futile.

B. "Fraud/Piercing the Corporate Veil"

Plaintiff's Amended Complaint asserts a new cause of action against Charleston Carriage Horse Advocates for "Fraud/Piercing the Corporate Veil." ("Sixth Cause of Action"). (See Prop. Am. Compl.).

ELECTRONICALLY FILED - 2020 May 01 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

This cause of action fails to comply with Rules 8 and 10, SCRCP. See Rule 8, SCRCP, Notes ("The Rule does not allow 'jumbling' of two or more causes of action."); see also, Rule 10, SCRCP ("[e]ach cause of action and each defense shall be stated in a separate cause of action or defense"). Additionally, it fails to comply with Rule 9, SCRCP, which requires that fraud be pled with specificity. See Rule 9, SCRCP ("in all averments of fraud, or mistake, the circumstances constituting fraud or mistake shall be stated with particularity").

Simply stated, South Carolina law is clear that plaintiffs attempting to pierce the corporate veil must state a claim against the corporate entity in order to proceed on a veil piercing theory. See Sturkie v. Sifly, 280 S.C. 453, 459, 313 S.E.2d 316, 319 (Ct. App. 1984) (adopting rule requiring plaintiffs to prove knowledge of a "claim" in order to provide fundamental unfairness and thereby pierce the corporate veil). While it appears that Plaintiff attempts to assert fraud as the basis for its veil piercing theory, Plaintiff has failed to sufficiently plead facts in support of same. Accordingly, Plaintiff's Sixth Cause of Action fails as a matter of law.

C. Plaintiff's Seventh and Eighth Causes of Action

Plaintiff's Amended Complaint states causes of action on behalf of Broderick Christoff and Amber Christoff for "Slander Per Se/Outrage" ("Seventh Cause of Action") and "Outrage" ("Eighth Cause of Action"). (See Prop. Am. Compl.). However, Plaintiff's Seventh and Eighth Causes of Action pertain to claims by new parties – Broderick and Amber Christoff. Because "Rule 15, SCRCP, is applicable to only existing parties[,]" Plaintiff is prohibited from asserting claims on behalf of these nonparties. Valentine, 319 S.C. at 171, 460 S.E.2d at 219.

CONCLUSION

Based on the foregoing, Defendants respectfully request that Plaintiff's Motion to Amend be denied. Additionally, Defendants request that a hearing be scheduled to allow for oral arguments to be presented by the parties.

(SIGNATURE PAGE TO FOLLOW)

Respectfully Submitted,

HALL BOOTH SMITH, P.C.

/s/Joseph D. Thompson, III
Joseph D. Thompson, III, SC Bar No. 66580
Email: jthompson@hallboothsmith.com
Spencer Craig Gill, SC Bar No. 100917
Email: sgill@hallboothsmith.com
111 Coleman Boulevard, Suite 301
Mount Pleasant, South Carolina 29464
Phone: 843.720.3469

Attorneys for Ellen Harley and Charleston Carriage Horse Advocates

-AND-

Elizabeth Palmer
Email: epalmer@rrhlawfirm.com
Rosen Hagood
151 Meeting Street
Suite 400
Charleston, South Carolina 29402
Phone: 843-266-8166

Attorneys for Defendant Charleston Animal Society

ELECTRONICALLY FILED - 2020 May 01 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-4083
	)	
Charleston Carriage Works, L.L.C.,	)	
	)	**DEFENDANT CHARLESTON ANIMAL SOCIETY'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**
Plaintiff,	)	
	)	
vs.	)	
	)	
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Plaintiff's Motion to Compel Defendant Charleston Animal Society (CAS) to produce the "Schedule B's" to its tax returns, which identify the individuals and entities who have donated in excess of $5,000 to CAS in any given year. Because the identity of CAS's donors, as well as the amounts donated, are completely irrelevant to this defamation lawsuit, Plaintiff's Motion must be denied.

Plaintiff's lawsuit alleges that CAS defamed it by advocating for the humane treatment of the animals used by Charleston's carriage industry. Plaintiff's sole owner, Broderick Christoff, has admitted that "a large part"[1] of the lawsuit arises from a video published by CAS showing one of Plaintiff's horses, Big John, after he had fallen to the pavement during a carriage tour and was unable to stand without assistance. See Christoff Depo., Vol. II, p. 125 (attached as Exhibit 1). The video can be viewed here:

https://www.youtube.com/watch?v=WLXdlMsxBZM

Plaintiff contends that the use of the word "collapse" to describe the downed horse is defamatory. Notably, Mr. Christoff testified that Big John fell suddenly and completely to the

[1] CAS has filed a Motion to Compel asking that Plaintiff be required to identify any and all other allegedly defamatory statements. To date, no such identification has been made.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ground, which is a definition of "collapse" according to Merriam-Webster[2]. See Christoff Depo., p. 24 (Ex. 1). Plaintiff also alleges that the video falsely depicts the horse as dead, despite the fact that the video shows Big John alive and well at the end. When asked in his deposition to explain how someone watching that video could reasonably conclude that the horse died, Mr. Christoff testified that "maybe people didn't watch the video all the way through" and that Defendants should be held responsible for people who unreasonably think that the horse died even though the video shows the opposite to be true. See Christoff Depo., pp. 36-37 (Ex. 1).

In addition to alleging defamation, Plaintiff alleges three other causes of action, all arising out of the alleged defamation: civil conspiracy (alleging the defendants conspired to defame the Plaintiff); "Violation of Plaintiff's Civil Rights under Article I, §3, South Carolina Constitution – Gross Negligence, Negligence" (repeating allegations that the defendants conspired to defame Plaintiff); and tortious interference with business relations (alleging defendants *attempted*[3] to procure a breach of Plaintiff's franchise contract with the city by publishing defamatory statements).

Rule 26(b)(1), SCRCP, provides, unless otherwise limited by order of the court, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action ... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." As to the requirement that the information sought be relevant, it has been held the information must be specifically relevant to the issues involved in the

[2] https://www.merriam-webster.com/dictionary/collapse (defining "collapse" as "to fall or shrink together abruptly and completely.").

[3] Even if true, an attempt to procure a breach does not satisfy the proof required to succeed on this cause of action. Rather, proof must be presented of a breach. Mr. Christoff testified that there has been no breach of, or threat to, Plaintiff's franchise contract. See Christoff Depo., pp. 51-52 (Ex. 1).

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

litigation, not merely relevant to the subject matter of the litigation. Hollman v. Woolfson, 384 S.C. 571, 579, 683 S.E.2d 495, 499 (2009); see Oncology and Hematology Assoc. of S.C., LLC v. S.C. Dept. Health and Envirn. Control, 387 S.C. 380, 388, 692 S.E.2d 920, 924 (2010) ("While discovery serves as an important tool in the truth-seeking function of our legal system, we are concerned that 'discovery practice' has become a cottage industry and the merits of a claim are being relegated to a secondary status.").

For defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). The identity of CAS's donors is irrelevant to the determination of whether the video of Big John, or any other publication by CAS (none of which have been specifically identified) is defamatory. The identity of CAS's donors does not prove any of the elements of Plaintiff's defamation claim or its other claims, all of which are based on defamation.

When asked why Plaintiff requested CAS's Schedule B's, Mr. Christoff testified, in part, that they might show whether or not CAS was receiving donations from "people or organizations or other nonprofits whose sole goal is banning the use of animals in any kind of entertainment whatsoever and maybe they are and maybe they aren't, but I don't know." See Christoff Depo., pp. 123-126 (Ex. 1). Counsel for Plaintiff has invented a creative narrative of the case; namely, that Defendants are radical animal rights activists that have whipped up hostility against the carriage industry with the ultimate goal of seeing it banned altogether. See July 16, 2019, Letter, pp. 3-4, attached as Exhibit 2.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Even if CAS's donors were all known "radical animal rights activists" who wanted the carriage industry banned, it would not prove, or even be relevant to, any of the causes of action alleged by Plaintiff. It would not prove that CAS published statements that are allegedly false, it would not prove that the statements themselves are false, it would not prove that Defendants conspired to defame Plaintiff, and it would not prove that CAS intentionally procured a breach of Plaintiff's franchise contract with the City (see FN 3).

In its Motion to Compel, p. 3, Plaintiff argues that CAS's Schedule B's "are public documents that should be available to anyone." This is incorrect. In fact, the IRS specifically excludes the name and address of any contributor to a tax-exempt organization from the definition of disclosable documents. See 26 U.S.C.A. § 6104(d)(3)(A) ("Nondisclosure of contributors, etc.--In the case of an organization which is not a private foundation (within the meaning of section 509(a)) or a political organization exempt from taxation under section 527, paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization..."); see also IRS Publication, "Public Disclosure and Availability of Exempt Organizations Returns and Applications: Contributors' Identities Not Subject to Disclosure" (attached as Exhibit 3). In fact, the S.C. Legislature has specifically recognized the importance of providing non-profits like CAS, which defines its donors as being members of the organization, to keep its donors' identities shielded from public inspection. See CAS Bylaws, Art II, § 2(A) (stating that any person who contributes a gift of money to CAS is a member of the organization) (attached as Exhibit 4); see also S.C. Code Ann. § 33-31-1605 ("Without the consent of the board, a membership list or any part of a membership list [of a nonprofit corporation] may not be obtained or used by a person for any purpose unrelated to a member's interest as a member.").

In conclusion, because the identity of those who donate to CAS is neither relevant to the claims made by Plaintiff in this lawsuit nor likely to lead to admissible evidence, Plaintiff's Motion to Compel must be denied.

ROSEN HAGOOD, LLC

By: /s/ Elizabeth J. Palmer
Elizabeth J. Palmer
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
epalmer@rosenhagood.com

ATTORNEY FOR DEFENDANT
CHARLESTON ANIMAL SOCIETY

Charleston, South Carolina
May 22, 2020

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

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

VIDEO DEPOSITION OF BRODERICK CHRISTOFF
VOLUME II

CHARLESTON CARRIAGE WORKS, LLC,

Plaintiff,

vs. CASE NO. 2018-CP-10-4083

CHARLESTON ANIMAL SOCIETY, ELLEN HARLEY and CHARLESTON CARRIAGE HORSE ADVOCATES, INC.,

Defendants.

DEPONENT: BRODERICK CHRISTOFF

DATE: MARCH 28, 2019

TIME: 10:05 A.M.

LOCATION: ROSEN HAGOOD
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. Yes, sir.
A. Yes. No, it doesn't. It does not.
Q. Would you say that Big John fell abruptly and completely?
A. No.
Q. Why not?
A. What do you mean by abruptly and completely? What do you mean by completely?
Q. Fell completely down.
A. Fell -- would I agree that he fell to the ground?
Q. Mm-hmm.
A. I would agree that he fell to the ground.
Q. And would you disagree that he fell abruptly and completely?
A. Yes, because I don't know your definitions of those two words.
Q. Well, it was all of a sudden, wasn't it?
A. It was all of a sudden.
Q. And he completely fell?
A. He completely fell to the ground.
Q. Okay. This report, the first page says the entire event lasted 11 minutes. Is that your understanding of the length of the time from the time of the fall to the time that he was back on

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

falsely implied that the video depicted a dead horse.

How did it imply that the horse died?

A. By the narrative that accompanied the video.

Q. Let's watch the video. For the Animal Society, you're speaking of the video that has subtitles and that we -- they posted on YouTube and on their website?

A. Correct.

Q. All right. I don't know if we're going to have sound or not. And just for the purposes of the record, this is the video that Animal Society posted on YouTube that is 3 minutes and 10 seconds long.

(Video played.)

Q. All right. So in your opinion, what about that video implies that the horse died?

A. It led people to believe that he died.

Q. He got up at the end. It -- it ends showing him up and alive, so what part would a reasonable person be able to conclude that that horse died?

A. Probably, you know, maybe people didn't watch the video all the way through. I can't really answer that question. All I know is that I got lots of messages from people who thought the

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

horse died as a result of that video and the Carriage Horse Advocates' video. So, I mean, thousands of people think the horse died, so...

Q. And you think that's the Animal Society's fault?

A. Sure, partly.

Q. Even though their video shows the horse fine?

A. Right.

Q. Okay. So the Animal Society should be held responsible for people who unreasonably think that that horse died even though it is shown as being alive at the end?

A. Yes.

Q. Okay. Let's see, back to the complaint, paragraph 9 --

A. Before we leave the video --

Q. Sure.

A. -- I'd like to also amend my answer. You noticed the narrative, correct?

Q. Mm-hmm.

A. So you noticed this about -- at the end about whether the environment is truly safe or humane. Does that -- does that lead people to believe that the horse slipped and fell and that

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

A. No, not any direct evidence, no.

Q. Okay. 24, paragraph 24 is, that last sentence, talking about the franchise contract: Defendants have frequently and intentionally attempted to procure breach of that franchise contract by publishing false and defamatory information about the plaintiff.

How has -- specifically what has Charleston Animal Society done that you believe was an attempt to procure a breach of your franchise contract?

A. They claim that we worked Big John to the point of his collapse.

Q. Are you referring to the video again?

A. Yes.

Q. Anything else?

A. They made statements that we don't close when the temperature threshold is exceeded, which -- which are false. They make statements about how the industry operates when the temperature threshold is met that are false. They made statements about the City not enforcing various parts of its ordinance, which are false.

Q. Has any -- have you ever received any type of notice from anyone acting on behalf of the City of Charleston that your franchise contract was in

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

jeopardy or anything related to your franchise contract?

A. No.

Q. Okay. So this is all hypothetical or potential that my franchise contract might someday in the future might be --

A. Correct.

Q. Okay. So just to clarify, no threats to your franchise contract currently by the City?

A. Not that I'm aware of.

Q. All right. Can you quantify specifically how Charleston Carriage Works has been damaged by what Charleston Animal Society has done or said?

A. Sure. We had, you know, a loss of revenue. I already mentioned that the -- the girl that called and canceled one of her tours because she thought one of our horses had died. The folks that were on that carriage all were -- all were refunded, you know, also the video.

I've had -- I had to spend a lot more money advertising to try to keep my business up. I still had a loss, a pretty -- pretty significant loss that year as a result of this. It took me out of my business. I was unable to go downtown probably for a month or a month and a half.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. Do you believe that Mr. Elmore has mishandled any taxpayers' money?

A. I don't have any proof of whether he has or hasn't.

Q. Do you believe that Mr. Elmore has committed fraud in any way?

A. I don't -- I don't think so.

Q. Is it safe to say that you believe there's something nefarious going on with CAS's finances?

A. Yes, I don't -- I don't -- I wouldn't say that. I wouldn't say it's nefarious. I'd say that, you know, maybe there might be some things that are questionable.

Q. Like what?

A. I don't know.

Q. What do you suspect?

A. I don't know.

Q. Do you -- well, do you have any suspicion as to anything going on?

A. I mean, I -- I mean, I can make some wild guesses. I mean, we've asked you all for the documents, what was that, September? You still haven't given them to us.

Q. Which ones --

A. How many months are we out?

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. Which ones are you referring to?

A. Their tax return schedule Bs.

Q. What would that show?

A. That shows donors from $5,000 and over.

Q. And why do you need that information?

A. Because I could then tell you whether or not I thought something was going on. I could answer your question if you had provided me the information.

Q. I'm trying to figure what does that have to do with this lawsuit, who their donors attorneys are?

A. You don't think major donors to businesses affect how they operate?

Q. What would it matter, though?

A. What do you mean what would it matter?

Q. I --

A. What if a major donor --

Q. I'm trying to understand.

A. What if a major donor to Emanuel AME Church was the KKK? Do you think that would have a different -- that wouldn't have an impact or be unusual? Of course you do. So I don't know who their donors are and who they aren't. So until I know, I can't -- I can't answer your question

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

unless you have that information with you and you would like to give it to me and then I'll look at it.

Q. You know, it's safe to say, I think, that the majority of this lawsuit arises out of that Big John video, correct?

A. A large part of it does.

Q. A large part, right? So what does who donates to Charleston Animal Society have anything to do with them publishing that video?

A. Because there are a lot of people that want to see the carriage industry banned.

Q. Okay.

A. The Charleston Animal Society maintains that they are not among those people and their -- their official statement is that they have -- they -- they haven't said that they haven't called for a ban, because they have and they know they have, so what they say is they have resisted the pressure, which doesn't say anything.

You can resist the pressure -- I could resist the pressure to wear shoes but still be wearing shoes. So that statement is a -- you know, and that's how they talk to the public. To some people that means they, oh, the Charleston Animal

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Society doesn't want a ban, but to people who read between the lines are like, well, that's not saying anything.

So maybe they're getting donations from people or organizations or other nonprofits whose sole goal is banning the use of animals in any kind of entertainment whatsoever and maybe they are and maybe they aren't, but I don't know.

Q. Well, you filed the lawsuit without knowing, correct?

A. Correct.

Q. Okay. So I don't understand why it would matter. How would it help you advance your claims?

A. What do you mean? I mean, everybody -- you -- nobody files lawsuits with all the information in their hands at the exact same time. That's why you have discovery. I mean, that information comes -- it comes down the line as you -- as you now have the right to have access to it.

Q. Sure. Let's move on.

Are you in agreement that carriage drivers are required to abide by traffic laws?

A. Yes.

Q. And you're aware that we have videos of your

EXHIBIT 2

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.
ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

July 16, 2019

Ms. Elizabeth J. Palmer
Rosen, Rosen & Hagood
151 Meeting Street
Suite 400
Charleston, S. C. 29401

Mr. Joseph D. Thompson, III
Hall Booth Smith, P.C.
111 Coleman Boulevard
Suite 301
Mt. Pleasant, S. C. 29464

Re: Charleston Carriage Works L.L.C. vs. Charleston Animal Society, *et. al.*
Case No.: 2018-CP-10-4083

Dear Beth and Trey,

1. Incident Reports

Beth asked me for copies of police incident reports. I am attaching all the copies of the incident reports in my position except for one 50-page report prepared by Dan Riccio regarding Old South's horse, Blondie. I will send that to you electronically due to its 50-page length. The others that I have in my possession are enclosed here as follows:

February 20, 2017 incident report on Chief
July 15, 2017, report on Blondie
May 18, 2017, incident report on T-Rex incident
June 3, 2019 incident report on John Daniel Blanton

These are all the incident reports in our possession. There may be others, but I am turning over all that we have.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

2. Deposition Schedule

Second, I am in receipt of the notices of depositions as follows:

Monday, August 26, 2019	Gabrielle Byrd	9:00 a.m.
Monday, August 26, 2019	Sarah Onderka	12:00 p.m.
Monday, August 26, 2019	Chase Lamb	3:00 p.m.
Tuesday, August 27, 2019	Shannon Tilman	9:00 a.m.
Tuesday, August 27, 2019	Dan Riccio	1:00 p.m.
Wednesday, August 28, 2019	Amber Christoff	9:00 a.m.
Thursday, August 29, 2019	Dr. Justin Miller	9:00 a.m.
Friday, August 30, 2019	Katie Clary, C.P.A.	9:00 a.m.

There are a couple of things noteworthy about this proposed schedule, not including no provision for time to eat lunch. First, you all selected all the dates without consultation with me. Which is fine. No rule requires consultation, but remember, when I start picking dates without consultation with you all, I expect, as Judge Norton unceremoniously stamped on a motion for reconsideration: "No whining." Second, the idea that we can get through an entire week of depositions without court conflict is ambitious, but: *dum spiro spero*. Third, it seems kind of, what's the word, I cannot say "ballsy" because women outnumber men in higher education these days, but maybe hubristic? to expect an out-of-county expert witness, Dr. Miller, to travel to your office for a deposition? There are rules about that, but maybe Dr. Miller will acquiesce. Personally, I am more of a Prufrock than Cicero on such matters:

> And indeed there will be time
> To wonder, "Do I dare?" and "Do I dare?"
> Time to turn back and descend the stair,
> With a bald spot in the middle of my hair—
> [They will say: "How his hair is growing thin!"]
> My morning coat, my collar mounting firmly to the chin,
> My necktie rich and modest, but asserted by a simple pin—
> [They will say: "How his arms and legs are thin!"]
> Do I dare
> Disturb the universe?
> In a minute there is time
> For decisions and revisions which a minute will reverse.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

3. Plaintiff's theory of the case

Which brings me to my final point in this loquacious letter. Beth, you ask me two questions that are interrelated: the first is to identify for you every statement the Charleston Animal Society has made that is slanderous, and the second is to explain to you what the Charleston Animal Society's Schedule B's have to do with this case. (I have abandoned this discussion with Harley's side of the case—apparently she is above it all—but the answer to your two questions is a single answer.)

To go in reverse order, the Schedule B's have everything to do with the case. As I have tried to explain, obviously deficiently, the animal rights movement is a scam, operating from the same social media playbook that plagues society across a broad spectrum. It is a first cousin to any of the ten million scams occurring daily to relieve gullible people from their money and redistribute it to any of the ten million plausible scoundrels—from Nigerian princes to, in our case, the Charleston Animal Society. To cite a cliché, follow the money. Consider, for example, Joe Elmore's salary increases in the short time he has been at the helm. (And consider where some of the previous leaders of Charleston Animal Society both came from and ended up.) Besides college football coaches, whose salary increases by like percentages in such a short period of time? Besides S.C.E.&G. executives I mean. What has Joe Elmore done to justify generous self-compensation? Is the Charleston Animal Society caring for thousands more of dogs and cats? Or is it a function of fund raising? And what better fundraising tool is there than to create an enemy, drive up people's fear, dehumanize the enemy, and then harness all that anger and fear into a motivation to donate to the cause? See: Trump, Donald J. or Marquardt, Kathleen, *Animalscam: The Beastly Abuse of Human Rights*. Why is the Charleston Animal Society sitting on 20 million dollars and simultaneously begging the County's taxpayers for hundreds of thousands of taxpayer support? Or, in a related context, as the philosopher, Sarah Silverman, asks: Why does the Pope live in a house that is a city? But even if all my analysis is wrong, wrong, wrong, and wrong, the Charleston Animal Society is a charitable organization supported by generous, annual taxpayer contributions. It is, in short, a quasi-governmental agency, so any citizen has the right to see how much money it collects, how it collects it, from what sources, and what it spends it on. As a taxpayer supported institution, its primary duty is to the taxpayers, and before Mr. Elmore arrived on the scene, the Charleston Animal Society routinely posted all of its Schedule B's so the taxpayers who involuntarily support the organization can know who is voluntarily supporting the organization.

If the attack on Brody is being coordinated with animal rights groups, then we are entitled to know it. I cannot think of anything more relevant than

who is providing financial support to the Charleston Animal Society. Money truly is the root of all evil. The mischief caused by animal rights groups is well documented (see above), and without access to the Animal Society's financial information, we can never fully answer your question because we do not know who Charleston Animal Society's masters are. As for detailed answers as to what the Animal Society has done to Brody, you deposed Brody on these topics for somewhere between thirteen and fourteen hours, including, but not limited to, examining him on his 14-page, carefully researched and annotated written explanation. (March 22, 2019, Deposition Exhibit 17)

Finally, the Charleston Animal Society should be proud to disclose both the organizations and the amounts given in support its putative animal "rescue" work. For a quasi-governmental, charitable organization, it sure acts nervous and cagey about who supports its alleged charitable work. *Hamlet*, Act III, sc. ii, line 230. All governments perform better in sunlight, and it is both immoral and illegal for the Charleston Animal Society to be both secretive and defensive about the sources of its financial support.

In short, I know that I lack the ability to persuade you what seems obvious to me, and I admit the last time I was in court over a discovery dispute, disco was king, and I was sporting what my daughter derisively calls a "porn mustache." At least one thing never changes.

What is the news on your proposed scheduling order? Is it being circulated, or did it die a quiet death in an obscure corner of a law office? With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/

enclosure: Incident Reports

cc:
Mr. Jenkins M. Mann (via e-mail)

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Old South Carriage
14 Anson Street
Charleston, SC 29401
843.723.9712 phone
843.722.2533 fax
info@oldsouthcarriage.com

Facsimile transmittal

To: Davida **Fax: 579-7673**

From: Heidi Richey **Date: 7/17/2015**

Re.: Incident on E. Bay St. **Pages: 3 including cover**

Comments: Attached you will find the incident report from Old South Carriage Company. If you have any questions please call 723-9712

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

City of Charleston
South Carolina
Division of Tourism Management

TOUR VEHICLE INCIDENT REPORT FORM

All Tour Vehicle Incident Report Forms must be sent to the Tourism Management Office within 24 hours of the Incident.

Company Information

Company: OLD SOUTH CARRIAGE Today's Date: 17 JUL 15

Name: SHAWN D. MATTHEWS
(of the person filling out the form)

Company Contact Name: OLD SOUTH CARRIAGE CO.
(if different from above)

Phone: (

Incident Information

Site of Incident: E. BAY AND N. ADGERS WHF
(include the closest intersection)

Time & Date: 950 AM 17 JUL 15

Damage: (Circle all that apply) Company Property; Public Property; None; Private Property; Bodily Injuries; Animal Injury

Who Responded: (Circle all that apply) Police; Company Representative(s); EMS; No assistance was called

Describe what happened: BLONDIE A 12 YO BELGIAN DRAFT HORSE WAS SPOOKED BY A CEMENT TRUCK. BLONDIE JACK-KNIFED THE CARRIAGE AND FELL TO THE GROUND. WHEN I GOT TO THE SCENE I UNHOOKED THE CARRIAGE AND REMOVED THE HORSE'S JACK. HE REMAINED ON THE GROUND.

Witnesses: THE VET WAS CALLED AND RESPONDED.
(Use additional pages if necessary) CONTINUED ON NEXT PAGE

OFFICE USE ONLY Date Received: Received By:

32 ANN STREET CHARLESTON, SOUTH CAROLINA 29403 • (843) 724-7395 • FAX (843) 579-7673

CONTINUED FROM PAGE 1

WE WERE ABLE TO RIGHT THE HORSE WITH THE AID OF A LIVESTOCK SLING. THE HORSE WAS FREED FROM THE SLING, AND STOOD ON HIS OWN. HE WALKED UNDER HIS OWN POWER ONTO OUR HORSE TRAILER. THE VET STATED THAT HIS VITALS WERE FINE. WE TRAILERED BLONDE TO EDISTO EQUINE CLINIC FOR FURTHER OBSERVATIONS AND CARE.

WITNESS: JOSHUA HYLTON DRIVER OLD SOUTH CARRIAGE
RODNEY ROGERS PASSENGER
HEATHER WEILAND "
GAIL S. WYATT "
SUE BJARNAR "
BRENDA ILOSANKO "

SUBMITTED:

SHAWN D. MATTICKS
MANAGER OLD SOUTH CARRIAGE

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020-May-22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

7796 White Point Road
Yonges Island, SC 29449

(843) 889-1316
Fax (843) 889-1321

Fax Transmittal

Number of Pages: 2 (INCLUDING COVER) Date: 7/23/15

Attention: Valerie

Receiving Fax Number: 843-720-3959

From: Edisto Equine Clinic

Regarding: Old South's "Bladie"

Comments:

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

7796 White Point Road
Yonges Island, SC 29449

(843) 889-1316
Fax (843) 889-1321

Dismissal Form and Aftercare Instructions

Owner Old South Carriage Patient Blondie
Admitted Date 7-17-15 Released Date 7-20-15
Attending Veterinarian Banner - Brown

History spooked while on trail, went down, unable getting up

Diagnostic Procedures and Findings physical + neuro exam(s), blood work
→ myositis, generalized musculoskeletal soreness from being down; EPM titer pending to make sure no underlying issue to cause hind end weakness

Prognosis good

Surgical Treatment None Date of Sx

Medical Treatment IV fluids, banamine, methocarbamol

Recommendation and Instructions ① 1 gram tube once daily in AM for next week ② Dexamethazone tabs 4 tabs once daily for 4 days then 3 tabs once daily for 7 days, and so on - to be given in the PM. ③ 15 tabs methocarbamol twice daily thru Friday.

Bandages None; clean and apply Silvadene ointment to scrapes daily / as needed.

Diet Currently being fed 3/4 sc senior pellet / 1/2 sc bran mashed 4x daily, along w/ 1 flake timothy - dif half soaked 4x daily

Exercise turn out for 30 days followed by recheck prior to return to work

Suture Removal: 10-14 days after Surgery

Follow up exam and Suture removal apt is:

Thank you for bringing your horse to Edisto Equine Clinic. If you have any further questions about this case, please feel free to contact us or your regular veterinarian.

Sally Banner Brown DVM

John A Mclark, DVM
Diplomat ACVS,ASVP

Member of The American Association of Equine Practitioners

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

City of Charleston

Division of Tourism Management

Office Use only:
Rec'd by:
Date Rec'd:

TOUR VEHICLE INCIDENT/ACCIDENT REPORT FORM

All Tour Vehicle Reporting Forms must be reported and filed AS SOON AS POSSIBLE (*no later than 24 hours*) following incident/accident to TEO or Equine Manager.

Company Information

Name: Broderick Christoff Today's Date: 2/20/17

Driver's Name: Will Green Animal's Name: Chief

Supervisor on duty: Grace Onderka

Driver Phone: 779.1279 Supervisor Phone: 779.1279

☐ Incident:

☒ Accident: Carriage Backed Into Two Vehicles

(Briefly describe event and whether it was accident vs incident)

Incident/Accident Information

Location: King St. at Queen St.

Time & Date: 2/19/17 1225 Cause: Charleston Police Department

Damage:	Company Property	Public Property	None
(Circle all that apply)	(Private Property)	Bodily Injuries	Animal Injury
Responded:	(Police)	(Company Representative(s))	
	(EMS)	(Equine Mgr/TEO)	

Describe (in detail) what happened: Use additional pages if necessary, to be filled in by driver

See attached pages (two)

*Witnesses: Name Chris Swisher Contact: 317.490.0221

river Signature: [signature] TEO signature:

*Driver of one of the damaged vehicles

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

The City of Charleston has policies in place that the Department of Livability is to be informed of all special events and parades that will affect downtown streets so that they may then take proactive action to reroute touring traffic, including carriages. These policies were put in place by the City of Charleston in the interest of both the safety and traffic flow of touring carriages and buses.

On 2/19/17 at approximately 12:10pm, our carriage was heading south on Archdale Street, itself on a reroute due to properly noticed construction at the BB&T building, when the driver noticed a parade assembling further down the street in the vicinity of the Unitarian Church. This parade was permitted by the Charleston Police Department who, against City policy, did not inform the Department of Livability that the parade was scheduled / taking place. The driver could see bagpipes, flags, and various other nominal (and non-horse friendly) parade paraphernalia, and immediately made the decision to avoid the area by turning left (east) on Fulton Street. At approximately 12:10pm the driver turned right (south) on King Street. As the carriage approached the intersection of King and Queen Streets, between 12:15pm and 12:20pm, a Charleston Police SUV travelling the wrong way (east) down Queen Street, stopped and blocked the intersection at King, right in front of the carriage. To the driver's dismay, not only was there a parade happening that he didn't know about, it was now coming the wrong way down Queen and he was trapped by the Police SUV. At this time the parade was just beginning to turn east onto Queen Street from Archdale. The Police SUV had its windows down, and the driver, Will, pleaded repeatedly with the officer to let him though as the horse was not going to be OK with the parade and no room to maneuver (sidewalk to the right, car to the left, van to the rear, and Police SUV blocking the front). The officer completely ignored our driver. Had the officer simply, even briefly, pulled up another 3 feet and let us through, our carriage would have been to Broad Street by the time the parade arrived at the intersection. For between 5 and 10 minutes and against all logic, the officer ignored both the driver's requests to pass and the horse's increasing movements and held the carriage at the intersection as the parade approached. As the next more than 5 minutes go by, the parade and the noise gets closer and closer. At this point, even our passengers were trying to get the officer to let them pass! Can you imagine the helplessness they must have all felt? Will told the passengers there was nothing else he could do and to hold on and be ready. When the parade arrived at the intersection, the horse immediately moved away (left) and jack-knifed the carriage into both the van behind it and the car next to it, causing minimal damage to both. The impact, however, caused the driver to fall from the carriage, whereupon he immediately went to the horse to control and settle the situation. The passengers were unscathed. We fortunately had passengers that were horse people and someone from a neighboring business that immediately helped the driver settle the horse and diffuse the situation. The police SUV simply drove away.

Afterwards, in an abundance of caution and because he fell, we chose to send the driver with EMS to make sure there were no concussive injuries. Thankfully, Will was examined, cleared and released. The horse was walked back to our stable where he was examined and, since he never touched anything, found to be completely fine. The carriage was transported back to our stable and had no damage.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

This incident was entirely preventable, and could have been prevented at least three times by the Charleston Police Department:

1) By notifying, per policy, the Department of Livability that a parade was taking place

2) By not permitting parades to use one way streets in the wrong direction thereby thwarting the efforts of people trying to avoid them who should be able to confidently assume streets will be used in the manner intended

3) By either listening to the driver / passengers (or even acknowledging their existence) or noticing the horse and choosing to be aware, present, and proactive relative to the situation.

To add insult to injury, the Charleston Police Department then reported to the media, who is still reporting, that the carriage had flipped over.

I have nothing but praise for Will, Chief, our passengers, my managers, the neighboring business owner who assisted, the TEOs and all members of the carriage industry that responded and helped out. They all did exactly as they are trained and driven to do and I continue to be proud to be among them.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

INCIDENT/INVESTIGATION REPORT

Agency Name: Charleston Police Department
ORI: SC0100100
Case#: 17-057345
Date / Time Reported: 05/18/2017 19:11 Thu
Last Known Secure: 05/18/2017 17:24 Thu
At Found: 05/18/2017 17:24 Thu

INCIDENT DATA

Location of Incident: 162 Church St/Vanguard St, Charleston SC 29401-
Premise Type: Highway/road/alley
Zone/Tract: 223

	Crime Incident(s)	(Cons)	Weapon / Tools		Security	Activity
#1	Disorderly Conduct 90C		Entry	Exit		
#2	Accident Report 93J		Weapon / Tools		Security	Activity
			Entry	Exit		
#3	Crime Incident	( )	Weapon / Tools		Security	Activity
			Entry	Exit		

MO:

VICTIM

of Victims: 1 | Type: SOCIETY/PUBLIC | Injury:

	Victim/Business Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
VI	City Of Charleston	1						

Home Address: | Home Phone:
Employer Name/Address: | Business Phone: | Mobile Phone:

VYR	Make	Model	Style	Color	Lic/Lis	VIN

OTHERS INVOLVED

CODES: V- Victim (Owner, VI, VI) O = Owner (if other than victim) R = Reporting Person (if other than victim)

Type: INDIVIDUAL/ NOT LAW ENFORCEMENT | Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
CO	STURGEON, THOMAS VANCE		[redacted] Age 61	W	M			

Home Address: [redacted] North Charleston, SC 29405 | Home Phone: 843-303-5902
Employer Name/Address: Palmetto Carriage Works (CARRIAGE DRIVER) | Business Phone: 843-303-5902 | Mobile Phone:

Type: | Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status

Home Address: | Home Phone:
Employer Name/Address: | Business Phone: | Mobile Phone:

PROPERTY

1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown
("O" = Recovered for Other Jurisdiction)

VI #	Code	Status Date/Tp	Value	OJ	QTY	Property Description	Make/Model	Serial Number

Officer/ID#: FARLEY, T. M. (PPTL, TMPD) (2335)
Invest ID#: HANNON, B. (PPTL, TMPD) (2136) | Supervisor: HUTTLER, T. C. (PPTL, TMPD) (1305)
Complainant Signature | Case Status: Cleared 05/24/2017 | Case Disposition | Page: 1

RPT THR | Printed By: FARLEY, 2294 | Sys#: 169503 | 06/08/2017 12:18

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Incident Report Additional Name List

OCA: 17-05745

Charleston Police Department

Additional Name List

Name Code/#	Name (Last, First, Middle)	Victim of Crime #	DOB	Age	Race	Sex
1) WI 1	GIBSON, THOMAS J		[redacted]	60	W	M
Address	[redacted], Lebanon, IN 46052-		H: 317-748-0554			
Empl/Addr			B: - -			
			Mobile #: - -			
2) WI 2	BOENZOW, ROGER CHARLES		[redacted]	72	W	M
Address	[redacted] Chapin, SC 29036-		H: 803-537-6296			
Empl/Addr			B: - -			
			Mobile #: - -			
3) WI 3	SALVADOR, SHELBY SUMMERS		[redacted]	44	W	F
Address	[redacted] S Jacksonville Beach, FL 32250-		H: 904-631-4201			
Empl/Addr			B: - -			
			Mobile #: - -			

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

INCIDENT/INVESTIGATION REPORT

Charleston Police Department

Case # 17-05745

Status: 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

DRUGS	IBR	Status	Quantity	Type Measure	Suspected Type

Assisting Officers

Suspect Hate / Bias Motivated:

NARRATIVE

On Thursday, May 18, 2017 at approximately 1720 hours, Officer T. Farley and SPO C. Hamilton were dispatched to the area of Tommy Condon's Restaurant at 160 Church St. in reference to a collision involving a horse drawn carriage. Officers arrived on scene and spoke with several carriage passengers and other witnesses regarding the incident including the driver Thomas Sturgeon, Thomas Gibson, Shelby Salvador, and Roger Buenzow. Parties advised that Sturgeon was driving Palmetto Carriage Works horse drawn carriage #151 north on Church St. with approximately fifteen passengers. The horses pulling the carriage were Yogi and BonBon.

An unknown party wearing a brown Tyrannosaurus Rex costume step off the sidewalk near the fire hydrant at Church St. and Linguard St. The party then began making growling noises. The suspects actions frightened the horses, causing them to back up and jackknife the carriage. While attempting to control the horses, Sturgeon fell out of the carriage, his leg was caught in the front left wheel, and his leg was then run over by the vehicle. As this occurred, the out-of-control carriage struck a parked VW Jetta (SC Tags MDA141). One of the horses then reportedly fell. Sturgeon was transported by EMS to Roper Hospital for further treatment and evaluation. No other passengers complained of injuries or requested EMS evaluation.

Salvador emailed Officer Farley a photograph of the suspect prior to the collision. Salvador advised that her husband told the suspect to leave. He reported that the suspect responded incoherently, but the voice sounded female. Her husband was unavailable for comment, but Salvador stated he could be reached on her phone later. Buenzow claimed to have photographs of the incident on his camera, and was provided the case number and Officer Farley's CPD email to send the files. Officers searched the area, but were unable to locate the suspect. Officer Farley spoke with the manager for Tommy Condon's and reviewed exterior surveillance cameras which captured the incident. The footage was consistent with witness statements, and showed the suspect in a dinosaur costume walking from the area of the Cumberland St. Garage. The manager was provided this case number, and advised to back up the footage. Officer Farley contacted CPD camera room and requested that the city cameras be reviewed.

Charleston Tourism Officer A. Jeffreys responded to the scene and was provided with this case number. Officer Farley spoke with representatives of Palmetto Carriage Works who advised that the horses were not injured, and were able to return to their stables unassisted. Palmetto Carriage Works and the owner of the VW Jetta were provided with FR-10's for the collision.

Officer Farley later received a call from an anonymous party advising that the suspect fled to the Cumberland St. garage, removed her costume, and got into a car. Officer Farley responded to the garage to review possible surveillance footage. On scene staff were unable to access the footage, were advised to have management review the cameras, and provided this case number.

Officer Farley recorded his response to this incident on his CPD issued body-worn camera.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Incident Report Suspect List

Charleston Police Department

OCA: 17-05745

1

Name (Last, First, Middle)	Also Known As	Home Address
* No name *		

Business Address

DOB	Age	Race	Sex	Eth	Hgt	Wgt	Hair	Eye	Skin	Driver's License / State

Scars, Marks, Tattoos, or other distinguishing features

Reported Suspect Detail	Suspect Age	Race	Sex	Eth	Height	Weight	SSN
		U	F				

Weapon, Type	Feature	Make	Model	Color	Caliber	Dir of Travel / Mode of Travel

Veh Yr/Make/Model	Drs	Style	Color	Lic/St	VIN

Notes — Physical Char

Unknown person in a brown Tyrannosaurus Rex costume. Possibly female based on voice.

2

Name (Last, First, Middle)	Also Known As	Home Address
WELLS, NICOLE TERESA		*CHARLESTON, SC 29412* *231-369-9799*

Business Address *MICHAELS, CASHIER, 1987 SAM RITTENBERG BLVD*

DOB	Age	Race	Sex	Eth	Hgt	Wgt	Hair	Eye	Skin	Driver's License / State
[redacted]	*36*	*W*	*F*	*N*	*503*	*150*	*BRN*	*BRO*	*LGT*	[redacted]

Scars, Marks, Tattoos, or other distinguishing features

Reported Suspect Detail	Suspect Age	Race	Sex	Eth	Height	Weight	SSN

Weapon, Type	Feature	Make	Model	Color	Caliber	Dir of Travel / Mode of Travel

Veh Yr/Make/Model	Drs	Style	Color	Lic/St	VIN

Notes — Physical Char

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: *CLEARED* Case Mng Status: *CLEARED BY ARREST* Occurred: *05/18/2017*

Offense: *DISORDERLY CONDUCT*

Investigator: *DOUGLAS, S. D. (1926)* Date / Time: *05/19/2017 10:15:01, Friday*

Supervisor: *BONANNI, J. A. (1839)* Supervisor Review Date / Time: *05/23/2017 17:59:37, Tuesday*

Contact: *Douglas, Simone Dorothy*
180 Lockwood Dr, Charleston, Reference: *Supplemental Report*

OCA#: 17-08745
Incident: Disorderly Conduct/Accident Report
Location: 162 Church St
Date/Time: 05-18-2017 at 1724 hours
Witness: Shelby Summers Salvador, (904) 651-4201

On 5-19 2017 at approximately 1044 hours, PO Douglas spoke with Witness #3/ Shelby Salvador via telephone in reference to the incident. Mrs. Salvador advised she was at 162 Church St (Tommy Condon's Irish Pub) when she initially observed a person in a dinosaur costume standing in the area. Mrs. Salvador further advised she captured a picture of the party wearing a dinosaur costume before a horse and carriage arrived in the area. Mrs. Salvador advised the party in the dinosaur costume was in the roadway, slightly off of the curb in a fire hydrant lane. Mrs. Salvador stated, "The horses began behaving strangely" while approaching the party in the dinosaur costume. She later stated the horses refused to go forward and backed up to a parked vehicle with the carriage. Mrs. Salvador advised passengers began "jumping off" off the carriages while the handler attempted to steer the horses forward. She further advised the handler fell on the ground and later observed one of the carriage wheels run over the handler legs.

Mrs. Salvador advised after the incident her husband and an unknown male made contact with the party and observed the party was a young female.

Mrs. Salvador did not observe the party in the dinosaur costume say anything or make any sounds
Please note Mrs. Salvador advised the party in the dinosaur costume remained within 10-15 feet away from the horse during the incident.
Mrs. Salvador was advised and the entire incident was recorded by CPD issued body camera.

Investigator Signature Supervisor Signature

r_narr3

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: CLEARED Case Sing Status: CLEARED BY ARREST Occurred: 05/18/2017

Offense: DISORDERLY CONDUCT

Investigator: HANNON, B. (3126) Date / Time: 05/19/2017 11:15:10, Friday

Supervisor: ALTINE, L. Z. (963) Supervisor Review Date / Time: 05/19/2017 11:21:41, Friday

Contact: Wells, Nicole Teresa Reference: Supplemental Report
3016 Allison Cove Dr, Charleston
231-360-9799

OCA # 17-08745
Incident: Disorderly Conduct
Location: 162 Church Street
Date: 05/18/2017

On 05/19/2017 Sgt. Altine received a phone call from Nicole Wells, stating she was the individual who had been inside the dinosaur costume during the incident. Ms. Wells came to the Team Two Office and met with Sgt. Altine and the I/O. Ms. Wells stated she works at the Tervis store, 179 Church Street, and the Black Fedora Theater, 164 Church Street. Ms. Wells stated that she had a friend who works at the O-Bar, 70 State Street, who was having a bad day. Ms. Wells wanted to surprise her friend by showing up in the dinosaur costume in between her work shifts. Ms. Wells reported that she worked at the Tervis store until 1630 hours at which time she went to her vehicle which was parked in the garage located at 84 Cumberland Street and is accessible from Church Street. Ms. Wells then changed into the dinosaur costume and was walking on Church Street to Linguard Street. Ms. Wells stated this is when she saw the horse and carriage and was attempting not to cause an issue. Ms. Wells advised that she did not say anything or attempt to approach the horses. After the horse reacted Ms. Wells stated she was unsure what to do, at which time two males reportedly told her to leave. Ms. Wells stated she left the area to not further scare the horses. Ms. Wells went back to her vehicle and removed the costume at this time.

Due to Ms. Wells wearing a costume that fully covered her features from identification and her disregard for public safety in wearing and traveling in the costume she was advised she would be receiving citations. Ms. Wells was issued Citation # 20170410055027 for disorderly conduct 21-109 and Citation # 20170410055033 for wearing a mask or disguise in public 21-111. A hearing date is schedule for 06/27/2017 at 0930 hours.

The meeting with Ms. Wells was recorded on the I/O's body worn camera.

Investigator Signature Supervisor Signature

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: CLEARED Case Mng Status: CLEARED BY ARREST Occurred: 05/18/2017

Offense: DISORDERLY CONDUCT

Investigator: FARLEY, T. M. (2335) Date / Time: 05/24/2017 18:47:06, Wednesday

Supervisor: KNIESS, J. R. (1376) Supervisor Review Date / Time: 05/24/2017 22:49:17, Wednesday

Contact: Reference: Supplemental Report

OCA#: 17-08745
Incident: Disorderly Conduct/Accident Report
Location: 162 Church St
Date/Time: 05-18-2017 at 1724 hours
Witness #1: Gibson, Thomas at 317-748-0554
Witness #2: Buenzow, Roger at 803-597-0296 and reb@sc.rr.com
Witness #3: Salvador, Shelby at shelby.salvador@gmail

On Wednesday, May 24, 2017 at approximately 1740 hours, Officer T. Farley attempted to contact witness Thomas Gibson regarding the incident using the phone number he provided. Gibson did not answer the phone, but a voicemail was left with Officer Farley's contact information.

At approximately 1742 hours, Officer Farley contacted Roger Buenzow via phone regarding this case. Buenzow was unable to travel to Charleston to make a written statement, but provided an oral account of the incident which Officer Farley recorded on Getac body-worn camera #GTC-BC100916. Buenzow stated that he was at the restaurant with his wife when observed someone in a dinosaur costume. He took several photographs of the person as she stepped off the curb toward the horses. He heard the driver of the carriage tell the person to get out of the way while he attempted to control the spooked horses. The party did not do so, and a collision resulted between the carriage and a parked car. Buenzow then observed two males approach the suspect and tell her to leave. She then fled north. Buenzow stated that he did not personally hear the suspect make any growling noises, but explained that numerous people on scene stated that the suspect did. Buenzow advised that he did not have anything further to add, but he was available via phone for further interview if needed. The recording from the interview was later uploaded into Veretos.

At approximately 1924 hours, Gibson called back to speak with Officer Farley. Gibson was unable to travel to Charleston to make a written statement, but provided an oral account of the incident which Officer Farley recorded on Getac body-worn camera #GTC-BC100916. Gibson explained that on the day of the incident he was riding in the front row of the carriage along with his wife, sister, and brother-in-law. He noticed a person walking on the sidewalk wearing a Tyrannosaurus costume. Gibson then asked the carriage driver if the costume would spook the horses. As the carriage driver turned around to see, the person in the costume stepped off the sidewalk into the street and facing the horses. The carriage driver yelled "get out of here" as the horses started rearing. Again the driver yelled for the person in the costume to get out of there as the horses became more agitated. The carriage then jack-knifed, hit a parked car, and the driver fell from the carriage. Other parties on scene then yelled to the person in the costume to leave, but she remained standing there which continued to spook the horses. She then moved back slightly behind a parked car. Gibson advised that he did not hear the suspect make any noises, but advised that he wore two hearing aides. Gibson

Investigator Signature Supervisor Signature

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

TR-310 (Rev. 11/2011)

Date	Time of Collision	County	Collision Location [Rt. # / Name]	Direction	Mile Pt.	In Which City is Town of
05-18-2017	1724	10	CHURCH ST			CHARLESTON

Distance Offset: 20 Feet — Direction: N E S W — Distance Unit: Miles / Feet

Nearest Intersecting Rd [Rt. # / Name]: LONGUARD ST

Second Intersecting Rd [Rt. # / Name]: CUMBERLAND ST

GPS Coordinates: Latitude / Longitude

D-037186 — LEGALLY PARKED

Unit 1 | Sex | Race | Street

Age | Birth Date | City, State, & Zip

State | Driver's License # | Class | Insurance Company

Year: 2013 | Body: 4D | Vehicle Make: VOLKSWAGO | VIN #: 3VW2K7AJ4DM236573

State: SC | Year: 2017 | License Plate #: MUA141 | Owner's D.L. #: [redacted]

Home Telephone | Owner's Full Name: SISK-KATARINA ALEXANDRIA

Bus. Telephone | Street: [redacted]

Contributed To Collision: Yes / No | City, State, & Zip: CHARLESTON, SC 29412

Estimated Speed: 0 | Speed Limit: 25 | C.D.L. Req: Yes / No | T/C $ Rec: Yes / No | Alcohol/Drug Info (see back): Yes / No

Summons # | Code | Summons # | Code | Towed? Yes / No | By

D-037187 — STURGEON-THOMAS VANCE

Unit 2 | Sex: M | Race: W | Street: [redacted]

Age: 2[redacted] | Birth Date | City, State, & Zip: NORTH CHARLESTON, SC 29405

State: SC | Driver's License #: [redacted] | Class: D | Insurance Company: PROGRESSIVE

Year | Body | Vehicle Make | VIN #

State | Year | License Plate # | Owner's D.L. #: NA

Home Telephone: (843) 303-5902 | Owner's Full Name: PALMETTO CARRIAGE WORKS

Bus. Telephone: (843) 723-8145 | Street: [redacted]

Contributed To Collision: Yes / No | City, State, & Zip: CHARLESTON, SC 29403

Estimated Speed: 5 | Speed Limit: 25 | C.D.L. Req: Yes / No | T/C $ Rec: Yes / No | Alcohol/Drug Info (see back): Yes / No

Summons # | Code | Summons # | Code | Towed? Yes / No | By

D-037188 — Driver/Pedestrian's Full Name

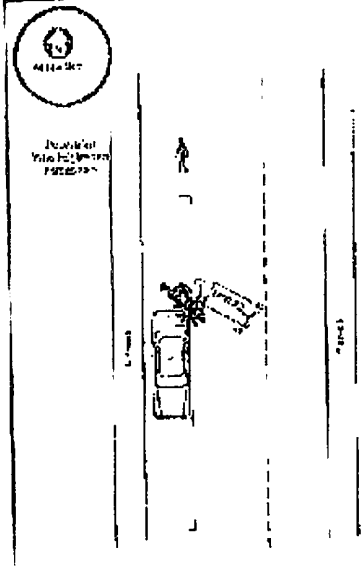
Unit | Sex | Race | Street

Age | Birth Date | City, State, & Zip

State | Driver's License # | Class | Insurance Company

Year | Body | Vehicle Make | VIN #

Dir. of Travel: Unit 1: N S E W | Unit 2: N S E W | Unit 3: N S E W



Unit 1 Dam	Unit 2 Dam	Unit 3 Dam	Prop Dam 1	Prop Dam 2
$ 1,000.00	$ 0.00	$	$	$

Owner: BUENZOW-ROGER CHARLES

Address: [redacted]

State: SC | Zip: 29036 | Phone: 8035370296

Witness: SALVADOR-SHELBY SUMMERS

Address: [redacted]

State: FL | Zip: 32250 | Phone: 9046514201

Photo: Y (N)

Describe What Happened (Refer to Units by Number)

The horses were spooked by a pedestrian, the driver of Unit #2 lost control of the horse drawn carriage, and it struck Unit #1 which was parked.

END

NOTICE - THIS TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION, AND BELIEF COVERING THE COLLISION, BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name	Rank	Badge #	Review Code	Review Date	Reviewer's Name	Rank	Internal Agency Code
FARLEY, TYLER M.	PPO	2335	01.00100	05-18-2017	HUTZLER, TODD C.	MPO	1708745

Mail To: SC Department of Motor Vehicles
PO Box 1498
Blythewood, SC 29016

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

2	[redacted]	M	W	3	01	00	7	7	1	1	Driver Unit #2	[redacted]	NORTH CHARLESTON, SC				29405
1	03/13/1957	M	W	0	99	00	7	1	1	2							

Race: A - Asian/Pacific Islander; B - African American; H - Hispanic; I - Native American/Alaskan Indian; W - Caucasian; O - Other; U - Unk.

a) Injury Status: 1 - Possible; 2 - Non-incapacitating; 3 - Incapacitating; 4 - Fatal; 5 - Not Injured; 9 - Unk.

b) 2 or 3 Wheel Motorized Vehicle Only: Helmet Worn: Y - Yes; N - No

Seating Loc: D1 D2 D3 D4 D5 D6 D7 D8 D9

20 - Pedestrian; 30 - Trailing Unit; 40 - Riding in Vehicle Enclosure (Motorhome); 50 - Other Enclosed Area (Describe); 60 - Other Unenclosed Area (Describe); 70 - Riding on Vehicle Exterior; 80 - Taxi; 99 - Unk/NA

Restraint/Safety Device: 00 - None Used; 11 - Shoulder Belt Only; 12 - Lap Belt Only; 13 - Shoulder & Lap Belt Used; 14 - Child Restraint; 15 - Booster Seat; 16 - Helmet; 17 - Reflective Clothing; 18 - Lighting; 19 - Protective Pads; 20 - Other; 99 - Unk

Pedestrian, Motor/Pedalcy Use Only: 1 - Injured; 2 - Not Injured; 3 - Refused Treatment; 4 - Transported

Ejection: 1 - Not Ejected; 2 - Partial Ejection; 3 - Total Ejection; 4 - Not Applicable; 9 - Unk

a) 1 - Deployed Front; 2 - Deployed Side; 3 - Deployed Both; 4 - Deployed Other; 5 - Not Applicable; 6 - Deployed Unknown

b) 1 - Switch in On Position; 2 - Switch in Off Position; 3 - Unknown

Head Injury: Y - Yes; N - No

Location After Impact: 1 - Not Trapped; 2 - Extricated (Mechanical Means); 3 - Freed (Non-Mechanical Means); 4 - Not Applicable; 9 - Unknown

a) Transported to Medical Facility: 1 - Yes; 2 - No; 3 - Unknown

b) By: 1 - EMS; 2 - Police; 8 - Other; 9 - Unk

Sequence of Events

38				38	25
25				35	

1st Unit: 25

Collision: Not Fixed: 31 - Pedestrian; 32 - Railway Veh; 34 - Other Non-Motorist; 35 - Motor Veh (Parked); 36 - Pedalcyclist; 37 - Train; 99 - Unk Motor Vehicle

Collision: Fixed Object: 41 - Bridge Overhead Structure; 42 - Bridge Pier or Abutment; 43 - Bridge Parapet End; 44 - Bridge Rail; 45 - Culvert; 46 - Curb; 47 - Ditch; 48 - Embankment; 49 - Fence; 50 - Guardrail Face; 51 - Guardrail End; 52 - Highway Traffic Sign Post; 53 - Overhead Sign Support; 54 - Light Support; 55 - Mailbox; 56 - Median Barrier; 57 - Traffic Signal Support; 58 - Tree (Standing); 59 - Utility Pole/Light Support; 60 - Wall; 61 - Other Fixed Object; 99 - Unk

Manner of Collision (Blank Veh): 10 - Not Collision with Motor Veh; 11 - Rear End; 12 - Head On; 13 - Front to Side; 14 - Front to Rear; 15 - Sideswipe, Same Direction; 16 - Sideswipe, Opposite Direction; 17 - Angle; 18 - Unknown

1st Point of Impact: 42

1st Point of Impact | Most Deformment: 17 | 81

Vehicle Type: 01 - Automobile; 02 - Van; 03 - Pickup Truck; 04 - Truck Tractor; 05 - Other Truck; 06 - Motorcycle; 07 - Motor Home; 08 - Bus; 09 - Emergency Vehicle; 10 - Motor Scooter; 11 - Motorized Bicycle; 12 - Snowmobile; 13 - All Terrain Vehicle; 14 - Other Motor Vehicle; 15 - Train; 16 - Other Non-Motorist; 17 - Pedalcycle; 18 - Animal Rider; 19 - Animal Drawn Vehicle; 20 - Pedestrian; 21 - Wheelchair; 22 - Other Non-Motorist; 23 - Unk Non-Motorist; 24 - Unk Motor Vehicle; 25 - Unk (Hit and Run Only)

Vehicle Use Code: 01 - Personal; 02 - Taxi; 03 - Rental; 04 - Other Livery; 05 - Emergency; 06 - Police; 07 - Public Transportation; 08 - School; 09 - Other Government; 10 - Farm Use; 11 - Construction; 12 - Logging; 13 - Military; 14 - Other

Vehicle Attachment: 1 - Single; 2 - Mobile Home; 3 - Semi-Trailer; 4 - Utility Trailer; 5 - Farm Trailer; 6 - Trailer w/ Boat; 7 - Camper Trailer; 8 - Snowmobile Trailer; 9 - Petroleum Tanker; A - Livestock Trailer; B - Autocamper Trailer; C - Tow Truck; D - Flat Bed; E - Other Towed Vehicle; F - Other

Action Prior to Impact (Vehicle): 01 - Backing; 02 - Passing; 03 - Changing Lanes; 04 - Entering Traffic Lane; 05 - Making U Turn; 06 - Movements Parallel Straight Ahead; 07 - Overtaking/Passing; 08 - Parking; 09 - Slowing/Stopping in Traffic; 10 - Turning Right; 11 - Turning Left; 12 - Other; 99 - Unk

Action Prior to Impact (Non-Motorist): 21 - Approaching/Leaving Vehicle; 22 - Entering/Crossing Location; 23 - Playing/Working on Vehicle; 24 - Pushing Vehicle; 25 - Standing; 26 - Walking, Running, Jogging; 27 - Working; 99 - Unk

Weather Condition: 1 - Clear (no adverse conditions); 2 - Rain; 3 - Cloudy; 4 - Sleet, Hail; 5 - Snow; 6 - Fog, Smog, Smoke; 7 - Blowing Sand, Soil, Dirt; 8 - Severe Crosswinds; 9 - Other; U - Unk

Light Condition: 1 - Daylight; 2 - Dawn; 3 - Dusk; 4 - Dark (Lighting Unspecified); 5 - Dark (Not Lighted); 6 - Dark (Lighted); 7 - Dark (Not Lighted); U - Unk

Junction Type: 01 - Crossover; 02 - Driveway; 03 - Five Point, or More; 04 - Four-Way Intersection; 05 - Ramp; 06 - Railway Grade Crossing; 07 - Shared Use Paths or Trails; 08 - T-Intersection; 09 - Traffic Circle; 10 - Unknown; 11 - Other; 99 - Unk

Primary Contributing Factors: 48

Driver: 01 - Disregarded Signs, Signals, Etc.; 02 - Improper Backing; 03 - Improper Passing; 04 - Driving Too Fast for Conditions; 05 - Exceeded Authorized Speed Limit; 06 - Failed to Yield Right of Way; 07 - Improper Turn; 08 - Inattentive/Asleep; 09 - Followed Too Closely; 10 - Aggressive Operation of Vehicle; 11 - Over-correcting/Over-steering; 12 - Swerving to Avoiding Object; 13 - Wrong Side of Wrong Way; 14 - Under the Influence; 15 - Visual Obstruction (Within Unit); 16 - Improper Lane Usage/Change; 17 - Improper Start from Parked Position; 18 - Improper Backing; 19 - Improper Turning; 20 - Fleeing; 21 - Other Improper Action; 22 - Unk

Roadway: 30 - Curve; 31 - Non-Highway Work; 32 - Obstruction in Roadway; 33 - Road Surface Condition (Ice, Oil, Wet); 34 - Rut, Holes, Bumps; 35 - Shoulder (Low, Soft, Drop); 36 - Traffic Control Device (Inoperative, Missing, Obscured); 37 - Work Zone (Construction/Maintenance/Utility); 38 - Other Improper Roadway Condition; 48 - Other

Non-Motorist: 60 - Inattentive; 61 - Lying and/or Illegally in Roadway; 62 - Failure to Yield R.O.W.; 63 - Not Visible (Dark Clothing); 64 - Improper Signals, Signals, Etc.; 65 - Improper Crossing; 66 - Darting; 67 - Wrong Side of Road; 68 - Other; 69 - Unk

Environmental: 70 - Animal in Road; 71 - Glare; 72 - Weather Conditions; 73 - Other; 74 - Unk

Vehicle Defect: 75 - Brakes; 76 - Windows/Vehicle; 77 - Steering; 78 - Tires/Coupling; 79 - Other Tires; 80 - Cargo; 81 - Lights; 82 - Fuel System; 83 - Other; 84 - Unk

Alcohol / Drug Test Given: 1 - Given - Known Results; 2 - Given - Unknown; 3 - Given - Pending; 4 - None; 5 - Refused

Test Type: 1 - Breath (Alc Only); 2 - Blood; 3 - Urine; 4 - Serum; 5 - Other

Drug Results: 1 - Amphetamines; 2 - Cocaine; 3 - Marijuana; 4 - Opiates; 5 - PCP; 6 - None; 7 - Benzodiazepines; 8 - Other

Special Use Only

Underride/Override: 1 - Underride - Compartment Intrusion; 2 - Underride - No Intrusion; 3 - Underride - Unknown; 4 - Override - Struck Transport; 5 - Override - Other Vehicle; 6 - None; 8 - Unk

Patient of Paternity: 1 - Yes; 2 - No; 8 - Unk

Trafficway: 1 - Two-way, Not Divided; 2 - Two-way, Divided, Unprotected Median; 3 - Two-way, Divided, Positive Barrier; 4 - One-Way; 5 - Ramp; 6 - Roundabout; 7 - Alley; 8 - Unk

Road Character: 1 - Straight - Level; 2 - Straight - On Grade; 3 - Straight - Hillcrest; 4 - Curve - Level; 5 - Curve - On Grade; 6 - Curve - Hillcrest; 9 - Unk

Road Surface Condition: 1 - Dry; 2 - Wet; 3 - Ice; 4 - Sand, Mud, Dirt, Oil, Gravel; 5 - Slush; 6 - Water (Standing, Moving); 7 - Other; 9 - Unk

Traffic Control Type: 01 - Stop Sign; 02 - Yield Sign; 03 - Traffic Signal; 04 - Police Officer; 05 - Traffic Flares; 06 - School Zone; 07 - Railroad Crossing Device; 08 - Railroad Crossing Gate; 09 - Other; 10 - Unk; 98 - None

School Bus Involved: 1 - Yes; 2 - No

Work Zone: 1 - Before 1st Sign; 2 - Advance Warning Area; 3 - Transition Area; 4 - Activity Area; 5 - Termination Area

Work Zone Location: 1 - Shoulder/Median Work; 2 - Lane Shift/Crossover; 3 - Intermediate/Moving Work; 4 - Other

Work Zone Type: 1 - Lane Closure; 2 - Lane Shift/Crossover; 3 - Work on Shoulder or Median; 4 - Intermittent or Moving Work; 5 - Other

Workers Present: 1 - Yes; 2 - No

Mail To: SC Department of Motor Vehicles, PO Box 1498, Blythewood, SC 29016

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

FR 10 (REV. 11/2011)
NOTICE OF REQUIREMENT

Date: 05-18-2017 | Time of Collision: 1724 | Deputy: 10 | Collision Location: CHURCH ST | City: CHARLESTON

To Vehicle Owner/Operator: Failure to return this form to the Department of Motor Vehicles within 15 days from the date of the collision could result in the suspension of your driver license and registration privileges pursuant to South Carolina Code of Laws 56-9-351 and 56-10-530.

FR10 Audit No. D-037186

Driver/Pedestrian's Full Name: LEGALLY PARKED

Unit #: 1 | Sex | Race | Street:

Age: 0 | Birth Date | City, State & Zip

State | Driver's License # | Insurance Company

Year: 2013 | Body: 4D | Vehicle Make: VOLKSWAGO | VIN #: 3VW2K7AJ4DM236573

State: SC | Year: 2017 | License Plate #: MUA141 | Owner's D.L. #

Home Telephone | Owner's Full Name: SISK-KATARINA ALEXANDRIA

Bus. Telephone | Street:

Contributed To Collision: Yes / No | City, State & Zip: CHARLESTON, SC 29412

FR10 Audit No. D-037187

Driver/Pedestrian's Full Name: STURGEON-THOMAS VANCE

Unit #: 2 | Sex: M | Race: W | Street:

Age: 0 | Birth Date: [redacted] | City, State & Zip: NORTH CHARLESTON, SC 29405

State: SC | Driver's License #: [redacted] | Insurance Company: PROGRESSIVE

Year | Body | Vehicle Make | VIN #

State | Year | License Plate # | Owner's D.L. #: NA

Home Telephone: (842) 303-5902 | Owner's Full Name: PALMETTO CARRIAGE WORKS

Bus. Telephone: (843) 723-8145 | Street: [redacted]

Contributed To Collision: Yes / No | City, State, & Zip: CHARLESTON, SC 29403

FR10 Audit No. D-037188

Driver/Pedestrian's Full Name

Unit # | Sex | Race | Street

Age | Birth Date | City, State, & Zip

State | Driver's License # | Insurance Company

Year | Body | Vehicle Make | VIN #

State | Year | License Plate # | Owner's D.L. #

Home Telephone | Owner's Full Name

Bus. Telephone | Street

Contributed To Collision: Yes / No | City, State, & Zip

Automobile liability insurance information for Unit # 1
Company Name | Area Code/Phone Number: (800) 776-4737
Agency Name: PROGRESSIV | Policy Number: 911317163

Automobile liability insurance information for Unit # 2
Company Name: PROGRESSIVE | Area Code/Phone Number: (843) 725-4909
Agency Name: ADMIRAL IN | Policy Number: CA0D002051602

Automobile liability insurance information for Unit #
Company Name | Area Code/Phone Number
Agency Name | Policy Number

Notice of Requirement Accepted → Signature | Y N Refused to Affix Signature? | Y N Vehicle Subject to Registration in SC?

To Be Completed Below or Entered at www.SCDMVOnline.com by Insurance Company Representative. This form should not be mailed to DMV if insurance information has been submitted electronically.

Reference to Unit # ____ I hereby affirm that to the best of my knowledge the vehicle described above was insured by the below stated insurance company on the date of the collision.

The information contained herein is based solely upon my knowledge and belief as a representative of the above insurance company and no warranty of liability is implied into the above mentioned statements as I have no first hand knowledge.

Insurance Company | Policy #: | Signature | Title

Beginning Date | Ending Date | Policy Holder | NAIC # (Assigned by S.C. Dept. of Ins.) | Bus. Telephone

Notice: If liability insurance was not in effect for your vehicle involved in the collision, The Department of Motor Vehicles could suspend your driver license and registration privileges pursuant to South Carolina Code of Laws 56-9-351 and 56-10-530.

If any of the below are applicable, disregard the above portion.

Form FR-10 Not Issued: Section 56-10-520

- Check here if Form SR-22 "Financial Responsibility Certificate" is on file with the Department of Motor Vehicles covering this vehicle
- Check here if a certificate of self-insurance has been issued by the Department of Motor Vehicles covering the vehicle and the certificate number is: ____
- Check here if liability insurance was not in effect to comply with South Carolina law, or any requirements

No FR-10 Issued to Operator/Owner of Unit #
Summons Issued for
For operating or allowing the operation of an uninsured vehicle
Summons Number
Signature | Title

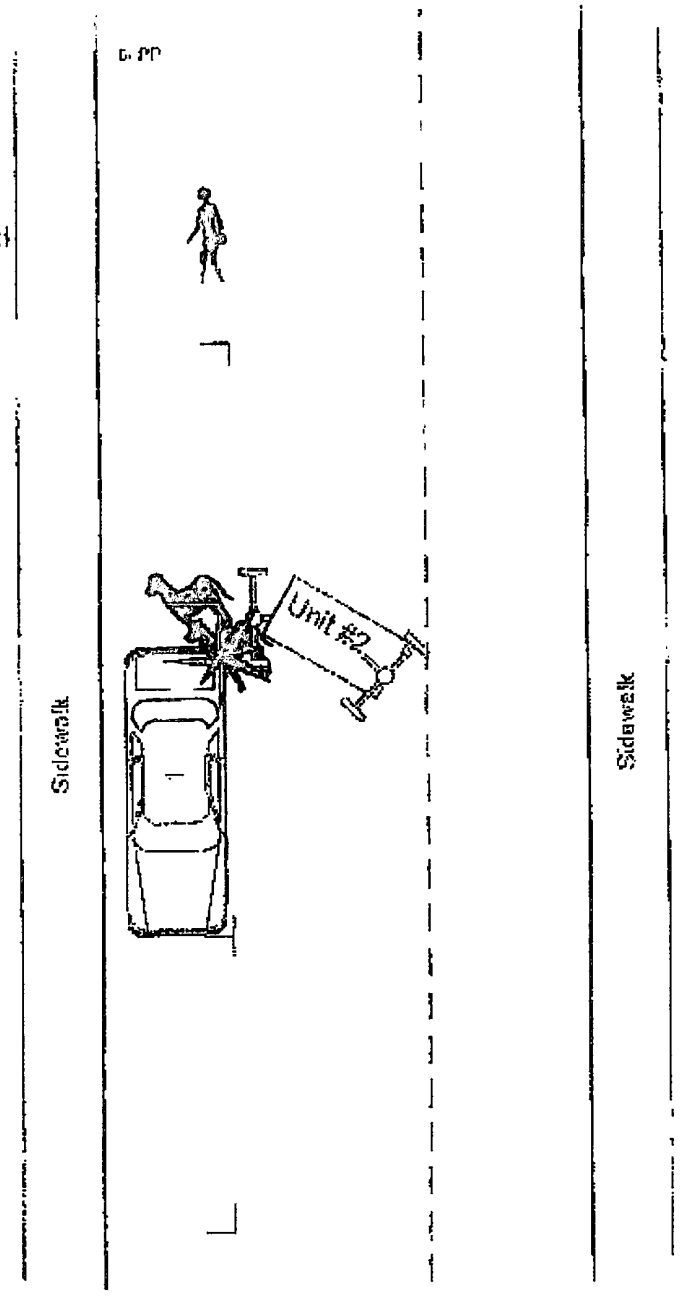
Assigning Officer's Name: FARLEY, TYLER M. | Rank: PPO | Badge #: 2335 | Jurisdiction Code: 0100100 | Review Date: 05 18 2017 | Reviewer's Name: HUTZLER, TODD C. | Rank: MPO | Internal Agency Code: 1708745

Indicate Nort

Date
05-

1724 | 1730

CHARLESTON



Drawing Not To Scale.

Investigating Officer's Name	Rank	Badge #	Jurisdiction Code	Review Date	Reviewer's Name	Rank	Internal Agency Case
FARLEY, TYLER M.	PPO	2335	0100100	05-16-2017	HUTZLER, TODD C.	MPO	1708745

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

INCIDENT/INVESTIGATION REPORT

Agency Name	Charleston Police Department
ORI	SC0100100
Case#	19-08202
Date / Time Reported	06/03/2019 14:00 Mon
Last Known Secure	06/03/2019 13:30 Mon
At Found	06/03/2019 14:00 Mon

INCIDENT DATA

Location of Incident	Premise Type	Zone/Tract
20 Anson St, Charleston SC 29401-	Highway road/alley	222

	Crime Incident(s)	(Com)	Weapon / Tools	Entry	Exit	Security	Activity
#1	Intimidation 13C						N
#2	Crime Incident	( )	Weapon / Tools	Entry	Exit	Security	Activity
#3	Crime Incident	( )	Weapon / Tools	Entry	Exit	Security	Activity

MO

VICTIM

# of Victims 1 — Type: INDIVIDUAL/ NOT LAW — Injury

	Victim/Business Name (Last, First, Middle)	Victim of Crime #	DOB	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
V1	JONES, MARK ROWELL	1	Age 59	W	M	IRU		

Home Address	Home Phone
1323 Jackwood Ct, Charleston County SC 29407-	- -

Employer Name/Address	Business Phone	Mobile Phone
CHARLESTON CARRIAGE WORKS 20 ANSON ST	843-729-1279	

VYR	Make	Model	Style	Color	Lic/Lis	VIN

OTHERS INVOLVED

CODES: V = Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)

Type: INDIVIDUAL/ NOT LAW ENFORCEMENT — Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
CO	JONES, MARK ROWELL		Age 59	W	M			

Home Address	Home Phone
1323 Jackwood Ct, Charleston County SC 29407-	- -

Employer Name/Address	Business Phone	Mobile Phone
Charleston Carriage Works 20 ANSON ST	843-729-1279	

Type: — Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status

Home Address	Home Phone

Employer Name/Address	Business Phone	Mobile Phone

PROPERTY

1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)

VI #	Code	Status Fm/To	Value	OJ	QTY	Property Description	Make/Model	Serial Number

Officer/ID# JACOBS, J. L. (PPTL, TM9P) (2180)

Invest ID# (0) — Supervisor MARCELL, B. J. (PPTL, TM2P) (1807)

Status — Complainant Signature — Case Status: Pending Active 06/03/2019 — Case Disposition: — Page 1

K_CS11ER — Printed By: RUEMELINS, ruemelins — Sys#: 211644 — 06/04/2019 14:49

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

	IBR	Status	Quantity	Type Measure	Suspected Type	
DRUGS						

Assisting Officers

Suspect Hate / Bias Motivated

INCIDENT/INVESTIGATION REPORT

Narr. (cont.) OCA: 19-08202 *Charleston Police Department*

NARRATIVE

On 06/03/2019 at approximately 1400 hours R/O met with the complainant, Mark Jones, who advised that the previous day a white male subject entered his business, Charleston Carriage Works. The offender, John Daniel Blanton, began to have a verbal altercation with staff. This was due to the fact that he was displeased how they were watering the horses in the heat.

Before leaving he told the complainant his name and where he worked, Hooked Restaurant. He also pointed at the staff and exclaimed: "I'll get you."

Mr. Jones also stated that he met with the manager of Hooked and he explained that the subject was terminated due to this incident. R/O then issued the complainant a business card with case number, 19-08202.

Incident was captured on R/O's Getac BWC.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Incident Report Suspect List

Charleston Police Department

OCA: *19-08202*

1	Name (Last, First, Middle) *BLANTON, JOHN DANIEL*					Also Known As				Home Address *7 CHARLOTTE ST* *CHARLESTON, SC 29403* *512-567-3242*	
	Business Address										
	DOB	Age *36*	Race *W*	Sex *M*	Eth *N*	Hgt	Wgt	Hair *BRN*	Eye *BRO*	Skin *LGT*	Driver's License / State
	Scars, Marks, Tattoos, or other distinguishing features										

Reported Suspect Detail	Suspect Age	Race	Sex	Eth	Height	Weight	SSN
							630-05-6237

Weapon, Type	Feature	Make	Model	Color	Caliber	Dir of Travel Mode of Travel

VehYr/Make/Model	Dis	Style	Color	Lic/St	VIN

Notes

Physical Char

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

IRS

EXHIBIT 3

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Public Disclosure and Availability of Exempt Organizations Returns and Applications: Contributors' Identities Not Subject to Disclosure

Is a tax-exempt organization required to disclose the names or addresses of its contributors?

A tax-exempt organization is generally not required to disclose publicly the names or addresses of its contributors set forth on its annual return, including Schedule B (Form 990, 990-EZ, or 990-PF) (PDF). The regulations specifically exclude **the name and address of any contributor to the organization** from the definition of disclosable documents. Contributor names and addresses listed on an exempt organization's exemption application are subject to disclosure, however.

This general exclusion for contributor information on annual returns does not apply to private foundations, or to political organizations described in section 527 of the Internal Revenue Code. Certain tax-exempt political organizations must report **the name and address, and the occupation and employer (if an individual), of any person that contributes in the aggregate $200 or more in a calendar year** on Schedule A of Form 8872 (PDF). Tax-exempt political organizations may also be required to file Form 990 (PDF), including Schedule B. Political organizations must make both of these forms available to the public, including the contributor information.

The IRS Required Disclosures course explains disclosure requirements for tax-exempt organizations.

Page Last Reviewed or Updated: 08-Jan-2020

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Bylaws of Charleston Animal Society

Revised February 19, 2019

ARTICLE I: NAME, PURPOSE AND OFFICES

SECTION 1. Name. The name of the organization shall be Charleston Animal Society (also referred to as the "Corporation" or "Society" in these Bylaws)

SECTION 2. Purpose. The purpose of the organization is to prevent cruelty to animals as stated in the Articles of Incorporation dated March 14, 1874.

SECTION 3. Offices. The principal office of the Corporation shall be located at such place as may be designated by the Board of Directors.

The registered office of the Corporation required by Section 33-31-501 of the South Carolina Nonprofit Corporation Act shall be maintained in the State of South Carolina and may be, but need not be, identical with the principal office of the Corporation, and the address of the registered office may be changed from time to time by the Corporation.

ARTICLE II: MEMBERSHIP

SECTION 1. General Rights and Powers. Except as otherwise provided by law, the Articles of Incorporation, or these Bylaws, the qualifications, rights, privileges, dues, fees, responsibilities, and the provisions governing the withdrawal, suspension, and expulsion of Members shall be determined by the Board of Directors.

SECTION 2. Qualifications for Membership:

A. Any person who contributes a gift of money to Charleston Animal Society (donor), or

B. Any person who contributes a gift of time to Charleston Animal Society (volunteer or foster), or

C. Any person who contributes a gift of their home to Charleston Animal Society (adopter).

SECTION 3. Entry of Members. Individuals satisfying all requirements established by the Articles of Incorporation, these Bylaws, and any other conditions approved by the Board shall be entered on the membership rolls of the Corporation.

SECTION 4. Annual Meeting. There shall be held annually in the first quarter of the fiscal year, at such time and place as the Board of Directors may designate, an annual meeting of the

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Members of the Corporation. At such meeting, the Board Chairperson and Treasurer shall report on the activities and financial condition of the Corporation and such other business as may come before the meeting.

SECTION 5. Notice of Meetings. Notice for meetings of the membership shall be governed by Section 33-31-705 of the Act (notice shall be given in a fair and reasonable manner).

ARTICLE III: BOARD OF DIRECTORS

SECTION 1. Duties of Directors. The business and affairs of the Corporation shall be governed by its Board of Directors, who may exercise all such powers of the Corporation and do all such lawful acts and things as are permitted by law or by the Articles of Incorporation or these Bylaws.

The Board is responsible for overall policy and direction of the Corporation and may delegate authority for day-to-day operations to the chief executive (i.e. executive director, general manager, chief executive officer).

SECTION 2. Number and Terms of Directors. The number of Directors shall not be fewer than fifteen (15) or more than thirty-one (31).

Directors shall serve staggered terms of two years, beginning and expiring in conjunction with the annual meeting . Directors may not serve for a period exceeding three consecutive terms from the date of their first election or appointment to a full term. After serving three consecutive terms, a director will be eligible for re-election or re-appointment to the Board after one year has elapsed since the expiration of his or her last term.

SECTION 3. Composition of Directors. The Corporation shall seek to ensure that the composition of the Board is reflective of the diversity of its membership and the communities the corporation serves.

SECTION 4. Voting Rights. Except as otherwise provided by law, the Articles of Incorporation, or these Bylaws, each Director shall be entitled to one vote on each matter upon which has voting rights. As a guideline, the Board votes on policy, a course or principle of action, not procedure, an established or official way of carrying out policy. Thus, the Board would vote to approve matters such as the annual operating budget and strategic plans, among other appropriate matters. All directors shall have the right to vote, as set forth in these Bylaws, on the election of directors, on the disposition of all or substantially all of the assets of the Corporation, on any merger, and on any election to dissolve the Corporation.

SECTION 5. Election. The Governance Committee of the Corporation shall recommend a slate of directors and officers for approval to the Board of Directors.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

The slate of nominees shall be communicated to the board no fewer than fourteen days prior to the deadline for receipt of completed ballots. Completed ballots may be returned by mail, facsimile, or email to the Corporation.

The slate shall be deemed approved upon the Corporation receiving a majority of affirmative votes cast by the Directors entitled to vote on the matter.

SECTION 6. Removal. A director may be removed from office with or without cause by a majority vote at a meeting of the directors called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

SECTION 7. Resignation. A Director may resign upon formal notification to the Board Chairperson or Secretary.

SECTION 8. Vacancies. Whenever a vacancy occurs due to death, resignation, or removal, a new Director may be appointed by a majority of the Board to fill the unexpired term upon seven days' notice prior to such consideration.

SECTION 9. Compensation. No Director shall receive any compensation for service in such capacity as a Director. The Board of Directors may authorize the payment of, or reimbursement for, all actual expenses of each Director if such is approved in advance.

SECTION 10. Liability. The Directors shall not be liable for loss to the Corporation, including any loss incurred on investment of the Corporation's funds, except in the event of intentional misconduct. The Corporation shall be responsible for obtaining and paying for director's insurance for all board members.

ARTICLE IV: MEETINGS OF THE BOARD OF DIRECTORS

SECTION 1. Regular Meetings. The Board of Directors shall hold regular meetings at least four times each fiscal year at such place and time as may be designated by the Board.

SECTION 2. Special Meetings and Notice. A special meeting of the Board of Directors may be held upon the call of the Board Chairperson and shall be held upon the request of members of the Board of Directors constituting not less than twenty (20%) percent of the total members of the Board of Directors then serving. Notice of a Special Meeting shall be reasonable and fair and describe the matter for which the meeting is being called.

SECTION 3. Notices. Notice of a regular meeting of the Board of Directors shall be given as soon as reasonably possible, but in any event at least five days prior to the time set for such regular meeting. Notice of the date, time and place of any special meeting shall be given to

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

each board member no less than 24 hours prior to the meeting. Such notices shall be given in writing unless oral notice is reasonable under the circumstances. Notice may be communicated in person, by telephone, or other form of wire or wireless communication, such as e-mail, facsimile or voice mail, or by mail or private carrier or any other lawful means. A Director's attendance at or participation in a meeting waives any required notice of the meeting, unless the Director upon arriving at the meeting (or prior to the vote on a matter not properly noticed under these bylaws) objects and does not thereafter vote for or assent to the objected to action.

SECTION 4. Quorum. Except as may otherwise specifically be provided by statute, the Articles of Incorporation, or these Bylaws, a majority of the Board of Directors shall constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the directors, the directors present may adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum is present. A quorum is not necessary to adjourn a meeting.

SECTION 5. Open Meetings. Meetings of the Board of Directors shall be open to the public and press to observe. The Board of Directors retains the right to meet in executive session at such time and for any reason as it deems necessary or appropriate.

SECTION 6. Action Without Meeting. Any action permitted by law, the Articles of Incorporation, or these Bylaws to be taken at a meeting of the Board of Directors, may be taken without a meeting if consent in writing or electronic means, setting forth the action to be taken, shall be signed by a majority of the Directors of the Corporation then in office. Such action shall be effective upon the signature of the last director so signing for the majority unless otherwise provided therein.

ARTICLE V: OFFICERS

SECTION 1. Board Officers. The officers of the Board shall be the Board Chairperson, one to three Vice Chairpersons, Secretary, and Treasurer. The offices of Chairperson(s), Secretary, and Treasurer shall be chosen by the Board of Directors annually. One of the Vice Chairpersons shall succeed to the office of Board Chairperson upon any vacancy in that office, whether vacancy is caused by expiration of eligibility to hold office, resignation, failure of reelection, or removal. No person shall concurrently hold more than one office.

SECTION 2. Term. Officers shall serve for a term of one (1) year. Except as set forth in this Section, officers may not serve for a period exceeding two (2) consecutive terms from the date of their first election or appointment to a full term. After serving two (2) consecutive terms, an officer shall be eligible for re-election or re-appointment after one (1) year has lapsed since the expiration of his or her term. Notwithstanding the foregoing, an officer's term may be extended by up to one (1) additional year in the event of special circumstances, where by majority vote, the Board of Directors has reasonably determined that such circumstances exist.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

SECTION 3. Chairperson. The Board Chairperson shall chair the annual membership meeting and all meetings of the Board of Directors and shall perform the following duties and responsibilities:

A. Except as provided herein, appoint the chairs of all standing committees and serve as liaison to the Corporation's board, committees, and staff;

B. Facilitate and coordinate the Board's discharge of its responsibilities as set forth in the Bylaws and by board resolutions; and

C. Such other responsibilities as provided in the Corporation's Bylaws or as may be directed by the board.

SECTION 4. Vice Chairperson(s). A board designated Vice Chairperson shall, in the absence or disability of the Board Chairperson, perform the duties and exercise the powers of the Board Chairperson, and perform such other duties as the Board shall prescribe from time to time.

SECTION 5. Secretary. The Secretary shall provide for the taking and keeping of the minutes of all meetings of the Board of Directors and the Executive Committee and shall ensure the appropriate custodianship of all books and records of the Board, excepting those relating to funds and properties of the Corporation. In the event of the Secretary's absence from a meeting of the Board or Executive Committee or the Secretary's inability to perform its duties, the Board Chairperson may designate a temporary substitute.

SECTION 6. Treasurer. The Treasurer shall provide for the preparation of an annual financial report prior to each annual meeting of the Board of Directors and the Members in such form and containing such information as may from time to time be directed by the Board. The Treasurer shall also provide such other financial records and reports as may be requested by the Board. Except as may be otherwise authorized by the Board or these Bylaws, the Treasurer or other board designated individuals shall countersign all checks disbursing funds belonging to the Corporation.

ARTICLE VI: STANDING COMMITTEES

SECTION 1. Executive Committee. The Executive Committee shall consist of the officers of the corporation as described in Article V, Section 1, and three non-officer Directors appointed by the Board. The Chairperson shall serve as chair of the Executive Committee. The Executive Committee will serve as the central planning group of the Corporation and have full authority to act for the Board in managing the affairs of the Corporation on urgent and time-sensitive matters between meetings of the Board. Approval of a majority of Executive Committee members shall be required to authorize action. Executive Committee members shall serve a term of one (1) year. The committee will meet no less than four times each year.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

SECTION 2. Governance Committee. The Governance Committee chair and members shall be appointed by the Board Chairperson with approval by the Board of Directors. The committee membership shall number seven (7) and include such directors, non-directors, members, and non-members as the Board Chairperson may from time to time determine with approval from the Board of Directors. Governance Committee members shall serve a term of one (1) year. The Governance Committee will serve as the board nominating and development group of the corporation. It is charged with recommending policies and processes to provide for optimal performance of the Board. It shall also serve as the bylaws management group of the corporation. The committee will meet no less than four times each year.

SECTION 3. Audit Committee. The Audit Committee chair and members shall be appointed by the Board Chairperson with approval by the Board of Directors. The committee shall number seven (7) and include the Chair, the Treasurer, two (2) additional board directors, and three (3) non-directors. Audit Committee members shall serve a term of one (1) year. The Treasurer shall not serve as the chair of the Audit Committee. The Audit Committee will serve as the accounting, financial and regulatory reporting group and internal control management group of the corporation. They shall also serve as the liaison to the external auditors to the corporation. The committee will meet no less than four times each year.

SECTION 4. Finance Committee. The Finance Committee chair and members shall be appointed by the Board Chairperson with approval by the Board of Directors. The committee shall number seven (7) and include the Chair, the Treasurer, three (3) board directors, and two (2) non-directors. Finance Committee members shall serve a term of one (1) year. The Treasurer shall not serve as the chair of the Finance Committee. The Finance Committee will serve as the fiscal management and investment group for the corporation. The committee will meet no less than four times each year.

SECTION 5. Other Committees. The Board of Directors may establish such other committees, advisory bodies, or task forces as it may deem advisable and may appoint such directors, non-directors, Members, and non-Members as the Board Chairperson may from time to time determine.

ARTICLE VII: BOARD PERFORMANCE AND EVALUATION

The Board of Directors will engage in an ongoing performance management system of each board member and the board as a whole focused on setting goals, reviewing progress, and ensuring improvements. The performance management system should identify areas for improvement, issues for discussion, and topics for board education. Annually, each board member will conduct a self-evaluation and evaluate the board as a whole. Performance shall be evaluated through a written, formal, documented process overseen by the Governance Committee.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

A board self-assessment is an effective way to get input from the board members on how the full board is performing in accordance with best practice standards. This will ensure a shared understanding of the board's responsibilities related to compliance, accountability, financial oversight, and ultimately, setting direction for the organization.

ARTICLE VIII: DIVERSITY AND INCLUSION

Annually the board members shall conduct a diversity and inclusion assessment to ensure that the board is on the path to becoming a diverse and inclusive board. The assessment should be formal and documented.

ARTICLE IX: CHIEF EXECUTIVE

The chief executive (i.e. executive director, general manager, ceo, president, etc.) shall be recommended by the Executive Committee or such other committee or body of persons as established by the Board of Directors, with approval by a majority of the full Board of Directors.

The chief executive shall manage the Corporation's day-to-day operations and be responsible for its professional staff, budget activities, strategies and tactics and implementation of action items. The chief executive shall attend all meetings of the Board and the membership. No officer or member of the Board of Directors may individually instruct the chief executive or any other employee. The Board Chairperson will serve as the Board's liaison in providing oversight to the chief executive.

The chief executive shall provide in such form and containing such information, including financial and programmatic performance metrics, as may from time to time be directed by the Board.

The chief executive may be permitted to sign all documents binding on the Corporation which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Act, the Board, or these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of the chief executive of the Corporation and such other duties as may be prescribed by the Board from time to time.

The chief executive shall be responsible for hiring, discharging, directing, and supervising the professional staff of the Corporation.

The chief executive, with the cooperation of the Board Chairperson and the Finance Committee, shall assist in the preparation of the annual budget. The chief executive shall be responsible for all expenditures and income within the approved budget. The Board of Directors will engage in an ongoing performance management system for the chief executive focused on setting goals,

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

reviewing progress, and ensuring improvements. Annually the chief executive shall have his or her performance evaluated through a written, formal, documented process. A designated committee of the Board of Directors should complete the evaluation of the chief executive.

ARTICLE X: GENERAL PROVISIONS

SECTION 1. Expense of Funds. All checks or requests for payment and notes of the Corporation in the amount of less than $10,000 shall be signed by the chief executive or another authorized signer as determined by the Board. All checks or requests for payment and notes of the Corporation in the amount of $10,000 or more shall be signed by both the chief executive and another authorized signer as determined by the Board. Invoices, requisitions and/or supporting documentation for payment shall be attached to the check or other means of payment and be authorized by the chief executive.

SECTION 2. Contracts. The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent or employee shall have the power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render monetarily for any purpose or any amount.

SECTION 3. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January of each year and shall end on the thirty first day of December of that same year, unless otherwise specified by the Board of Directors.

SECTION 4. Conflicts of Interest. The Board of Directors shall adopt and enforce a Conflict of Interest Policy, which shall be distributed to each officer, director, employee or volunteer acting on behalf of the Corporation. Each such person shall sign a form acknowledging receipt of the statement at the time of their appointment to the corporation.

SECTION 5. Parliamentary Authority. Conduct of the business and meetings of the Corporation shall be governed first by the Articles of Incorporation and the Bylaws, insofar as they are not inconsistent with those sections of the Internal Revenue Code of 1986 or successor provisions of the Internal Revenue Code governing the tax-exempt status of the Corporation and the South Carolina Nonprofit Corporation Act of 1994, as amended. Matters not addressed by the Articles of Incorporation or these Bylaws shall be governed, first, by the South Carolina Nonprofit Corporation Act of 1994, as amended, and second, by the most recent revision of Roberts' Rules of Order.

ELECTRONICALLY FILED - 2020 May 22 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ARTICLE XI: AMENDMENT OF BYLAWS

Except as otherwise provided by law, the Articles of Incorporation, or these Bylaws, these Bylaws may be amended, modified, supplemented, or replaced in whole or in part by a majority vote at any legally constituted meeting of the Board of Directors providing, however, that written notice of any such amendment, modification, supplement, or repeal shall be sent by electronic communication or regular United States mail, first class postage prepaid, or by submitting same to a courier service to each member of the Board of Directors at his/her last known preferred address, not less than seven (7) days prior to the meeting at which the same are to be considered.

ARTICLE XII: DISSOLUTION

In the event of dissolution, assets of the corporation shall, after necessary expenses thereof, be distributed to another organization exempt under IRS Section 501(c)(3), or corresponding provisions of any subsequent Federal tax laws, or to the Federal government, or state or local government for a public purpose of preventing cruelty to animals. Any such assets not so disposed of shall be then allocated, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which were organized and operated exclusively for such purposes.

RESOURCES:

1. *Current Charleston Animal Society (CAS) bylaws*
2. *South Carolina Association of Nonprofit Organizations (SCANPO) bylaws*
3. *South Carolina Nonprofit Corporation Act*
4. *Better Bylaws: Creating Effective Rules for Your Nonprofit Board (BoardSource)*
5. *101 Board Basics: Bylaws (BoardSource)*
6. *How to Draft 501 (c) (3) Bylaws (IRS)*
7. *Revision of Bylaws Guide*
8. *Articles of Incorporation (State Charter)*
9. *Guidelines for South Carolina Nonprofit Charitable Organizations*
10. *Boardroom Chemistry: Getting Your Board to Govern as a Team*
11. *The Board Chair Handbook*
12. *Leading with Intent: A National Index of Nonprofit Board Practices (JAN2015)*
13. *The Principles Workbook: Steering Your Board Toward Good Governance and Ethical Practice*
14. *SCANPO- Guiding Principles and Best Practices*
15. *The Ultimate Board Member's Book*
16. *BoardSource.org*
17. *Diversity in Action Toolkit (BoardSource)*

ELECTRONICALLY FILED - 2020 May 26 5:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-04083
Charleston Carriage Works, L.L.C.,)	
)	
Plaintiff,)	
)	**REPLY MEMORANDUM**
vs.)	**SUPPORTING MOTION TO AMEND**
)	
Charleston Animal Society, Ellen)	
Harley and Charleston Carriage)	
Horse Advocates, Inc.,)	
)	
Defendants.)	
)	

The defendants oppose plaintiff's motion to amend on three grounds:

1. Alleged prejudice and timeliness.

2. Rule 15 does not allow adding new parties.

3. An amendment would be "futile."

In evaluating these objections, it may be convenient to have a succinct timeline of the procedural history and pertinent events of the case:

August 17, 2018 Plaintiff files summons and complaint

October 19, 2018 Defendants file a joint motion to dismiss

April 22, 2019 Plaintiff's counsel suffers heart attack.

May 3, 2019, Plaintiff takes the deposition of Elizabeth Fort

ELECTRONICALLY FILED - 2020 May 26 5:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

July 5, 2019 Plaintiff moves for an Order compelling defendants to answer discovery

July 16, 2019 Consent Scheduling Order

July 22, 2019 Defendant, Charleston Animal Society moves for an Order compelling discovery

August 25, 2019 Plaintiff's counsel undergoes open heart surgery (The procedure, while a success, damages the laryngeal nerve, paralyzing vocal cords for approximately six months.)

September 27, 2019 Plaintiff files amended request to compel responses to discovery

November 20, 2019 Defendants file their Answers to the Complaint and move for summary judgment

January 30, 2020 Defendant, Charleston Carriage Horse Advocates, moves for an Order compelling discovery.

January 31, 2020, Charleston Carriage Horse Advocates submits to a 30(b)(6) deposition.

April 6, 2020 Plaintiff moves to amend complaint

This timeline demonstrates the slow progress of this case toward trial has been hampered by (1) a life-changing medical event and (2) the defendants', Charleston Carriage Horse Advocates and Ellen Harley's, steadfast refusal to engage in minimal or meaningful discovery. At the beginning of the case, before the defendants filed their Answers, the plaintiff took the deposition of Elizabeth Fort, a putative director of Charleston Carriage Horse Advocates on May 3, 2019. During this deposition, Ms. Fort testified that the Charleston Carriage Horse Advocates is run by Ellen Harley:

ELECTRONICALLY FILED - 2020 May 26 5:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. Did y'all have regular meetings?

A. We had like—we gathered, the four of us, at Ellen's house. And so, if that was like a formalized meeting, yes, but it was nothing like a board that I've been on in the past in terms of like we had a space. We'd just go to Ellen's. It was probably, I mean, if I remember correctly, I was over there maybe twice. (Fort Deposition, page 14, lines 16-23)

During this early part of the case, the plaintiff served specific discovery questions on Charleston Carriage Horse Advocates and Ellen Harley, almost all of which the defendants have to this day ignored and refused to answer on the grounds of relevancy, in the public domain, and/or burdensome. (See plaintiff's motions to compel.) The Carriage Horse Advocates' and Ellen Harley's deliberate disregard of their responsibilities under the *Rules of Civil Procedure* is blatant contempt for court process and unjustified. However, because their unjustified and dilatory conduct is fully addressed in the pending motions to compel, those facts do not require repetition here. However, by complaining about timeliness of plaintiffs' proposed amendments, the defendants seek to profit from their own dilatory conduct.

The closest the plaintiff has been able to come to extracting meaningful information from the defendants, Carriage Horse Advocates and Ellen Harley, was during a 30(b)(6) deposition taken on January 31, 2020, when the Carriage Horse Advocates produced Ellen Harley as the witness most knowledgeable about the corporate structure and operation of the charitable organization. (The completion of this deposition was extraordinarily difficult. Plaintiff noticed it on November 13, 2019 for December 6th. Two days prior the 6th, defendants indicated they were not appearing. After much back and forth, the defendants agreed to produce a witness on January 31, 2020.). There, **for the first time**, Ms. Harley denied being responsible for the defamatory content on her

putative charity's home page and also asserted for the first time that the defamatory editing, which will expose her fraudulent activities, was done by someone else. For the first time, the defendants asserted that the offensive publication was done by two other corporate entities and/or by her directors on their personal electronic devices. The transcript of the 30(b)(6) deposition reveals the obfuscation that Ms. Harley has adopted from the beginning:

Q. Okay. Now, did you bring any other documents with you here today pursuant to the notice of the deposition and subpoena?

MR. THOMPSON: She did. I have them.

MR. GOLDSTEIN: Okay. Can you tell me what your brought?

MR. THOMPSON: I think you've asked the questions, and to the extent you ask the questions and we have documents that are relevant to those questions, we will present them.

BY MR. GOLDSTEIN:

Q. All right. Here's my question: Did you bring any other documents with you here today, "yes," or "no"?

A. Yes.

Q. Okay. Can you tell me what they are?

A. Can you tell me what you want?

Harley deposition, January 31, 2020, page 35, lines 4-21

ELECTRONICALLY FILED - 2020 May 26 5:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 May 26 5:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

The 30(b)(6) deposition was an exercise in almost entire futility as it was punctuated by continuous coaching and speaking objections. Most importantly Ms. Harley is still refusing to allow access to her organization's meta data or banking records, both of which are important to plaintiff's case especially because the defendant, Harley, disclosed for the first time in her January 31, 2020 deposition that she now blames others for the content plaintiff has identified as defamatory. Importantly, there is no mention of these allegations in the defendants' Answers filed November 20, 2019. Having obtained this new information, the plaintiff consulted immediately with opposing counsel as to whether they would or would not consent to an amendment, and when they failed to respond, filed the motion to amend on April 6th. (The addition of the principals of the plaintiff are only to meet the allegations of the defendants that some of the damages pertain to the principals individually and not their limited liability company, but their claims are based on the original identification of defamatory publications.).

As to the defendants' allegations that they will prejudiced by an amendment, they merely state the conclusion without providing evidence. (They also say that Rule 15 does not permit the addition of new parties. Rule 20 does so long as the allegations arise out of the same transaction or occurrence, and there is no objection raised that the allegations of the amended complaint allege anything other than the original claims; to wit, the defamatory attacks on plaintiff.) "Prejudice" in the context of pleading amendments means a defending party is deprived of a defense or a witness, neither of which is implicated or alleged here. The proposed amendments involve merely the addition of the "directors" of Charleston Carriage Horse Advocates, a putative organization that, as far as plaintiff has been able to determine from the limited discovery allowed by the defendants on January 31st, disregards the responsibilities of operating as a proper charitable organization with alarming insouciance.

ELECTRONICALLY FILED - 2020 May 26 5:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Moreover, the proposed amendments arise out of the same transaction, the same occurrences, and the same allegations of defamation and add nothing other than to address the fact that, based on Ms. Harley's January 31st deposition, she identified for the first time two additional corporate entities that she claims are responsible for her defamatory content. The proposed amendments do nothing but follow up on the information provided by her on January 31st that the Charleston Carriage Horse Advocates does not observe corporate formalities and to address the defendants' criticisms that some of the damages claimed by the plaintiff inure to the benefit of the principals of Charleston Carriage Works individually and not the limited liability company. The proposed amendments do not alter the theory of the case or require additional defenses not already plead.

Rule 15 of the *South Carolina Rules of Civil Procedure* requires that amendments be liberally granted in the interests of justice. (The addition of new parties is the same standard under Rule 20. New parties can be added if the claims arise out of the same transaction or occurrence. *Chan v. Thompson*, 302 S.C. 285, 395 S.E.2d 731 (Ct. App. 1990: "We affirm the decision of the master to add the other companies owned by the Chans o the litigation on the breach of contract claim. There is some evidence these companies were set up by the Chans and utilized to channel sales away from Lisa Floral in such a way as to deprive the Thompsons of sales commissions.") The wellspring of commentary on the rule allowing amendments stems from the discussion of the rule in the United States Supreme Court case of *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962):

The Court of Appeals also erred in affirming the District Court's denial of petitioner's motion to vacate the judgment in order to allow amendment of the complaint. As appears from the record, the amendment would have done no more than state an alternative theory for recovery.

ELECTRONICALLY FILED - 2020 May 26 5:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded. See generally 3 Moore, Federal Practice (2d ed. 1948), 15.08, 15-10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, *etc.*—the leave should, as the rules require, be 'freely given.' Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Here, the plaintiff is not changing the legal issues of the case and is really not adding "new" parties since the "new" parties are, according to Ms. Harley, another embodiment of the same amalgamated entity whom she now says is responsible for the content that is the subject of this lawsuit. After testifying that the putative "directors" of the Carriage Horse Advocates publish information via their smart phones and personal computers, Ms. Harley made clear that they are necessary parties and their addition to the case do not change the theory of the case or require additional defenses or witnesses than those already plead and/or identified. Rather, the addition of the principals of Charleston Carriage Works does nothing more but address the defendants' contention that some of the damages claimed by the plaintiff are suffered by the principals individually. As set forth above, the addition of the defendants' directors does not change anything about the case other than address the defendants', Charleston Carriage Horse Advocates and Ellen Harley's, failure to adhere to minimum corporate requirements for a charitable organization, deficiencies which the plaintiff only recently discovered. She can hardly point to others as responsible for the challenged content and simultaneously object to them being brought in the case.

The final objection interposed to an amendment is that the defendants contend such an amendment would be "futile." Since the defendants, Charleston Carriage Horse Advocates and Ellen Harley have engaged in a pattern of dilatory tactics to prevent the disclosure of the most basic

ELECTRONICALLY FILED - 2020 May 26 5:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

information, they can hardly complain that an amendment is futile when the amendment simply tracks the testimony she provided on January 31st and addresses Carriage Horse Advocates' loose observation of the rules regulating the operation of a charitable organization and its identification of putative deficiencies in plaintiff's claim for damages. In *Skydive Myrtle Beach, Inc. v. Horry County,* 426 S.C. 175, 826 S.E.2d 585 (2019), the trial court refused to allow an amended complaint, which the Court of Appeals affirmed in an unpublished opinion. The Supreme Court reversed, instructing trial courts that ordinarily an allegation of futility is insufficient to defeat an application to amend:

> A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion. See Rule 15(a) (stating "leave shall be freely given when justice so requires and does not prejudice any other party." *Forman*, 371 U.S. at 182, 83 S.Ct. at 230, 9 L.Ed2d at 226 (listing valid reasons for denying a motion to amend) *Patton*, 420 S.C. at 490, 804 S.E.2d at 262 (stating "the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it.) 420 S.C. at 491 n. 9, 804 S.E.2d at 262 n. 9 (stating the burden of establishing a reason for denying the motion is on the party opposing the amendment); *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (stating "a proper reason" for to deny a motion to amend could be "bad faith, undue delay, or prejudice"); *Id.* ("In the absence of a proper reason, . . . a denial of leave to amend is an abuse of discretion.").
>
> A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint. *Patton*, 420 S.C. at 490-91, 804 S.E.2d at 262 (citing *Tanner v. Florence City Treasurer*, 336 S.C. 552, 558-60, 521 S.E.2d 153, 156-57 (1999). In rare cases, however, a trial court may deny a motion to amend if the amendment would be clearly futile. See *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' . . '. it may be denied where the proposed amendment would be futile."

The Supreme Court went on to explain that the trial court must examine the amended complaint and explain why such amendment would be "futile." Here, the defendants simply assert the amendment would be futile without shouldering their burden of explaining how. At its core, the defendants' response is nothing more than the latest iteration of defendants' insistence that they are above the law and not responsible for the tsunami of hate mail, death and arson threats and destruction of the plaintiffs' business by labeling them animal abusers. The defendants' interference

with discovery is blatantly contumacious conduct, and consistent with Ms. Harley's view of herself as above the rules. The plaintiffs' proposed amendments do nothing other than address the defendants' recent identification of other pertinent parties and their repeated allegations of deficiencies in the pleading, and the *Rules of Civil Procedure* clearly allow them.

In short, the plaintiff's proposed amendments do nothing more than address Ms. Harley's January 31st disclosures and address alleged technical deficiencies concerning damages. The amended complaint alleges nothing new other than responding to Ms. Harley's January 31st identification of who is responsible for the allegations arising out of the original transaction and occurrence. They require no new defenses or witnesses other than those previously disclosed. Obviously the plaintiff is entitled to an amended scheduling Order to address the amendments, counsel's lost year in 2019, and the delays occasioned by the effect of a worldwide pandemic, but the defendants have not identified any fact or conduct that would deny the plaintiff the right to amend under Rule 15. The plaintiff's proposed amendments do nothing more "than state an alternative theory for recovery," *Foman v. Davis*, *supra.* and address technical objections made by the defendants regarding damages.

Respectfully submitted,

May 25, 2020

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29405
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net

ELECTRONICALLY FILED - 2020 May 26 5:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-04083
Charleston Carriage Works, L.L.C.,)	
)	
Plaintiff,)	
)	**MEMORANDUM IN SUPPORT**
vs.)	**OF MOTION FOR SANCTIONS**
)	(RULE 37, *S. C. RULES OF CIVIL PROCEDURE*)
Charleston Animal Society, Ellen)	
Harley and Charleston Carriage)	
Horse Advocates, Inc.,)	
)	
Defendants.)	
)	

The plaintiff filed this case on August 17, 2018. The defendants, Ellen Harley and Charleston Carriage Horse Advocates filed their answers on November 20, 2019. On December 7, 2018, before they filed their Answer or engaged in discovery, counsel for Ellen Harley and Charleston Carriage Horse Advocates deposed the plaintiff's principal, Brody Christoff for ten hours, which was followed by three additional hours on March 28, 2019, by Charleston Animal Society. The case went into a temporary hiatus in April 2019, when plaintiff's counsel suffered a heart attack, which required open heart surgery in August 2019.

The plaintiff served interrogatories and requests for production on Harley and Charleston Carriage Horse Advocates on September 20, 2018. To date neither Harley nor Charleston Carriage Horse Advocates have fulfilled their obligation to respond fully to this basic discovery. The plaintiff filed motions to compel on July 5, 2019, and September 27, 2019. These two motions to compel came before the Honorable Bentley Price on June 17, 2020, via WebEx virtual hearing, who orally ordered the defendants to answer discovery. (Judge Price stated he was filing a Form 4 Order, which has not been filed to date.) To date, neither defendant has provided anything other than (1) tax returns

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

through 2018, (2) screen shots of publicly available information, (3) one agenda and set of putative Minutes, and (4) exactly one e-mail. The defendants' January 31, 2020, 144-page 30(b)(6) production in response to plaintiff's subpoena paints a concise snapshot of the defendants' dilatory tactics. This production consisted precisely of 144 pages as follows:

30(b)(6) Production
144 pages = total production

33 pages are duplicates (23%)

51 pages are public e-blasts (46%)

2 pages = Charleston Carriage Horse Advocates' "entire" correspondence (mostly blank—one e-mail)

This bad faith production is emblematic of the defendants' consistent refusal to adhere to either the rules governing discovery or basic good faith. Other than the defendants' tax returns, the plaintiff has no more information about the composition or operation of Charleston Carriage Horse Advocates since the day it filed its complaint. For months, the plaintiff made numerous attempts to persuade the defendants to engage in meaningful discovery, but to date, the defendants have steadfastly refused to permit access to any meaningful information relevant to the issues in this case and have erected numerous barriers to compliance, some of which are quoted *verbatim* below. In an effort to break through the defendants' unwillingness to participate in the framing of a discovery plan, the plaintiff hired, at considerable expense, a computer forensic expert, Steve Abrams, to simplify its request to relieve the defendants of assembling information and instead to provide mere access to the defendants' computer/phones. In her January 20, 2020, 30(b)(6) deposition, the defendant, produced Ellen Harley, whom the defendants identified as the person most knowledgeable about the requested information, who testified she had no objection to this request until her lawyer overruled her testimony, as quoted below on page 8. (Plaintiff also reasonably believes that a forensic examination

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

will reveal willful destruction of material evidence.) Since the defendants publish their libel of the plaintiff through their electronic devices—which includes manipulating the message by deleting corrective truthful statements—an examination of the defendants' computers will provide the necessary corroborating evidence to prove the plaintiff's assertions of the manner in which the defendants broadcast their false information to create a false narrative and cast the plaintiff in the false light as an animal abuser. As a public charity, the defendant, Charleston Carriage Horse Advocates, is required to maintain its filings, which are public, and the State prohibits charities from publishing false or misleading information. See §§ 33-56-80 (filings to be public records) and 33-56-120 (misrepresentations prohibited).

The plaintiff adopted several strategies in an effort to overcome the defendants' recalcitrance in the hope of unburdening the Court with unproductive discovery disputes. For example, the plaintiff changed direction and scheduled a 30(b)(6) deposition, summarized above, of the person most knowledgeable about the workings of Charleston Carriage Horse Advocates. The defendants designated Ellen Harley, who appeared and produced written responses to the plaintiff's subpoena, which asked for, among other things, all of the Charleston Carriage Horse Advocates' correspondence. The defendants produced exactly one e-mail in response to plaintiff's request for correspondence and documentation. As the summary of the defendants' 144 page production reveals, the defendants did not meaningfully respond.

Moreover, the defendants' response is further demonstrably fraudulent because the hundreds of e-mails produced by the Charleston Animal Society demonstrate that either Harley or the Charleston Carriage Horse Advocates was involved in an almost daily coordination with the Animal Society to smear the plaintiff and drive him out of business. However, when plaintiff asked for the Charleston Carriage Horse Advocates' written documents, it responded by providing a single e-mail,

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

public e-blasts and fraudulent bank "summaries" that reveal nothing about the source of its income or its expenditures. Ms. Harley's uncooperativeness was on full display throughout her January 31, 2020, 30(b)(6) deposition:

Page 33, line 24 – page 34, line 23

Q: Okay. So it could be -- I'll mark all these but I'm going to mark them as one. So are there any other written documents maintained by Charleston Carriage Horse Advocates other than the ones that you've handed me, being the report from the Secretary of State, the bylaws, and the minutes that we have just discussed, are there any other documents maintained by Charleston Carriage Horse Advocates?

A: You mean legal documents?

Q: Anything in writing. It could be correspondence, it could be memorandum, it could be outlines, it could be talking points, it could be press releases, it could –

A: Yes.

Q: Okay. And where are those documents?

A: Well, they would be on –

MR. THOMPSON: Hold on. Stop. Stop.

(Interruption.)

BY MR. GOLDSTEIN:
Q: They would be where?

A: They would be on various computers.

Q: Okay. And who -- who would maintain those computers?

A: They would be personal computers of board members.

Page 76, line 21 – page 78, line 14:

Q: Okay. Now, let me go to Deposition Exhibit 1. The images that you have provided us on the flash drive and that you've kept, do you have the -- do you know the identity of the person who supplied the images to you?

MR. THOMPSON: Tommy, objection. And I want to make sure you understand, the -- all of the Facebook and Insta and Twitter were provided by those companies. In other

words, Facebook sends the information. Twitter sends the information. It was compiled in that fashion.

MR. GOLDSTEIN: Okay.

MR. THOMPSON: You've suggested that they've kept it, and it's available through those outlets.

BY MR. GOLDSTEIN:
Q: Now, the video of Big John's incident, how did you have -- and again, when I say "you," Charleston Carriage Horse Advocates, how did you obtain a copy of that video?

A: Of which video?

Q: Big John's incident.

A: There were a number of people who took videos is my understanding. There were a number of people who were on the streets and that were taking videos.

Q: Right. Okay. Every copy that we've been able to obtain has been edited, so I want to know if you have any unedited versions? I would like to see them.

MR. THOMPSON: Objection.

THE WITNESS: I think Elizabeth Fort, I think you deposed her, and I think she probably gave you that information. [Note: Elizabeth Fort promised to supply the information to defendants' counsel. To date, despite several demands, the plaintiff has not received this video evidence.

BY MR. GOLDSTEIN:
Q: Did you take a video of the incident that day?

A: I did.

Q: Okay. Where is your video maintained?

A: I have that video.

Q: Okay. And where would we obtain a copy -- how would we obtain a copy of it?

A: I'm happy to share that with you.

Q: Okay. Well, I appreciate that very much. If you'd send that to your lawyer, he'll forward it right over to me. [To date counsel has not provided this information.]

page72, lines 22-25 - page73, lines 1-9

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q: Sure. Sure. Either you or another member of Charleston Carriage Horse Advocates have taken numerous photographs and videos of various carriage companies, including Charleston Carriage Company, correct?

A: I would -- we have taken photographs and videos –

Q: Right.

A: -- of carriage company animals, yes.

Q: Okay. And so my question is: Where is that information stored? Where are those images stored?

A: They are stored in telephones for the most part.

page74, lines 4-7

Q: But when you're out taking a video and you now have the image or the sequence of images that you wanted, where do you store it?

A: In my phone.

Page 11, line 6 – page 12, line 4:

Q: Okay. Do you have an objection to making the devices owned and operated by Charleston Carriage Horse Advocates available to Mr. Abrams for imaging?

A: No, I don't. [To date, the defendants have refused to make them available—see counsel's objection.]

MR. THOMPSON: And a continued objection because the complete mirroring or imaging of the hard drive would be more intrusive than necessary given that there may very well be other things on that laptop that are not business-related. Again, I repeat, the question about whether that hard drive should be mirrored or in any way copied is going to be a legal decision, and we will file a motion to prevent that, I can just state that for the record regardless of her answer.

MR. GOLDSTEIN: Okay. You realize, Mr. Thompson, that you're coaching the witness, which is a direct violation of the rules covered in the conduct of depositions?

MR. THOMPSON: I am -- I am –

MR. GOLDSTEIN: You can put your -- you can put your objection on the record, but the witness testified that she has no objection, and then you overrode her decision and put your objection on the record, but you're not the witness.

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

In summary, Harley has demonstrated repeatedly her contempt for the rules governing pre-trial procedure, and her bag of tricks includes a willingness to report plaintiff's counsel to Disciplinary Counsel when counsel took offense at her contumacious conduct and expressed it in a letter to counsel. The *South Carolina Rules of Civil Procedure*, Rule 37, provides the Court with a series of discretionary tools to force contumacious litigants into compliance with discovery procedure. Ellen Harley takes contumaciousness to a new level, and even though the Court has already ordered her to make discovery material available to the plaintiff, she flouts the Court's Order with unprecedented arrogance.

South Carolina has a well-developed body of law on the responsibilities of parties to comport themselves by the rules and the Court's discretion to impose appropriate sanctions to exact compliance. The Court of Appeals analyzed this precise issue in instructive detail in 2004 in *Qzo, Inc. v. Moyer:*

> . . . Appellant contends the trial court erred by granting sanctions, ordering Appellant's answer to be struck, and entering a default judgment. We disagree.
>
> The decision of whether or not to award sanctions is generally entrusted to the discretion of the trial court. See *Fields v. Regional Med. Ctr. Orangeburg*, 354 S.C. 445, 581 S.E.2d 489 (Ct.App.2003) (decision of what kind and whether to impose discovery sanctions is left to sound discretion of [358 S.C. 256] Circuit Court); *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679 (Ct.App.1997) (noting that imposition of sanctions is generally entrusted to sound discretion of Circuit Court); see also *Stone v. Reddix-Smalls*, 295 S.C. 514, 369 S.E.2d 840 (1988) (stating that contempt decision should be reversed only when without evidentiary support or upon an abuse of discretion by the trial court). An appellate court will not disturb this decision unless the trial court abused its discretion. *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct.App.1999); see also Karppi, 327 S.C. at 542, 489 S.E.2d at 681 (stating that trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of Appeals only if abuse of discretion has occurred).
>
> The burden is on the appealing party to show the trial court abused its discretion in imposing sanctions for failing to comply with a discovery order. *Halverson v. Yawn*, 328 S.C. 618, 493 S.E.2d 883 (Ct.App.1997); *Karppi*, 327 S.C. at 542, 489 S.E.2d at 681. An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

law. *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990); *Karppi*, 327 S.C. at 542, 489 S.E.2d at 681.

When a party fails to obey an order relating to discovery, the trial court may strike that party's pleadings and enter a default judgment. *Griffin*, 334 S.C. at 198, 511 S.E.2d at 718 (citing Rule 37(b)(2)(c), SCRCP); see also *Karppi*, 327 S.C. at 542, 489 S.E.2d at 682 (explaining that Rule 37, SCRCP, expressly grants trial court power to order judgment by default for either the violation of a court order or, upon motion, for party's failure to respond to certain discovery requests). When a court orders a sanction that results in default or dismissal, "the end result is harsh medicine that should not be administered lightly." *Griffin*, 334 S.C. at 198, 511 S.E.2d at 718; see also *Karppi*, 327 S.C. at 547, 489 S.E.2d at 684 (Anderson, J., concurring) ("A sanction which results in a default or dismissal is harsh punishment which should be [358 S.C. 257] imposed only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party."). The sanction should be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. *Griffin*, 334 S.C. at 198, 511 S.E.2d at 719; *Karppi*, 327 S.C. at 543, 489 S.E.2d at 682. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. *Karppi*, 327 S.C. at 543, 489 S.E.2d at 682. Finally, when a sanction "would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." *Griffin*, 334 S.C. at 198-99, 511 S.E.2d at 719; see also *Karppi*, 327 S.C. at 543, 489 S.E.2d at 682 ("Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants.").

Qzo, Inc. v. Moyer, 358 S.C. 246, 594 S.E.2d 541 (S.C. App. 2004)

As the same court said in 1999 in *Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc.* 334 S.C. 1983, 511 S.E.2d716 (Ct. App. 1999), such a remedy is appropriately applied against one who has shown "bad faith, willful disobedience, or gross indifference." Here, Harley demonstrates all three by refusing not only to provide the documents requested, but also to deny the even less onerous request of providing access to the defendants' electronic devices. As a public charity she is required to maintain this information and turn it over as part of her duties as the principal of a putative charitable organization. See § 33-56-75 S. C. Code, ann. Notwithstanding these requirements, she has thumbed her nose at the orderly administration of pre-trial procedure, even going so far as to create faux "bank statements," which she substituted for bank statements. When the plaintiff attempted to break through this dilatory obstruction by asking for the documents, the defendants filed a motion to quash the subpoena on August 19, 2020, on three

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

frivolous grounds: (1) that the documents are not relevant, (2) on the ground that the scheduling order has elapsed, a document created before plaintiff's counsel's heart attack and before the world changed as a result of COVID-19, and (3) on the ground that South State Bank is a foreign corporation! (South State's home office is on Gervais Street in Columbia.)

During Defendant's January 31, 2020, 30(b)(6) deposition, after willfully refusing to provide the pre-identified records sought by the plaintiff, and in response to the plaintiff's questions about the books and records of Charleston Carriage Horse Advocates, Ms. Harley testified:

Page 21 lines 16 - 22

BY MR. GOLDSTEIN:

Q. Who writes the checks for Charleston Carriage Horse Advocates?

A. We have an accountant.

Q . Who's that?

A. A-1 Bookkeeping.

Q. Where are they located?

A. In the State of South Carolina.

[A web-search reveals no such entity located in the State of South Carolina]

page 82, line 10 – page 83, line 6

Q. Well, who's the person who has the most day-to-day administrative duties with regard to Charleston Carriage Horse Advocates?

A. Again, are you talking about the social media aspect? If you're talking about the social media aspect, that would be Custom Digital Solutions that would do that exclusively.

Q. Okay.

A. If you're talking about other things, it would be the Board of Directors. It would be the -- the accountants.

Q. The accountants in Pennsylvania?

A. No, in -- in South Carolina.

Q. Oh, the bookkeeper?

A. Yes, the bookkeeper.

Q. Okay. You --

A . A-1 Bookkeeping.

Q. A-1 Bookkeeping?

A. Uh-huh.

Q. Okay. Now, who balances the checkbook for Charleston Carriage --

A. A-1 Bookkeeping.

Ms. Harley gave the previous testimony despite the fact that there is no business named A-1 Bookkeeping in the records of the South Carolina Secretary of State, and no evidence of it in any on-line directory, and Section 42a of each of the CCHA's tax returns specifically states that the 'organization's books are in care of Ellen Harley, Located at 23 Wentworth Street, Charleston, SC' which is Ms. Harley's home address.

In numerous negotiations to break through this impasse, plaintiff ran into contradictory assertions such as this. One lawyer says the discovery schedule cannot be amended; another says he consents to an extension. Harley also maintains that the plaintiff is not entitled to know who her donors are even though such information is supposed to be public and transparent. See § 33-56-75, S. C. Code, ann., "Donor lists." To break through these pretextual and dilatory obstacles, the Plaintiff has repeatedly offered to the defendants a non-disclosure/confidentiality agreement, but Harley steadfastly maintains that the operation of her putative charity is not subject to public scrutiny. Moreover, the defendants have demonstrated a commitment to bad faith and dirty tricks, and so far

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Harley and/or the Charleston Animal Society have filed complaints against the plaintiff's lawyer's license, his veterinarian's license, and Harley took steps to get the manager of a local carriage organization fired from his consulting job. As her former congressional campaign manager summarizes her, "she has a taste for the jugular." Allen Raymond, *How To Rig an Election*, (Simon & Shuster Press, 2008). The defendants' unwillingness to provide discovery is simply another step in a long career of flouting the rules, and she will never conform her behavior to comply until this Court compels her to adhere to the rules that govern the rest of us, and as Judge Price's previous oral Order demonstrates, nothing short of penalties will induce these defendants to conform. Early on, the plaintiff realized that the defendants, who conduct their fundraising activities in a virtual world, would never provide discovery and for that reason, the plaintiff hired a forensic computer expert, Steve Abrams, who, once he is given access to the defendants' electronic devices, can cut through the thicket of obfuscation and relieve the defendants of having to produce anything. All that is required is for the Court to Order the defendants make their devices available for forensic examination, which they refuse to do.

Based on the foregoing, the plaintiff respectfully requests the Court to enter its Order:

1) Compelling the defendants to make their computers available to plaintiff's forensic expert for examination, or in the alternative;
2) Striking the defendants' answers for failure to cooperate in discovery and set the case for a damages hearing;
3) For a reasonable sum as attorney's fees to compensate the plaintiff for the time spent in attempting to compel the defendants to provide meaningful discovery;
4) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

October 2, 2020

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29405
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net

ELECTRONICALLY FILED - 2020 Oct 02 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-04083
Charleston Carriage Works, L.L.C.,	)	
	)	
Plaintiff,	)	
	)	**MEMORANDUM OF LAW**
vs.	)	**STATUS CONFERENCE**
	)	
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,	)	
	)	
Defendants.	)	
	)	

The plaintiff offers this memorandum of law for the Court's convenience to summarize the procedural complexity of the case and to offer a proposed solution to prepare the case for trial. It serves in a triple capacity as a memorandum in opposition to defendants' requests for summary judgment, in further explanation of plaintiff's motion for sanctions, and as a summary of procedure to serve as an overview for a status conference. The plaintiff has several motions pending (motion to extend scheduling Order, motion to add parties, and two motions to compel and for sanctions—see procedural timeline below). Plaintiff offers this memorandum, therefore, to assist the Court in attempting to shed some light on a confusing mix of cross motions, including, but not limited to, as an explanation why summary judgment is inappropriate.

OVERVIEW OF THE CASE.

The plaintiff filed this case on August 17, 2018, alleging, in summary, that the defendants are conspiring to put it out of business because: (1) they are animal rights activists, and (2) they knowingly disseminate false and misleading information to persuade many people to send them

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

money as well as to harass the plaintiff out of existence, or as they say "depress their income." Both Charleston Animal Society and the Charleston Carriage Horse Advocates are South Carolina charities, and Charleston Animal Society derives much of its support from the taxpayers of South Carolina. As public charities, they are governed by South Carolina law, and § 33-56-120, S. C. Code, ann. Misrepresentations prohibited, states: "In connection with the solicitation of contributions . . . a person shall not misrepresent or mislead, knowingly and willfully, a person by any means, practice, or device." The practice of using a putative social cause to solicit donations to generate income is an ancient idea, familiar to all of us through, for example, televangelism, or any of a hundred other grifts. Anyone old enough to remember, for example, Jim and Tammy Faye Bakker remembers the shocking display of garish materialism associated with their "ministry," and the newspapers are full of a thousand other nationally recognized social, political, religious grifts. Such fundraising techniques run the same playbook, often publicizing an "emergency," and asking for donations to ameliorate it. Such financial fraud is a frequent topic of conversation, and is especially prominent in the animal rights movement, such as the financial fraud exhibited by the United States Humane Society director, Paul Irwin. Even the United States Communist Party—the organization promoting "from each according to his ability to each according to his needs"—operated the same way. Gus Hall, the leader of the United States Communist Party in America until his death in 2000, told a high ranking Communist official that he from time to time created a money crisis to launch emergency fundraising campaigns. See: Harvey Klehr and John Haynes, "The American Communist Con Man," *Commentary* (October 2020, pps. 42-46). Such scams are widely practiced and well known.

In this case, not only does both Charleston Animal Society and Ellen Harley focus primarily on fundraising as their *raison d'être*, but one of them, Charleston Animal Society, takes from the

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

taxpayers as well. (The evidence will show that the two organizations are amalgamated; Charleston Carriage Horse Advocates acts as agent for the Charleston Animal Society—there are even e-mails between the two admonishing agents to keep the relationship secret.) The Charleston Animal Society, which recently had 14 dogs available for adoption and a bank account of 19 million dollars, receives a check from Charleston County every month for $175,000.00 and smaller sums from other municipalities. Like many "non-profits," this one is profitable. Since arriving at the Charleston Animal Society in 2012, the executive director's, Joe Elmore's, base salary has increased as follows:

2012	$ 90,000.00	Health benefit ($525.00 x 12 = $6,300.00) Four weeks paid vacation Four personal days Expense Account Automobile
2013	$ 94,787.00	
2014	$100,607.00	
2015	$135,158.00	
2016	$132,650.00	
2017	$170,029.00	
2018	$248,942.00	
2019	$243,123.00	

The most effective way for Ellen Harley and Joe Elmore to cultivate this garden of riches is to follow the televangelists'/communists' playbook and create "emergencies" to mislead their millions of "followers" that Brody abuses his animals, that he is "cruel" and "inhumane" to his horses and by creating the false impression that he worked an animal to death. They promulgate

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

this false "facts" to create the "emergency" that can only be cured by lots of money. The best evidence of this scheme comes from the defendants' own words and their putting the money raised to work to interfere with Brody's business, or as they say, "depress his income." On Sunday, April 23rd, four days after Big John tripped on Meeting Street, was evaluated by a veterinarian as well as the City of Charleston's equine manager, found to be without injury and cleared for work, the defendants were implementing their combined strategy and effort to get out the false message by using a spliced/edited video accompanied by false messaging that Big John "collapsed" on Meeting Street due to heat and overwork. Here is an example:

On Sunday, April 23, 2017 11:17 AM, Joe Elmore <jelmore@charlestonanimalsociety.org> wrote:

Ellen, Beth, Amy,

Kudos to Charleston Carriage Horse Advocates (CCHA) for immediately uploading the video, which has now been viewed by 10,700,000+ people, perhaps it will top 11 million by Wednesday's tourism commission.

http://ftw.usatoday.com/2017/04/heartbreaking-video-carriage-horse-charleston-videophoto

More to come re: the meeting.
Joe
Joe Elmore, CAWA, CFRE
Chief Executive Officer

From: Catherine Poag
To: Joe Elmore; Ellen Harley; elizabeth slagsvol; Amy Dye
Cc: Dan Krosse; W. Kurt Taylor; Elizabeth Bradham; Hank Greer; Laurel Greer; Elizabeth Fort; Carol LInville; Barbara
Hart; Constance Paras; Christina Dodd; Joan Van Scyoc; Kirk Grant; Jackie Meaney; Erinne Scarborough; Connie
Baldwin; Will Moredock; randolphc@southeasterngalleries.com; Kay Hyman; Janet McKim
Subject: Re: Video Gone Viral
Date: Sunday, April 23, 2017 4:10:38 PM

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

USA Today site (go to USA Today-Carriage Horse) shows 11.028,000 views--It has our video---Not sure if that is addition to our site--If so, we'll hit 20 million by Monday night--less than a week from when posted--

On Sunday, April 23, 2017 3:51 PM, Catherine Poag <cdbp@att.net> wrote:

Joe
I second, third, fourth... that--Amazing that video was made(someone being in the right place at the right time) and that CCHA posted right away and that for some yet unknown reason USA Today posted---Would think any future videos will get even more views--This is on international radar and with summer heat coming, I have no doubt there will be additional incidents--non-heat and probably heat related--and viewing audience will grow exponentially with each incident--10 miilion views now and growing is more tourists than Charleston gets in how many years--So here is Charleston--#1 tourist site on some rankings and this is front and center--Wonder what liability hotel concierges have for recommending carriage rides if an accident and someone hurt??

Carriage Companies can't fight the SAFETY issue--Traffic is only getting worse in Charleston--Clean barns, supposedly well loved horses have nothing to do with SAFETY on the streets--That is not under the control of anyone--City sure hasn't done anything by allowing so much unbridled growth with no traffic or roads master plan--And if a horse is working under stressful conditions (heat, weight, traffic etc.), it probably increases the possibility of something going "terribly wrong"---May be time to remind everyone of the innocent woman in the market that was killed by a runaway carriage a number of years ago--This time it could be a tourist on the street or sitting at a sidewalk cafe--

Would hope the video will be played at that commission meeting and also at next City Council meeting--Emphasis on safety--How many accidents in past year--past 3 months---Great photo a month or so ago of car at Queen and King with horse manure all over windshield--Then we had the horse with the bloody hoof driven down Market Street--and at least one or 2 other horses have stumbled--(Maybe all of those need to be reposted on CCHA as recent history of "accidents/incidents")--I know I heard somewhere that carriage drivers are told to steer a runaway towards something solid,:a car, a wall, a building--There was the back of a pickup truck at Broad and Meeting last spring that stopped a runaway -- and the wall by a driveway SOB following that--And then we have the carriages that just fall apart--wheels collapse--(I'm sure that had nothing to do with excessive weight in the carriage)--

And best of all we have the drivers who turn to talk to the passengers and are not watching where they are going--For several minutes at a time---Would be great to get some videos of those--Every driver does it on every trip--They should be arrested for dangerous driving--Wonder how many accidents might be connected to that??

Is banning animal drawn "wagon/carriages") an item that could be put on a referendum?? Might be the way to get it done --City Council has too many good ole boys and there is a little too much incest in City government and police department and the Mayor is hopeless--

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

-This is where the City's expansion could come back to bite it--A referendum for City would include peninsula, Daniel Island, W. Ashley, James Island, John's Island and all other little pockets around--Have no doubt enough signatures can be gotten to get it on a referendum--and it would probably pass--

Carriage company owners now have backs to wall --Look at that letter from Broderick--and like any cornered animals, their natural actions will be desperate ones--The drivers will all be on edge about what if they are the next carriage with a runaway horse or one that stumbles and end up in international views--That driver in the yellow jacket was so incredibly stupid to come after people filming--That is all on video now for the whole world to see--Wonder if it is assault if somneone tries to grab a phone or camera and touches a person?? If nothing else,that woman sure looked threatening--

Lots to mull over--Fortunately, the horse is oK and the passengers also--Wonder if those kids stayed in carriage because they were in shock or if driver told them to do so or if they were all busy taking selfies and texting their friends?? Nothing like a spring break/school trip that gets you in the international spotlight--

Catherine

The defendants made no effort to hide—at least between themselves—the fact that their effort was to put the plaintiff out of business by "depressing their income" as this exchange from March 30, 2017 (emphasis added) demonstrates:

From: Ellen Harley
To: Joe Elmore; Dan Krosse; Kurt Taylor, Esquire
Subject: Channel 5 Digital Impressions
Date: Thursday, March 30, 2017 6:51:30 PM

Started today. Running 150K through next Wednesday.
I am thinking the only way to defeat this City/Industry cartel is by depressing their income.
The corruption is too great to fight and win.

There are hundreds of these e-mails, all supplied by Charleston Animal Society, who, unlike the defendants, Harley and Charleston Carriage Horse Advocates, have conformed to the rules that govern discovery. Recall that to date, as set forth in the pending motions for sanctions, the

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

defendants, Harley and Charleston Carriage Horse Advocates have produced exactly one e-mail, which they have asserted are all the documents in their possession.

What the defendants do with the money they raise is specifically tailored to Brody to "depress [his] income." As Brody's affidavits attest, the defendants intentionally created a wave of terror that rained down upon him, his wife, and his employees once 10 million people were led to believe that he worked a horse to death. Other e-mails further elucidate how the Defendants spent an unknown amount of money to manipulate social media to divert customers away from "**Charleston Carriage Works**" to "**Charleston Carriage Horse Advocates** and **Charleston Animal Society**." Attached to this memorandum as Exhibit 1 is a depiction of how the defendants spend money to interfere with Brody's business. By paying enough money to Google—and recall this is taxpayer money at the rate of $175,000.00 a month—the defendants purchase Google ads so that when a potential client searches for Brody's business, she is directed instead to Charleston Animal Society and greeted with the false message that the business is "inhumane": "See how you can help solve the problem of this inhumane system."

The attack on the plaintiff employs other less direct, but no less sinister ploys. For example, the Defendants refuse to call "carriages" carriages. Rather, they insist on calling them "wagons" because the designation as "wagon" further dehumanizes and demonizes the target. The psychological trick of renaming the enemy is straight out of the genocide playbook when the targets are referred to as "cockroaches," "lice," "sub-human," *etc.* Slavery lasted in this Country for over 200 years because "owners" convinced themselves their slaves were "property," or as enshrined in Article I, § 2 of the U. S. Constitution, 3/5's of a person. In the Vietnam War, American soldiers were not killing Vietnamese; they were killing "Gooks." The point is that everything the defendants do, they do with a concerted, coordinated plan to destroy the plaintiff's

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

business. The name of Harley's group, an agency of the Charleston Animal Society, is carefully selected to tailor her efforts to disrupt Brody's business. Once again, e-mails provided by Charleston Animal Society (remember: Harley has produced only a single, irrelevant e-mail) further explain the attack:

> Hi Amy,
> Currently we are targeting anyone who is searching for the keywords or reading about things to do in Charleston for the whole Charleston DMA (this includes the islands, so they are covered). For the rooftop targeting component of targeting by virtual perimeter, we are targeting hotels and tourist locations. With these online and offline mechanisms in place, we are able to capture all tourists. Does that make sense? Any other questions?
> Thanks,
> Erin

The foregoing is a brief summary of the plaintiff's contentions, which are before the Court in more detail in the affidavits of Broderick Christoff filed June 23, 2020, and February 25, 2020.

PROCEDURE AND CLAIM FOR SANCTIONS

No matter how this case is ultimately resolved, one thing is beyond dispute, and that is this: This Court has never seen a litigant like Ellen Harley. Despite the case being interrupted, first by plaintiff's counsel's 2019 heart attack and the open-heart surgery required to address it and then by the shutdown brought about by the corona virus, Ms. Harley has resisted all efforts to produce even minimal discovery. Despite, for example, receiving hundreds of e-mails produced by the Charleston Animal Society, which included numerous e-mails both to and from Ellen Harley, to date, Ellen Harley has produced exactly one irrelevant e-mail in response to discovery. At her 30(b)(6) deposition on January 31, 2020, she identified "A-1 Bookkeeping" as the repository of her financial records, an entity that does not exist. Moreover, all of her filings with the I.R.S. and the South Carolina Secretary of State identify her as the repository of Charleston Carriage Horse

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Advocates records, but she has produced nothing except a few alleged Minutes, which are extremely suspect since the first deposition the plaintiff took, that of Elizabeth Fort on May 19, 2019, and she established the "Board of Directors" were four downtown residents who "gathered" at Ellen's house:

A. I don't think we had necessarily a board of directors. It was my understanding I was on the Board , but I never – I jus I never felt like I was – I didn't have a specific role.

Q. Did y'all have regular meetings?

A. We had like – we gathered, the four of us, at Ellen's house. And so if that was like a formalized meeting, yes, but it was nothing like a board that I've been on in the past in terms of like we had a space. We'd just got to Ellen's. It was probably, I mean, if I remember correctly, I was over there maybe twice.

Elizabeth Fort, Page 14, lines 12-23her records

The reason the plaintiff has been trying for over a year without success to gain access to Charleston Carriage Horse Advocates computers is to nail down when documents were created and what has been deleted. Ms. Harley has already demonstrated that she will manipulate putative bank records to thwart discovery and lie under oath about where records are stored. When Ms. Harley refused to produce bank records—a sample of what she calls a "bank record" is attached to this memorandum as Exhibit 2 so the Court can see for itself how far she is willing to go in her contempt for court process—the plaintiff attempted to overcome her contumaciousness by going directly to the source, South State Bank. Harley's response to plaintiff's efforts to obtain the records directly from South State Bank resulted in her filing on August 19, 2020, a motion to quash the subpoena on the ground that South State Bank is a "foreign corporation"! South State Bank,

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

with branches all over Charleston, lists its corporate home office address as 520 Gervais Street in Columbia, South Carolina. Ms. Harley's numerous incidences of interference and contumaciousness are set forth fully in the motions presently before the Court and do not need to be repeated here. However, one post filing incident merits mention for the light it sheds on her pattern of behavior.

On July 13, 2020, plaintiff's counsel wrote another letter to Harley's counsel expressing frustration and outrage over her continued interference in discovery and her unwillingness to cooperate in framing a discovery plan. In that letter, attached here as Exhibit 3, plaintiff's counsel referred to Ms. Harley as a "liar" and a "fraud." Even though this letter was addressed to counsel and not Ms. Harley, and even though the letter is entirely accurate, Ms. Harley filed a complaint with the South Carolina Supreme Court Office of Disciplinary Counsel seeking sanctions against plaintiff's counsel. Her complaint against plaintiff's counsel is not an outlier event. Her preference for dirty tricks is but one facet of the strategy employed by the defendants to damage the plaintiff. Since this case began, the defendants filed a complaint with Labor Licensing and Regulation against the veterinary license of plaintiff's veterinarian, Dr. Miller. They filed an O.S.H.A. complaint against the plaintiff. Ms. Harley has advocated for the firing of at least two employees of the City as well as for the firing of the operator of Charleston Cares, a public relations firm operated by Tyler Jones, who worked on Congressman Cunningham's campaign. In other words, these behind-the-scenes, extra judicial attacks are a pattern and part of the overall plan to lay waste to the plaintiff's livelihood. Ms. Harley is well seasoned as a dirty trickster, a former Republican representative in the Pennsylvania House of Representatives and an unsuccessful Republican candidate for United States Congress for the Fifth district of Pennsylvania. After losing the nomination for that Congressional seat, Ms. Harley relocated to Charleston where she launched an unsuccessful

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

campaign against Henry Fishburne for a seat on City Council. She then became a fixture at City Council Tourism Commission meetings where she has long advocated for the elimination of carriage tours. Interestingly, her Congressional campaign manager, Allen Raymond, wrote a book about dirty tricks in politics and describes Ms. Harley as having a taste for such. (Allen Raymond served three months in federal prison for tying up Democratic get-out-the-vote phone lines on election day. He wrote a book about his career as a political operative, including acting as Ellen Harley's campaign manager. See Allen Raymond, *How to Rig an Election* (Simon & Schuster, 2008).)

In summary, the defendant, Harley, has no intention of participating in discovery because she is above the rules that govern others. She hopes that by refusing to participate in discovery, she can run out the clock on the plaintiff and get the upper hand by way of a motion for summary judgment even though she has consistently interfered in plaintiff's efforts to get basic discovery information:

B. Full and Fair Opportunity to Complete Discovery

The Court of Appeals held the trial court abused its discretion in granting summary judgment before Doe had a full and fair opportunity to complete discovery. We agree.

Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.*

In *Baughman*, we ruled summary judgment premature because (1) plaintiffs demonstrated a likelihood that further discovery would uncover additional relevant evidence, and (2) plaintiffs were not dilatory in seeking discovery. Although three years had elapsed between filing the action and summary judgment, the delay could not fairly be attributed solely to plaintiffs' inaction, and the delay was tempered by the complexity of the case. *Id.* at 112-114, 410 S.E.2d at 544.

The record here does not support a finding that Doe was dilatory in pursuing discovery. Depositions, including Donald's, were scheduled for the week following the hearing. Doe had noticed Batson's deposition on January 31, 1998, but postponed it at the request of defense

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

counsel in two related cases, in order to consolidate the discovery process. Although the delay was in no way attributable to Batson, it was not solely attributable to Doe either. Doe should have been permitted to complete discovery. See *J.S. v. R.T.H.*, 714 A.2d 924, 936 (N.J. 1998) (summary judgment entered five months after defendant's answer was filed was premature; "plaintiffs should have been given the opportunity to depose [molester] and others to try to discover further evidence bearing on [defendant's] knowledge of [molester's] conduct or sexual proclivities").

Doe v. Batson, 345 S. C. 316, 548 S.E.2d 854 (2001)

Based on her intentional contumaciousness in refusing to provided discovery responses, this Court should deal harshly with the defendants, Harley and Charleston Carriage Horse Advocates, and consider striking her Answers and setting the case for a damages hearing as to the defendants, Ellen Harley and Charleston Carriage Horse Advocates.

THE REMEDY

When this case is called for trial, it will take up at least a week to try. Despite pending for two years, the plaintiff has received no meaningful discovery responses from either Harley or the Charleston Carriage Horse Advocates. Since the plaintiff filed this action, Ms. Harley's attacks against the plaintiff have not abated, and it is clear that she places herself beyond the reach of law and she demonstrates repeatedly her contempt for Court process and the rules regarding the administration of justice, while she pursues a course of extra-judicial intimidation. The point is: Ms. Harley has no intention of cooperating in a discovery plan or obeying the rules regarding discovery even though she claims she operates a South Carolina "charity," which obligates her to be transparent and obey the rules regarding the operation of charities.

As a result, the Court should:

1) Enter an Order directing the defendants, Harley, and Charleston Carriage Horse Advocates to adhere to the rules regarding discovery;

2) Enter an Order directing the defendants, Harley and Charleston Carriage Horse Advocates to turn over their electronic devices to the plaintiff's expert for forensic examination;

3) Impose sanctions up to and including a dismissal of the defendants, Harley and Charleston Carriage Horse Advocates, Answers;

4) Assess attorney's fees against Harley and Charleston Carriage Horse Advocates for deliberately contumacious conduct in refusing to participate in discovery;

5) Strike the case with leave to restore or amending the scheduling Order to complete discovery as soon as it is reasonably safe for lawyers to take in person depositions;

6) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

December 2, 2020

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29405
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

PROCEDURAL TIMELINE

August 17, 2018	Complaint filed
October 19, 2018	Defendants' Joint Motion to Dismiss
July 5, 2019	Plaintiff's Motion To Compel
July 16, 2019	Consent Scheduling Order
July 22, 2019	Charleston Animal Society Motion to Compel
September 27, 2019	Plaintiff's Amended Motion to Compel
November 20, 2019	Charleston Animal Society's Answer
November 20, 2019	Charleston Carriage Horse Advocates Motion to Strike
November 20, 2019	Answer of Ellen Harley
January 30, 2020	Charleston Carriage Horse Advocates' Motion to Quash
February 18, 2020	Memorandum of Law (Limit Damages)
February 25, 2020	Affidavit of Broderick Christoff
February 25, 2020	Memorandum of Law (Summary Judgment)
April 6, 2020	Plaintiff's Motion to Amend
May 28, 2020	Hearing on Plaintiff's Motion to Compel (Judge Price) No order filed
October 2, 2020	Motion for Sanctions
October 20, 2020	Motion to Enlarge Scheduling Order

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net
Thomas K. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

July 17, 2020

Mr. Joseph Thompson
Haff Booth & Smith, P.C.
111 Coleman Boulevard
Mt. Pleasant, S. C. 29464

Re: Charleston Carriage v. Harley, *et. al.*, 2018-CP-10-04083

Dear Trey,

I am in receipt of your June 25th letter. I am **assuming** that your alleged deficiencies are solved by the detailed supplemental responses previously furnished to Beth Palmer and you. I also realize that your letter is window dressing, and that you are attempting to create a faux patina of uncooperativeness to paper over your client's refusal to provide meaningful discovery. Your putative "deficiencies" are not deficiencies, but rather your client's unsatisfaction with our answers. Most of your dilemma results from your client's (and Charleston Animal Society's) decision to depose Brody for 13 hours **BEFORE** you did discovery. Had your client pursued discovery in the normal course, you would have an opportunity to ask him specific questions about specific documents. To the extent your letter of June 25th represents a good faith effort to clarify the documents produced, I am happy to set up a conference call with you and set aside sufficient time for Brody and I to go down the list with you so we can walk your through our production.

On the other hand, we still have no meaningful production from your client. Her entire e-mail production consists of a single e-mail, which we know is false as evidenced from the documents provided by the Charleston Animal Society, which detail almost daily coordination between Joe Elmore and Ellen Harley. Even your client's May 3, 2019, promise to forward us Elizabeth Fort's e-mails and video footage turned out to be a lie:

Q. And do you still have that original video?
A. It was my phone, yes sir.
Q. And do you still have that original video?
A. I do.
Q. Would you do me a favor and just transmit it to your lawyer, just your version of the video?
A. Yes.

. . .

Q. And so, you don't have any objection to sending that to her?
A. No, sir, not at all.

. . .

Q. You could go back in your e-mails and you could see?
A. Yes, I will look for that for sure.
Q. And send that to your lawyer?
A. Yes, sir I will definitely do that.

Elizabeth Fort, page 59, lines 6-18; page 72, lines 4-8

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

The fact is, Trey, that your client is a liar and a fraud. Her dismissive conduct towards us demonstrates she considers herself above the rules because of her wealth. She thumbs her nose at discovery, and when you identify our answer to interrogatory number 12 as being "incomplete," you highlight her intransigence. How in the world do we know what your client was up to either before January 3, 2017 (date of incorporation) or after when she has produced nothing more substantial than a single e-mail? I do not expect a Perry Mason moment when my expert cross examination breaks her down on the stand and she tearfully confesses to a jury and we cut to commercial. Have you LOOKED at the e-mails Charleston Animal Society produced? Ellen Harley stepped out of her protection as a private citizen when she chose to create a South Carolina charity called the Charleston Carriage Horse Advocates. Running a tax exempt charity comes with the responsibility to be open and transparent. In all her filings, she identifies herself as the repository of the charity's records, and yet, we have a single e-mail from her and not a single financial record other than her publicly filed tax returns. We know from the documents produced from Charleston Animal Society that she is in near daily contact with Charleston Animal Society, and it is an established fact that these documents demonstrate the Charleston Carriage Horse Advocates is the alter ego of the Charleston Animal Society under its current leadership. And yet, your client has provided nothing other than copies of publicly posted Facebook pages. We know she censored truthful information and she banned commenters who provided truthful corrections to her misinformation in order to create a false impression of Brody, which she designed to drive him out of business. As Officer Riccio testified in his deposition, she is a bully, a character straight out of *The Great Gatsby*:

"They were careless people, Tom and Daisy- they smashed up things and creatures and then retreated back into their money or their vast carelessness or whatever it was that kept them together, and let other people clean up the mess they had made."

I have seen for a long time that she is not going to allow you to participate in meaningful discovery, and for that reason, I am going to have to depose her twice, first to find out who has the administrator's keys so that Steve Abrams can get for us what you should be providing voluntarily, and then a second time to ask her about the information related to the operation of her putative South Carolina charity after we force her to disgorge it. I am not going to let you paper over her contempt for the process by creating a false impression that we have failed to provide discovery materials to you, and for that reason, as set forth above, I will make Brody and myself available to sit with you and walk you through the discovery in an effort to meet any alleged deficiencies. In the meantime, however, I no longer believe you can control Ms. Harley to persuade her to operate within the rules that govern the rest of us. So, please let me know when you have time available for us to walk through the discovery with you, and once that is complete, I plan on asking the Court to impose sanctions against Ms. Harley, including dismissing her pleadings and reimbursing Brody for fees incurred in trying to get her to comply. You can solve all this by simply providing the computer access to our expert, Steve Abrams so we are relieved from the delusion that Ms. Harley will turn over anything meaningful. With kind regards, I am

Very truly yours,

TRG/

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

cc: Elizabeth Palmer, Jenkins Mann

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

001 00085 01

PAGE: 1 ACCOUNT:
01/31/2018
TELEPHONE:800-277-2175 CHARLESTON CARRIAGE
HORSE ADVOCATES ELLEN ANDERSON HARLEY
ELIZABETH A SLAGSVOL 30
P O BOX 22827 3
CHARLESTON SC 29413-2827 5

==========

========== COMMUNITY CHECKING ACCOUNT

==========

========== MINIMUM BALANCE 11,887.02 LAST STATEMENT
12/29/17 20,487.02 AVG AVAILABLE BALANCE 20,058.50
6 CREDITS 21,516.72 AVERAGE BALANCE 20,703.74
5 DEBITS 13,312.68
THIS STATEMENT 01/31/18 28,691.06 - - - - - - - -
- - DEPOSITS - - - - - - - - - - REF #.....DATE.....AMOUNT REF
#.....DATE.....AMOUNT REF #.....DATE.....AMOUNT 01/17
20,000.00 01/23 1,050.00 01/29 243.00
- - - - - - - - - OTHER CREDITS - - - - - - - - - DESCRIPTION
DATE AMOUNT STRIPE TRANSFER
01/22 128.74 STRIPE TRANSFER
01/23 94.80 INTEREST
01/31 .18 - - - - - - - - - - CHECKS - - -
- - - - - - - CHECK #..DATE.....AMOUNT CHECK #..DATE.....AMOUNT
CHECK #..DATE.....AMOUNT 139*01/02 8,400.00 144 01/19
210.00 147 01/18 302.68 143 01/11 200.00
145*01/22 4,200.00 (*) INDICATES A GAP IN CHECK NUMBER SEQUENCE
- - - - - - - - - - I N T E R E S T - - - - - - - - - - AVERAGE LEDGER
BALANCE: 20,703.74 INTEREST EARNED: .18
AVERAGE AVAILABLE BALANCE: 20,058.50 DAYS IN PERIOD:
33 INTEREST PAID THIS PERIOD: .18 ANNUAL PERCENTAGE YIELD
EARNED: .01% INTEREST PAID 2018: .18 INTEREST PAID
2017: .58 - - - - - - - - DAILY
BALANCE - - - - - - - - DATE.....BALANCE
DATE.....BALANCE DATE.....BALANCE 01/02
12,087.02 01/11 11,887.02 01/17 31,887.02
* * * C O N T I N U E D * * *

001 00085 01

PAGE: 2 ACCOUNT:
01/31/2018
CHARLESTON CARRIAGE HORSE ADVOCATES ELLEN ANDERSON HARLEY
ELIZABETH A SLAGSVOL

==========

========== COMMUNITY CHECKING ACCOUNT

==========

========== - - - - - - - - DAILY BALANCE - - - - - - - -
- DATE.....BALANCE DATE.....BALANCE
DATE.....BALANCE 01/18 31,584.34 01/22
27,303.08 01/29 28,690.88 01/19 31,374.34 01/23
28,447.88 01/31 28,691.06 -
END OF STATEMENT -

CCHA_Bank Statements_0001

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

```
            SOUTH STATE BANK                    101 00085 01
PAGE:    1           P O BOX 118068                    ACCOUNT:
09/28/2018           CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175                        CHARLESTON CARRIAGE HORSE
ADVOCATES          ELLEN ANDERSON HARLEY          ELIZABETH A SLAGSVOL
30          P O BOX 22827
1          CHARLESTON SC  29413
4
=============================================================================
=========                    COMMUNITY CHECKING ACCOUNT
=============================================================================
=========   MINIMUM BALANCE              12,066.87  LAST STATEMENT
08/31/18      13,135.02 AVG AVAILABLE BALANCE         12,703.81
4 CREDITS            431.81 AVERAGE BALANCE               12,707.39
5 DEBITS           1,498.99
THIS STATEMENT 09/28/18      12,067.84                  - - - - - - -
- - - DEPOSITS - - - - - - - - - - - REF #.....DATE......AMOUNT REF
#.....DATE......AMOUNT REF #.....DATE......AMOUNT          09/24
100.00                  - - - - - - - - - OTHER CREDITS - - - - - - - -
- DESCRIPTION                                                    DATE
AMOUNT STRIPE TRANSFER
09/06          50.09 FACEBOOK PAYMENTRMR*IK*FACEBOOK PAYOUT B5WDYAGVCO\
09/10         280.75 INTEREST
09/28            .97                    - - - - - - - - - - CHECKS - -
- - - - - - - - - CHECK #..DATE......AMOUNT  CHECK #..DATE......AMOUNT
CHECK #..DATE......AMOUNT      195 09/14      590.00      197 09/14
359.00      196 09/12      225.00      198 09/27      200.00
- - - - - - - - - OTHER DEBITS - - - - - - - - - DESCRIPTION
DATE         AMOUNT CARDMEMBER SERV ELECT PYMT **********9221
09/25         124.99              - - - - - - - - - - I N T E R E S T -
- - - - - - - - - -   AVERAGE LEDGER BALANCE:        12,707.39  INTEREST
EARNED:                  .97 AVERAGE AVAILABLE BALANCE:     12,703.81
DAYS IN PERIOD:                    28 INTEREST PAID THIS PERIOD:
.97  ANNUAL PERCENTAGE YIELD EARNED:   .10% INTEREST PAID 2018:
8.70                  - - - - - - - - DAILY BALANCE  - - - - - - - - -
DATE..........BALANCE      DATE..........BALANCE
DATE..........BALANCE 09/06        13,185.11      09/10
13,465.86      09/12        13,240.86                        * * *  C
O N T I N U E D  * * *
            SOUTH STATE BANK                    101 00085 01
PAGE:    2           P O BOX 118068                    ACCOUNT:
09/28/2018           CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175                CHARLESTON CARRIAGE HORSE ADVOCATES
ELLEN ANDERSON HARLEY          ELIZABETH A SLAGSVOL
=============================================================================
=========                    COMMUNITY CHECKING ACCOUNT
=============================================================================
=========                  - - - - - - - - DAILY BALANCE  - - - - - - - -
- DATE..........BALANCE      DATE..........BALANCE
DATE..........BALANCE 09/14        12,291.86      09/25
12,266.87      09/28        12,067.84 09/24        12,391.86      09/27
12,066.87                                - END OF STATEMENT -
```

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

SOUTH STATE BANK 101 00085 01
PAGE: 1 P O BOX 118068 ACCOUNT:
09/30/2019 CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175 CHARLESTON CARRIAGE HORSE
ADVOCATES ELLEN ANDERSON HARLEY ELIZABETH A SLAGSVOL
30 P O BOX 22827
0 CHARLESTON SC 29413
4

==========

========= Please be aware, effective September 10, 2019, the transaction posting order will be updated so that Debit Card Transactions post with ATM Withdrawals from lowest to highest dollar amount. If you have any questions, please call us at (800) 277-2175.

==========

========= COMMUNITY CHECKING ACCOUNT

==========

========= MINIMUM BALANCE 28,177.56 LAST STATEMENT
08/30/19 32,098.81 AVG AVAILABLE BALANCE 31,075.51
7 CREDITS 444.23 AVERAGE BALANCE 31,075.51
6 DEBITS 4,364.16
THIS STATEMENT 09/30/19 28,178.88 - - - - - - -
- OTHER CREDITS - - - - - - - - - DESCRIPTION
DATE AMOUNT FACEBOOK PAYMENTRMR*IK*FACEBOOK PAYOUT B5W845PPVM\
09/04 170.18 STRIPE TRANSFER ST-G5R0D1S5S9R6
09/05 100.52 STRIPE TRANSFER ST-K6X4W3W5N3M0
09/19 10.05 FACEBOOK PAYMENTRMR*IK*FACEBOOK PAYOUT B5VY908QNO\
09/23 162.00 PAYPAL VERIFYBANK 1006706682563
09/27 .06 PAYPAL VERIFYBANK 1006706682564
09/27 .10 INTEREST
09/30 1.32 - - - - - - - - - - CHECKS - -
- - - - - - - - CHECK #..DATE.....AMOUNT CHECK #..DATE.....AMOUNT
CHECK #..DATE.....AMOUNT 2260 09/11 1,290.00 2262 09/13
359.00 2261 09/16 135.00 2263 09/30 2,000.00
- - - - - - - - - OTHER DEBITS - - - - - - - - - DESCRIPTION
DATE AMOUNT CARDMEMBER SERV ELECT PYMT **********9221
09/24 580.00 PAYPAL VERIFYBANK 1006706682566
09/27 .16 * * * C O N T I N U E D
* * *

SOUTH STATE BANK 101 00085 01
PAGE: 2 P O BOX 118068 ACCOUNT:
09/30/2019 CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175 CHARLESTON CARRIAGE HORSE ADVOCATES
ELLEN ANDERSON HARLEY ELIZABETH A SLAGSVOL

==========

========= COMMUNITY CHECKING
ACCOUNT==========

========== - - - - - - - - - - I N T E R E S T - - -
- - - - - - - AVERAGE LEDGER BALANCE: 31,075.51 INTEREST
EARNED: 1.32 AVERAGE AVAILABLE BALANCE: 31,075.51
DAYS IN PERIOD: 31 INTEREST PAID THIS PERIOD:
1.32 ANNUAL PERCENTAGE YIELD EARNED: .05% INTEREST PAID 2019:
14.87 - - - - - - - - DAILY BALANCE - - - - - - - -
DATE.....BALANCE DATE.....BALANCE
DATE.....BALANCE 09/04 32,268.99 09/16
30,585.51 09/27 30,177.56 09/05 32,369.51 09/19
30,595.56 09/30 28,178.88 09/11 31,079.51 09/23

30,757.56	09/13	30,720.51	09/24	30,177.56

- END OF STATEMENT -

ELECTRONICALLY FILED - 2020 Dec 02 12:11 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-4083
Charleston Carriage Works, L.L.C.,)	
)	
Plaintiff,)	
)	
vs.)	**MEMORANDUM OF LAW**
)	
Charleston Animal Society, Ellen)	
Harley and Charleston Carriage)	
Horse Advocates, Inc.,)	
)	
Defendants.)	
)	

The defendants ask this Court to end the case on summary judgment even though the defendants, Charleston Carriage Horse Advocates and Ellen Harley have demonstrated willful contempt for the process of discovery and not responded to standard discovery requests as required by the *Rules of Civil Procedure*. The plaintiff previously filed a Motion for Sanctions on July 5, 2019, along with a Memorandum of Law discussing the remedies available to punish parties for not participating in discovery and restricts this memorandum of law to two more fundamental matters:

1. When can a defendant move for summary judgment?
2. The record, even though incomplete, contains copious evidence of genuine issues of material facts.

1. When can a party can move for summary judgment.

The plaintiff relieves the Court from re-reading another explication of the standard for summary judgment, a standard of review so well-known as to make unnecessary burdening the

Court with repetition of the standard. Instead of discussing the general standard for summary judgment, the plaintiff zeroes in on one selected aspect of the summary judgment standard, the one that governs the timing for such a motion. No party is required to face a motion for summary judgment until he or she has had an opportunity to receive a "full and fair" disclosure of evidence. As the plaintiff's motion for sanctions against the defendants, Harley and Charleston Carriage Horse Advocates, demonstrates, the defendants' disclosures have been neither full nor fair.

In *Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2003), the Supreme Court affirmed the Court of Appeals' decision to reverse the trial court's grant of summary judgment because the plaintiff had not had a full opportunity to conduct discovery:

> The Court of Appeals held the trial court abused its discretion in granting summary judgment before Doe had a full and fair opportunity to complete discovery. We agree.
>
> Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.*
>
> In *Baughman*, we ruled summary judgment premature because (1) plaintiffs demonstrated a likelihood that further discovery would uncover additional relevant evidence, and (2) plaintiffs were not dilatory in seeking discovery. Although three years had elapsed between filing the action and summary judgment, the delay could not fairly be attributed solely to plaintiffs' inaction, and the delay was tempered by the complexity of the case. *Id.* at 112-114, 410 S.E.2d at 544.
>
> The record here does not support a finding that Doe was dilatory in pursuing discovery. Depositions, including Donald's, were scheduled for the week following the hearing. Doe had noticed Batson's deposition on January 31, 1998, but postponed it at the request of defense counsel in two related cases, in order to consolidate the discovery process. Although the delay was in no way attributable to Batson, it was not solely attributable to Doe either. Doe should have been permitted to complete discovery. See *J.S. v. R.T.H.*, 714 A.2d 924, 936 (N.J. 1998) (summary judgment entered five months after defendant's answer was filed was premature; "plaintiffs should have been given the opportunity to depose [molester] and others to try to discover further evidence bearing on [defendant's] knowledge of [molester's] conduct or sexual proclivities").

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Here, the completion of discovery has been hampered by (1) Harley's and her charity's willful refusal to participate in a discovery plan, (2) the loss of most of 2019 due to counsel's cardiac failure, and (3) the loss of most of 2020 due to a worldwide pandemic. (Although, nothing about the pandemic interfered in Harley's refusal to turn over electronic media or make her devices available to plaintiff's expert as she agreed to do in her January 31, 2020, deposition.) In short, the defendants seek to profit from their own wrongdoing, asking the Court to exclude them from the discovery rules that apply to everyone else. For example, on June 17, 2020, Harley and her charity filed a motion seeking to hold the plaintiff in contempt for failing to provide discovery. This bogus claim is nothing more than a strategic decision to blunt the plaintiff's motion for sanctions as demonstrated by the numerous responses provided by the plaintiff. As recently as June 9, 2021, plaintiff's counsel wrote to defendants' counsel:

> I understand that you still contend we have discovery deficiencies. I previously wrote to you on March 11, 2021 and told you I am not aware of any discovery deficiencies, and each time you fall back on your June 25, 2020, letter, but you never acknowledge that I responded to that letter on August 28, 2020, which was a 22-page detailed response in which I addressed each of your alleged deficiencies point by point. So I remain in the dark as to what deficiencies, if any, remain. **In an effort to break through the impasse, if there is one, if you will give me a date, time, and place, Brody and I will make ourselves available to you or to your designee to review point by point any deficiency you identify.** Otherwise, I will conclude that your assertions are strategic posturing to blunt the fact that, to date, your client has given us almost nothing. So far, you have produced a single e-mail, and yet, we know from the Charleston Animal Society's production that your client is very active on e-mail and text messaging. If, on the other hand, you are really saying that the defamatory statements we identified are insufficient as a matter of law for recovery, that is not a discovery dispute; rather, that is something you will argue at summary judgment or directed verdict stage. (emphasis added, Exhibit 1 attached hereto)

In short, the case is not properly before the court for consideration of the imposition of the "drastic remedy" of summary judgment.

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

2. The record, even though incomplete, contains copious evidence of genuine issues of material facts.

Throughout this case, the defendants have all asserted that their comments are not slanderous or libelous but are protected by the First Amendment. The plaintiff is not clear on which causes of action the defendants contend are not supported by sufficient facts to create a genuine issue of material fact. Pending before the Court is the plaintiff's motion to amend the complaint to add new parties on the following causes of action: (1) civil conspiracy, (2) negligence, (3) tortious interference with business relations, (4) defamation, (5) piercing the corporate veil, and (6) outrage. The same evidence discussed here create genuine issues of material facts on all 6, but it seems as if the main thrust of the defendants' motions are that their publications are all protected by the First Amendment. Therefore it is not necessary to discuss the evidence as it relates to each individual cause of action because the same evidence supports all.

Relevant to the defendants' First Amendment claims are the significant facts that Harley, the Charleston Animal Society, and the Carriage Horse Advocates have all appeared before the City Council and its Tourism Commission on numerous occasions, often identifying themselves as arms of the same organization, in order to lobby for changes in the rules regulating the operation of carriage tours. (See Affidavit of B. Christoff filed December 2, 2020, page 3.) When they advocate to the Tourism Commission and/or the City Council for rules changes, or even for a complete ban of carriages, their activities are protected by the First Amendment. Where the parties diverge is on the question of whether South Carolina statutes and South Carolina case law authorizes them to promote misinformation for the twin purposes of whipping up hysteria to destroy the plaintiff's business (or as Harley says: "depress their income"—see March 30, 2017 Harley e-mail attached to Second Supplemental affidavit of B. Christoff) and to induce people to

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

donate money, and it is an undisputed fact that they work in tandem, which is the epitome of a combination of persons to commit torts. (See December 2, 2020 affidavit, page 3.) The depiction of allegedly abused animals to generate large donations is a well-known, well-discussed phenomenon. On August 2, 2021, CBS News' Jim Axelrod, Megan Towey and Rachel Bailey wrote about the explosion of donations to the ASPCA following broadcasts of Sarah McLaughlin's minor chords and plaintive crooning:

> In 2019, the ASPCA's CEO Matt Bershadker made more than $840,000. That's more than the CEO's of Feeding America and the American Red Cross, charities that have a budget 10 times the size of the ASPCA. Bershadker declined CBS News' request for an interview, but in response to questions posed to the nonprofit, the ASPCA's Senior Vice President of Communications Elizabeth Estroff wrote, "the ASPCA's CEO compensation is evaluated and benchmarked every year by an outside consultant." She also said it is based on policies and practices that are fully consistent with IRS regulations regarding "reasonable compensation" for nonprofits.

There are dozens of stories like this, so many that such stories have become rather common experience, and they all serve to demonstrate how the intentional manipulation of emotional responses generates income. (See February 25, 2020, affidavit of B. Christoff at page 6 and December 2, 2020 affidavit at page 9.) In this case, the defendants are motivated by the same desire to generate cash because neither one of them has the slightest involvement with equine rescue, something that is handled by the Livestock & Equine Awareness & Rescue Network, L.E.A.R.N. in Meggett, South Carolina, whose principals are witnesses for the plaintiff.

Here, there is copious evidence of the defendants unlawful combination as far back as 2015 to circulate demonstrably false messages about the plaintiff's business and particularly that Brody's horse collapsed from heat and overwork, that he cheats on the regulations governing his operation, that he is an animal abuser, that the use of his horses is "inhumane." (See affidavit of B. Christoff December 2, 2020 at page 5 for explanation of the 2015 creation of the C.C.H.A./C.A.S. "Equine Cruelty Committee." The defendant, Ellen Harley is known to follow

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

carriages and harass the drivers and guests—see February 25, 2020 affidavit, page 4, of B. Christoff.) In making these statements to cast the plaintiff in a false light and to generate contributions to their organizations, they also encourage third parties to pile on by hosting refusing to correct or disavow false assertions even though some call for the destruction or harm to Brody, his employees, and his business. (See February 25, 2020, affidavit of B. Christoff at page 4 for an explanation of how the defendants delete truthful rebuttal information and ban the commentor.) When the defendants promote such inflammatory rhetoric, they are embracing non-protected speech. Lest there be any question about the defendants' financial motivation for intentional misstatements, one need only examine one test parameter, the undisputed facts of the rapid increases in the Charleston Animal Society's net worth and generous compensation to its director, Joe Elmore:

Elmore Compensation

	Base Salary	
2012	$ 90,000.00	Health benefit ($525.00 x 12 = $6,300.00) Four weeks paid vacation Four personal days Expense Account Automobile
2013	$ 94,787.00	
2014	$100,607.00	
2015	$135,158.00	
2016	$132,650.00	
2017	$170,029.00	
2018	$248,942.00	
2019	$243,123.00	
2020	$243,294.00	

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

As of the writing of this memorandum, Charleston Animal Society's reported in its 2020 public disclosure of finances that at the end of 2019, it had $21,409,226.00 in "net assets," and at the end of 2020, it had $24,498,974.00 in "net assets." Joe Elmore's salary is listed as $243,294.00 (which does not include fringe benefits such as an automobile and medical insurance, etc.), which is twice more than the organization's Chief Veterinary Officer. Charleston Animal Society is so flush with cash that it has $12,029,608.00 invested in the stock market. It took in over seven million dollars in contributions in 2020, but it keeps its list of contributors secret, which is unusual for an organization that is supported by taxpayers and a violation of § 33-56-120(F): "Nothing contained in subsection (E) prevents the publication of names of contributors, without their written consent, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors." Even though the Animal Society has the ability to manage its own costs—especially since Charleston County provided the Animal Society with the land and the building on which it operates—it has enough disposable income to invest large sums in securities trading. However, the Charleston Animal Society is not a private charity; it receives a check each month from the taxpayers of Charleston County in the amount of $175,000.00 as well as smaller contributions from other local governments including Mount Pleasant, North Charleston, and the City of Charleston. The fact that a taxpayer supported charity operates in secret and in conjunction with the Charleston Carriage Horse Advocates would be shocking even if it did not invest its considerable expertise and power to destroy a small business. It is indisputable that this non-profit is quite profitable for a few people, but the point for the Court in evaluating whether a genuine issue of material fact exists is the fact that the surest way to keep the contributions flowing is to mislead the public that Charleston Animal Society is allied with the Charleston Carriage Horse

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Advocates in stamping out equine "abuse." The General Assembly recognizes how easily people can be manipulated to make donations, and for that reason, the General Assembly prohibits charities from disseminating misleading and false information to solicit donations. See § 33-56-120, S. C. Code, ann: "In connection with the solicitation of contributions . . . a person shall not misrepresent or mislead, knowingly and willfully, a person by any manner, means, practice or device." Yet the electronic media provided by the Charleston Animal Society demonstrates that it is engaged in precisely doing that.

At its core, the defendants' push for summary judgment relies on an improperly narrow reading of Slander/Libel law in South Carolina. Perhaps the best way to address this issue is to examine the standard jury charges taken verbatim from Ralph King Anderson's *South Carolina Requests to Charge—Civil*—published by the South Carolina Bar:

§ 14-4 Defamation - Slander - Defined

An action for slander is based on the violation of a person's right to enjoy his good reputation, unimpaired by false and defamatory attacks. Slander is a spoken defamation. Slander consists of the publication of defamatory matter by spoken words, transitory gestures or by any form of communication other than those defined as part of libel.

🔔 *See Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)(Majority Opinion); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)(Toal, J., concurring); *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 556 S.E.2d 732 (Ct. App. 2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001).

§ 14-5 Defamation - Slander - Actionable Per Se

Slander is actionable per se when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics:

(1) commission of a crime of moral turpitude;

(2) contraction of a loathsome disease;

(3) adultery;

(4) unchastity; or

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

(5) unfitness in one's business or profession.

🔔 *See Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)(Majority Opinion); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)(Toal, J., concurring)(when statement falls into one of five categories of slander, damages are presumed; in all other cases-namely, when slander does not fall into above-named categories-special damages must be established); *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997); *Constant v. Spartanburg Steel Products, Inc.*, 316 S.C. 86, 447 S.E.2d 194 (1994)(in slander per se action, general damages need not be proven by plaintiff; damages are presumed); *Galloway v. Cox*, 172 S.C. 101, 172 S.E. 761 (1934); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001)(in defamation action that is actionable per se, general damages are presumed and need not be proven by plaintiff).

§ 14-6 Defamation - Elements

To recover for defamation, the plaintiff must establish, by a preponderance of the evidence, that there was:

(1) a false and defamatory statement by the defendant concerning the plaintiff;

(2) an unprivileged publication by the defendant to a third party;

(3) fault on the defendant's part in publishing the statement; and

(4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication. [1]

A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. In determining the defamatory character of language, the meaning of which is clear or otherwise determined, the social station of the parties in the community, the current standards of moral and social conduct prevalent therein, and the business, profession or calling of the parties are important factors. An imputation may be defamatory as applied to one person at a given time and place, although it would not be derogatory of another person at a different time or in a different place. To determine whether the words were defamatory, you should ask yourselves whether, taken as a whole, the words tend to diminish the respectability of the plaintiff-and to expose him to disgrace and ill repute.

The defamatory statement must be false. One who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true.

---

[1] The South Carolina abrogated special damages in *Paradis v. Charleston County School District*, __ S.C. __, __SE2d __ (Op. No. 28030, May 21, 2021)

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

To create liability for defamation, there must be publication of matter that is both defamatory and false. There can be no recovery in defamation for a statement of fact that is true, although the statement is made for no good purpose, is inspired by ill will toward the person about whom it is published, and is made solely for the purpose of harming him. The truth of the matter published is an absolute defense. A sufficient defense is made out where the evidence establishes the statement is substantially true.

A defamatory communication is presumed to be false under the common law. The plaintiff does not have the burden of proving falsity. However, truth can be asserted as an affirmative defense, the burden of which is on the defendant.

ALTERNATE CHARGE WHERE SPEECH INVOLVED IS OF PUBLIC CONCERN:

The United States Supreme Court's holding in *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986), modified the common law rule that a defamatory communication was presumed to be false. *Hepps* instructed: "[A]t least where a newspaper publishes speech of public concern, a private-figure plaintiff cannot recover damages without also showing that the statements at issue are false." *Id.* at 768-69, 106 S.Ct. at 1559, 89 L.Ed.2d at 787. Public figures also have such a burden. *Id.* at 775, 106 S.Ct. at 1563, 89 L.Ed.2d at 792. Thus, in a case involving a private plaintiff, a media defendant, and a publication regarding an area of public concern, the Constitution requires the plaintiff bear the burden of proving falsity. 50 Am. Jur. 2d *Libel and Slander* § 113 (1995). The following charge is proposed:

Where the defamatory statement addresses a matter of public concern, the plaintiff bears the burden of proving falsity, as well as fault, before recovering damages against a media defendant for speech of public concern. In other words, a statement on matters of public concern must be provable as false before there can be liability under defamation law, at least in situations where a media defendant is involved.

The second major element of defamation that a plaintiff must prove is an unprivileged publication by defendant to a third party. The publication of defamatory matter is its communication, intentionally or by a negligent act, to a third party-someone other than the person defamed. Defamation is an injury to reputation and, in order to be actionable, there must be a publication to a third party. For there to be actionable defamation, the statement must have been communicated to someone other than the plaintiff. Making the statement to the plaintiff alone is not sufficient and cannot be a basis for a [libel] [slander] action. [As to libel, no matter what a person may write, if it is not published, there is no liability since no one is injured.]

Where the plaintiff presents evidence that defamatory remarks were made in the presence of third persons who were close enough to hear the words spoken, it is for you, the jury, to determine whether the statement was published or not, even if the third person denies having heard the words. Plaintiff must prove the publication was heard by a third party who understood that it referred to the plaintiff. Publication includes proof that the complaining party was the person with reference to whom the defamatory matter was spoken. To meet the requirement of "publication" for purposes of a defamation action, the third person to whom the defamation is communicated must know the defamatory statement was referring to the plaintiff.

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Additionally, the alleged defamatory statement must be published by the defendant. As a general rule, where a person communicates a defamatory statement only to the person defamed and the defamed person then repeats the statement to others, publication of the statement by the person defamed, or "self-publication," will not support a defamation action against the originator of the statements. If the plaintiff repeats the statement to a third party, the defendant is not responsible for any damages caused by plaintiff communicating the statement. Where the plaintiff himself communicated or, by his acts, caused the communication of a defamatory statement to a third person, the plaintiff cannot recover because there is no publication for which defendant can be liable. If plaintiff consented to or authorized the communication of the defamatory statement, he cannot recover for any injury sustained by reason of the communication.

The third element of defamation is fault on the part of the publisher.- [**NOTE:** The degree of fault a plaintiff must establish depends upon his status as a public or private figure. See §§ 14-9 and 14-11 for separate charges regarding defamation of public figures and defamation of private persons.]

Finally, the plaintiff must prove either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication.

- *See Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986); *Fleming v. Rose*, Op. No. 25500 (S.C. Sup. Ct. filed July 22, 2002)(Shearouse Adv. Sh. No. 25 at 30); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)(Majority Opinion)(while common law malice involves malicious intent or recklessness on part of publisher, constitutional malice requires actual knowledge of publication's falsity or serious reservations about its truthfulness; presumption of common law actual malice cannot substitute for requirement of proof of constitutional actual malice in case where First Amendment is involved); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)(Toal, J., concurring)(under common law, defamatory communication presumed to be false, yet, truth can be asserted as affirmative defense; whether communication is reasonably capable of conveying defamatory meaning is question of law for trial court to determine); *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997)(trial court determines initially whether statement is susceptible of having defamatory meaning); *Beckham v. Sun News*, 289 S.C. 28, 344 S.E.2d 603 (1986); *Kendrick v. Citizens and Southern Nat'l Bank*, 266 S.C. 450, 223 S.E.2d 866 (1976); *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 221 S.E.2d 770 (1976); *Duckworth v. First Nat'l Bank*, 254 S.C. 563, 176 S.E.2d 297 (1970); *Pelot v. Davison-Paxon Co.*, 218 S.C. 189, 62 S.E.2d 95 (1950); *Tucker v. Pure Oil Co.*, 191 S.C. 60, 3 S.E.2d 547 (1939); *Tobias v. Sumter Telephone Co.*, 166 S.C. 161, 164 S.E. 446 (1932); *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 556 S.E.2d 732 (Ct. App. 2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001); 50 Am. Jur. 2d *Libel and Slander* §§ 235, 236 (1995); 53 C.J.S. *Libel and Slander* §§ 48, 49, 58 (1987); Restatement (Second) of Torts §§ 558, 559, 581A (1977); Michael G. Sullivan, *Elements of Civil Causes of Action* 65-79 (2000).

§ 14-7 Defamation - Defamation *Per Se* or Defamation *Per Quod*

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

The defamatory meaning of a message or statement may be obvious on the face of the statement, in which case the statement is defamatory *per se*. A statement is defamatory per se, or on its face, if its defamatory meaning is apparent from the language itself. It must be susceptible of only one meaning, that being a defamatory one. If an innocent construction can fairly be made of the statement, it cannot be defamatory *per se*. An example of defamation per se is "A is a thief."

Conversely, if it is necessary to refer to facts or circumstances beyond the language itself in order to make the defamatory meaning of the statement clear, it is defamatory *per quod*. In other words, if the defamatory meaning is not clear unless the hearer knows facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning. An example of defamation *per quod* is "A had a baby" where the extrinsic fact is that A is unmarried.

> **NOTE:** Chief Justice Toal, in her concurring opinion in Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998), stated:
>
> "The requirement for special damages in the case of 'libel *per quod*' is clearly contrary to the historical rule as developed in England and to the apparent weight of authority in this country...." 2 Harper & James, § 5.9A, at 84. A growing number of courts have rejected the concept of libel *per quod*, either explicitly or through the adoption of section 569 of the Restatement of Torts.... This formulation encapsulates the common law rule that all libel is actionable, eliminating, thereby, the distinction between libel *per se* and libel *per quod*.... Adoption of section 569 by this Court would do much to clarify defamation law in this state.

Id. at 529-30, 506 S.E.2d at 512 (footnotes omitted).

- *See Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)(Majority Opinion); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)(Toal, J., concurring); *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001); 50 Am. Jur. 2d *Libel and Slander* § 136 (1995)(statements are considered defamatory per se when defamatory character of statement is apparent on its face-that is, when words used are so obviously and materially harmful to plaintiff that injury to his or her reputation may be presumed; statements are considered defamatory per quod if defamatory character of statement is not apparent on its face and if extrinsic facts are required to explain its defamatory meaning).

§ 14-8 Defamation - Insinuation

Defamation need not be accomplished in a direct manner. An insinuation may be defamatory. A mere insinuation is as actionable as a positive assertion if it is false and malicious and its meaning is plain.

- *See Cooper v. Laboratory Corp.*, 150 F.3d 376 (4th Cir. 1998); *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *Tyler v. Macks Stores*, 275 S.C. 456, 272 S.E.2d 633 (1980); *Timmons v.*

News & Press, Inc., 232 S.C. 639, 103 S.E.2d 277 (1958); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001).

In short, the defendants insist that the plaintiff has not created a genuine issue of material fact that the defendants' statements are defamatory or libelous, but this question is a quintessential question of fact. It is for a jury to decide if the defendants knowingly made false or misleading statements, and as set forth in *Murray v. Holnam*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001) and the numerous cases cited therein, it is not up to the defendants to declare themselves beyond the reach of the law because they claim a privilege. It is up to the jury to decide if their statements are defamatory, whether a privilege exists, and if it does, whether the defendants exceeded it in branding the plaintiff an animal abuser. The examples of libelous statements are too numerous to set out in a memorandum of law, but perhaps the clearest example of both libelous publication and the manner in which it is used to generate income occurred immediately following the April 19, 2017, incident in which the plaintiff's horse, Big John, slipped on Meeting Street. Almost immediately, the Charleston Animal Society published a compilation video put together by Dan Krosse, the Charleston Animal Society's Video Director:

Q. Well, there's a video on your web page that appears to be—and when I say "your web page," Charleston Carriage Horse Advocates—that appears to be at least two videos edited together. So who was it who did that?

MR. THOMPSON: Objection. Answer the question.

A. THE WITNESS: I'm not sure which video. I would have to look to make sure. Is it one that has writing on it?

Q. There were both.

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

A. Well, I would say that I—I would say that if there was one with writing on it, that that was Dan Krosse did that, and I—I don't know which one the other wone is. You'd have to show it to me.

Ellen Harley, 30(b)(6) deposition, January 31, 2020, page 85, lines 2-17

This compilation video of Big John contained the Animal Society's inserted narrative, which posed questions in such a way as to mislead the public and whip up a frenzy of aggressive threats against the plaintiff and enhance the defendants' fundraising. The Charleston Animal Society edited together at least three separate videos and inserted the following false and misleading questions to lead viewers to the conclusion that the plaintiff's horse was worked to collapse. (The stratagem of posting libelous material in the form of a question is a widely used technique because many mistakenly believe that something posed as a question or an opinion cannot be libelous. The United States Supreme Court rejected this fallacy in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), a case discussed more fully below. The Charleston Animal Society inserted the following captions into the video published by both defendants:

"Was Big John exhausted or did he just trip?"

"Why were eyewitnesses intimidated to stop taking video when a horse collapsed?"

"By law, the horses are not supposed to pull more than three times their weight. However loaded carriages are never weighed, and Charleston does not enforce this provision."

"Big John could not get up on his own. A team of people had to try and pull him up."

"After several minutes of trying, finally some good news for Big John."

"Charleston Animal Society and several local and several national Animal Welfare Groups want independent, scientific, peer-reviewed study to answer questions (with research) on whether the working environment for horses like Big John is truly safe and humane."

"Is this too much to ask for Big John and other working horses?"

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

The inference of this language is unmistakable, and the defendants believe that by posing their allegations in the form of questions they escape liability. (This fallacy can also be explicated by resorting to a simple thought experiment. If the defendants formed a charitable organization to advocate for legal reform and posted a photo of me walking with a child with the following caption: "Should child abusers be allowed to practice law?" that publication would be actionable. The thought experiment is not too far-fetched as these defendants have demonstrated a pattern of filing spurious complaints against the licenses of anyone who challenges them.) As discussed more fully below, the United States Supreme Court has already rejected this facile excuse, a stratagem easily punctured by posing the above hypothetical. See *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990) Two weeks after Big John tripped on Meeting Street, even though both defendants were aware that both the City's Equine Manager and the horse's veterinarian both inspected Big John, found him uninjured and cleared him for work, the Charleston Animal Society posted on its May 2, 2017, Facebook page that they met and surpassed their **one-day** fundraising goal of $100,000.00.

In the seminal work on the right to privacy, Brandeis and Warren summarized the purpose and underpinning the law of slander and libel and contrasted it with they saw as the then inadequacy of the law to address invasions of privacy:

> It is our purpose to consider whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual; and, if it does, what the nature and extent of such protection is.
>
> Owing to the nature of the instruments by which privacy is invaded, the injury inflicted bears a superficial resemblance to the wrongs dealt with by the law of slander and of libel, while a legal remedy for such injury seems to involve the treatment of mere wounded feelings, as a substantive cause of action. The principle on which the law of defamation rests, covers, however, a radically different class of effects from those for which attention is now asked. It deals only with damage to reputation, with the injury done to the individual in his external relations to the community, by lowering him in the estimation of his fellows. The matter published of him, however widely circulated, and however unsuited to publicity, must, in order to be actionable, have a direct tendency to injure him in his intercourse with others, and even if in writing or in

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

print, must subject him to the hatred, ridicule, or contempt of his fellowmen, — the effect of the publication upon his estimate of himself and upon his own feelings nor forming an essential element in the cause of action. In short, the wrongs and correlative rights recognized by the law of slander and libel are in their nature material rather than spiritual. That branch of the law simply extends the protection surrounding physical property to certain of the conditions necessary or helpful to worldly prosperity. On the other hand, our law recognizes no principle upon which compensation can be granted for mere injury to the feelings. However painful the mental effects upon another of an act, though purely wanton or even malicious, yet if the act itself is otherwise lawful, the suffering inflicted is *dannum absque injuria*. Injury of feelings may indeed be taken account of in ascertaining the amount of damages when attending what is recognized as a legal injury; but our system, unlike the Roman law, does not afford a remedy even for mental suffering which results from mere contumely and insult, but from an intentional and unwarranted violation of the "honor" of another.
Louis D. Brandeis & Samuel D. Warren, "The Right to Privacy," *Harvard Law Review*, Vol. 4, No. 5 (Dec. 1890)

South Carolina responded to the deficiency noted by Brandeis and Warren by adopting the tort of Outrage. See *Ford v. Hutson,* 276 S.C. 157, 276 S.E.2d 776 (1981); *Holtzscheiter v. Thompson Newspapers, Inc.*, 306 S.C. 297, 411 S.E.2d 664 (1991) (Brandeis and Warren would not have agreed the law contained a "deficiency." They believed that the Fourth Amendment gave every citizen a right to constitutionally protected privacy. In essence, the defendants contend that the plaintiff has failed to present a genuine issue of material fact because they believe their statements are unqualifiedly privileged, and if they are unqualifiedly privileged, then most of the plaintiff's claims fail. The assertion of "privilege" was the basis for a trial judge in Berkeley County granting summary judgment in favor of the defendants in a defamation case when a supervisor terminated an employee, John Murray, because of unsupported allegations of theft of company property. *Murray v. Holnan*, 344 S.C. 129, 542 S.E.2d 743 (2001) The discharged employee brought suit for slander, and the appellate court reversed the grant of summary judgment as follows:

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

I. Defamation and Agency

Murray contends the trial judge erred in concluding Holnam was not liable for defamation arising from Smoak's statement because Holnam did not expressly direct Smoak to make the statement. We agree.

In *Fleming v. Rose*, 338 S.C. 524, 526, S.E.2d 732 (Ct. App. 2000), this Court explained:

The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999). The focus of defamation is not on the hurt to the defamed party's feelings, but on the injury to his reputation. See *Wardlaw v. Peck*, 282 S.C. 199, 318 S.E.2d 270 (Ct. App. 1984). Defamatory communications take two forms: libel and slander. *Swinton Creek Nursery, supra*. Slander is a spoken defamation, while libel is a written defamation or one accomplished by actions or conduct. *Id. Fleming*, 338 S.C. at 532, 526 S.E.2d at 737. Defamation need not be accomplished in a direct manner. *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *Tyler v. Macks Stores*, 275 S.C. 456, 272 S.E.2d 633 (1980). A mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain *Eubanks, supra; Tyler, supra.*

The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998) (Toal, J., concurring in result in separate opinion; *Fleming, supra*. A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. *Fleming, supra.*

Here, the trial judge concluded a principal could not be vicariously liable for statements made by an agent unless the agent was expressly authorized to make the statement. However, a principal may be held liable for defamatory statements made by an agent acting within the scope of his employment or within the scope of his apparent authority. *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 341 S.E.2d 622 (1986) *See also* Restatement (Second) of Agency § 247 (1965) (master is subject to liability for defamatory statements made by servant acting within scope of his employment, or, as to those hearing or reading the statement, within his apparent authority).

The trial judge improperly concluded Holnam could not be held liable absent express authorization to Smoak.

II. Qualified Privilege

Murray argues the trial judge erred in concluding: (1) Smoak's statement was protected by qualified privilege and (2) Smoak did not exceed the scope of the privilege.

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Our Supreme Court addressed a similar issue in *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999):

In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege. Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. Restatement (Second) of Torts § 593 (1977); see *Bell v. Bank of Abbeville*, 208 S.C. 490, 38 S.E.2d 641 (1946). In *Bell,* this Court held:

In determining whether or not the communication was qualifiedly privileged, regard must be had to the occasion and to the relationship of the parties. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed. *Bell*, 208 S.C. at 493-94, 38 S.E.2d at 643

In general, the question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. 50 Am.Jur.2d *Libel and Slander* § 276 (1995). However, the question whether the privilege has been abused is one for the jury. *Id.* Factual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused. *Id.; see also* Restatement (Second) of Torts §§ 599-610. In *Fulton v. Atlantic Coast Line R.R.*, 220 S.C. 287, 67 S.E.2d 425 (1951),], this Court held that it was a question for the jury to determine if the publication went beyond what the occasion required and was unnecessarily defamatory. *Fulton*, 220 at 297, 67 S.E.2d at 429; *cf. Woodward,* 277 S.C. at 32-33, 282 S.E.2d at 601 ("While abuse of privilege is ordinarily an issue for the jury, ... in the absence of a controversy as to the facts ... it is for the court to say in a given instance whether or not the privilege has been abused or exceeded."). *Swinton Creek Nursery*, 334 S.C. at 484-85, 514 S.E.2d at 134.

It is the duty of the trial judge to determine if the statement is privileged. *Id.* A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable. *Constant v. Spartanburg Steel Prods., Inc.*, 316 S.C. 86, 447 S.E.2d 194 (1994); *Prentiss v. Nationwide MUT. Ins. Co.*, 256 S.C. 141, 182 S.E.2d 325 (1971). Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business. *Conwell v. Spur Oil Co.*, 240 S.C. 170, 125 S.E.2d 270 (1962).

We find the trial judge did not err in initially concluding Smoak was protected by a qualified privilege. Yet, the protection of a qualified privilege may be lost by the manner of its exercise. *Fulton v. Atlantic Coast Line R.R.*, 220 S.C. 287, 67 S.E.2d 425 (1951). The publisher must not wander beyond the scope of the occasion. *Constant, supra; Woodward v. South Carolina Farm Bureau Ins. Co.*, 277 S.C. 29, 282 S.E.2d 599 (1981). The privilege does not protect any

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

unnecessary defamation. *Fulton, supra.* In order for a communication to be privileged, the person making it must be careful to go no further than his interests or his duties require. *Id.* Where the speaker exceeds his privilege and the communication complained of goes beyond what the occasion demands that he should publish, and is unnecessarily defamatory of the plaintiff, he will not be protected. *Id.* The existence of a duty, a common interest, or a confidential relation is not a defense. *Id.*

Whether the publication went too far beyond what the occasion required, resulting in the loss of the qualified privilege, is a question for the jury. *Id.* See also *Constant,* 316 S.C. at 89, 447 S.E.2d at 196 ("It is ordinarily for the jury to determine whether the privilege has been abused or exceeded.").

We find there is a genuine issue of material fact as to whether the qualified privilege was lost.

III. Actual Malice

Murray maintains the trial judge erred in concluding there were no genuine issues of fact regarding whether Smoak made the statements with actual malice. We agree.

If a defamation is actionable per se, then under common law principles the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. *Holtzscheiter v. Thomson Newspaper, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998). If a defamation is not actionable per se, then at common law the plaintiff must plead and prove common law actual malice and special damages. *Id.* Slander is actionable per se if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. *Id.*

However, even if the slander is actionable per se, if the communication is privileged, the plaintiff must prove actual malice. *Bell v. Bank of Abbeville*, 208 S.C. 490, 38 S.E.2d 641 (1946) (privileged communication is exception to rule that malice will be presumed where offending statement is actionable per se). A qualified privilege does not prevent liability for defamation where the statement is made with actual malice. *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987). *Bell, supra* (in defamation action, if defendant proves qualified privilege, plaintiff may not recover unless he overcomes privilege by proving actual malice).

Common law actual malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, meaning with conscious indifference toward the plaintiffs rights. *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1982). The Court, in *Fulton v. Atlantic Coast Line R.R.*, 220 S.C. 287, 67 S.E.2d 425 (1951), discussed malice:

That the appellant believed the charges to be true did not justify it in publishing them in an improper and unjustified manner or with improper and unjustified motives. Proof that they were published in such manner and with such motives would constitute sufficient proof of malice, or malice in fact. It is not necessary that evidence must be offered of malignity or ill will, nor that those facts should be found. The time, place, and other circumstances of the preparation and

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

publication of defamatory charges, as well as the language of the publication itself, are admissible evidence to show that the false charge was made with malice.

Fulton, 220 S.C. at 296, 67 S.E.2d at 429. An academic review of malice is presented in *Jones v. Garner*, 250 S.C. 479, 158 S.E.2d 909 (1968). *Jones* enunciates:

Malice, in actions for libel or slander, is of two kinds: implied malice or malice in law, and actual malice or malice in fact.

"Malice in law, or legal malice, is a presumption of law and dispenses with the proof of malice when words which raise such presumption are shown to have been uttered. This form of malice is not necessarily inconsistent with an honest or even laudable purpose and does not imply ill will, personal malice, hatred, or a purpose to injure." 33 Am. Jur. *Libel and Slander,* Section 111. Also, 53 C.J.S. *Libel and Slander* § 2.

Actual malice or malice in fact is not presumed and must be proved. Actual malice means that the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiffs rights.

Jones, 250 S.C. at 488, 158 S.E.2d at 913-14. *See also Eubanks v. Smith,* 292 S.C. 57, 63, 354 S.E.2d 898, 902 (1987) ("Actual malice is ill will, recklessness, wantonness, or conscious indifference to the plaintiff's rights.").

In *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998), our Supreme Court revisited malice and lifted the definition of common law actual malice from *Jones v. Garner*, supra: "[C]ommon law actual malice, that is `the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiffs reports.'" *Holtzscheiter*, 332 S.C. at 510 n. 3, 506 S.E.2d at 501 n.3. The case *sub judice* is controlled by the definition of common law actual malice because the plaintiff is a private citizen. A different definition of malice is efficacious in regard to a public official or public figure:

In defamation actions involving a "public official" or "public figure," the plaintiff must prove the statement was made with "actual malice," i.e., with either knowledge that it was false or reckless disregard for its truth. *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974).....
....

The actual malice standard is not satisfied merely through a showing of ill will or "malice" in the ordinary sense of the term.

Elder v. Gaffney Leger, 341 S.C. 108, 113-14, 533 S.E.2d 899, 901-02 (2000). The public official or public figure definition of actual malice is inapposite to the case at bar.

Actual malice requires that at the time of the defendant's act or omission he was conscious or chargeable with consciousness of his wrongdoing. *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

30 (1982). Malice may be proved by direct or circumstantial evidence. *Hainer v. American Medical Int'l. Inc.*, 328 S.C. 128, 492 S.E.2d 103 (1997); *Smith v. Smith*, 194 S.C. 247, 9 S.E.2d 584 (1940).

Whether malice is the incentive for a publication is ordinarily for the jury to decide. See *Ponticelli v. Mine Safety Appliance Co.*, 104 R.I. 549, 247 A.2d 303 (1968) (citing 3 Restatement of Torts § 619(2)). Proof that statements were published in an improper and unjustified manner is sufficient evidence to submit the issue of actual malice to a jury. *Hainer supra; Mains v. K Mart Corp.*, 297 S.C. 142, 375 S.E.2d 311 (Ct. App. 1988). See also *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999) (finding factual inquiries, such as whether the defendants acted in good faith in making the statement, questions for the jury).

We find genuine issues of fact exist regarding whether the statement was made with actual malice. The issue of actual malice is properly a question for the jury. (As set forth above in footnote 1, the requirement that a plaintiff prove "special damages" is no longer the law.)

If there is no "privilege" between an employer and an employee, then there can be no claim of "privilege" between these defendants who have no relationship to the plaintiff.

In *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987), a case cited by the Court of Appeals in *Murray v. Holnan*, the Supreme Court took up a fact pattern similar to the present case. There, a City Manager became suspicious that a plumbing and electrical inspectors had participated in assisting unqualified contractors getting licenses in Myrtle Beach. Myrtle Beach's City Manager suspended them and issued a press release implying the suspended employees were guilty of criminal activity and would be disciplined. That is identical to what these defendants routinely do when they accuse the plaintiff of overworking horses, failing to give them rest proper rest or time off, cheating on their city records, overloading their carriages, working them in overheated conditions and otherwise treating them inhumanely. The malice of the defendants is made clear not only when they delete and ban anyone who posts truthful information that corrects the defendants' false narrative, but also, as set forth in the plaintiff's affidavits, by acts such as the defendant Harley following carriages and harassing drivers and guests. (See affidavits of B. Christoff, February 25, 2020, page 4 and December 2, 2020, page 6.) In *Eubanks*, when the City

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

of Myrtle Beach failed to produce evidence of its allegations against the suspended employees, the employees sued, and a jury returned a verdict for them in the amount of $517,000.00. The City appealed, and the Supreme Court upheld the verdict, holding: "Respondents presented sufficient evidence of actual malice to submit the case for libel to the jury even if Smith was protected by a qualified privilege." *Eubanks* at page 902. Here, the evidence is overwhelming that the defendants have conspired with one another to drive the plaintiff out of business by, "depressing their income," helpfully putting their malicious goal in writing and circulating it among themselves. (See e-mail dated March 30, 2017, attached to Brody Christoff's supplemental affidavit.) The evidence of the lengths to which these defendants have gone to disseminate false information and innuendo to destroy the plaintiff's business is much greater than the mere creation of a genuine issue of material fact, and unlike any party in any of the cases cited, no defendant has any plausible claim to "privilege" because the concept of "privilege" is reserved to those applications where the parties have some relationship such as employer/employee or agency.

The legal issue presented in this case has been much in the news of late. In asking the court to dismiss a libel action against her for comments about Dominion voting machines, Sidney Powell raises the same defenses raised here, to wit, that their statements about carriages are protected opinions and therefore not actionable:

> Powell alone argues that her statements cannot be defamatory because no reasonable person could conclude that they were statements of fact. According to Powell, her statements were either "opinions" that cannot be proven true or false or "legal theories . . . made in the context of pending and impending litigation." *US Dominion, Inc., et. al. v. Sidney Powell, et. al.* Civil Action No. 1:21-cv-00040 (CJN)

In the Sidney Powell case, the trial judge swept away her arguments that her statements were nothing but her opinions and therefore not actionable, relying on, among other cases, *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990) where the Supreme Court stated:

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications; and the statement, "In my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar." As Judge Friendly aptly stated: "[It] would be destructive of the law of libel if a writer could escape liability for accusations of [defamatory conduct] simply by using, explicitly or implicitly, the words 'I think.'" See *Cianci, supra*, at 64. It is worthy of note that at common law, even the privilege of fair comment did not extend to "a false statement of fact, whether it was expressly stated or implied from an expression of opinion." Restatement (Second) of Torts, § 566, Comment *a* (1977). (wrestling coach sued local paper for publishing story accusing him of lying about melee at a wrestling match)

Ellen Harley and Joe Elmore have lots of opinions about carriage horses, and they are not shy about expressing them; neither are they shy about painting the plaintiff as an animal abuser, a cheater, and a person who treats horse inhumanely. They do much worse—not only do they publish knowingly false information (see the examples set forth above on pages 11-12), but when anyone rebuts their allegations with truthful and accurate information, they not only delete the truthful information, but also they ban the commentor from their web pages as explained in the affidavit of B. Christoff filed February 25, 2020 on page 4. In other words, they deliberately create a false narrative to cast the plaintiffs in a false light because the false narrative is rocket fuel for donations, the whole purpose of the defendants joining together to form the "Equine Cruelty Committee," in which they voted to spend $95,000.00 of taxpayer provided money to hire an expert for "Phase 1" to leverage their joint efforts on social media to attack the plaintiff. See affidavit of B. Christoff, filed December 2, 2020, at page 5. It is also relevant that Ellen Harley who splits her time between Charleston and her home on Martha's Vineyard, finds the carriages that travel in front of her house at 23 Wentworth Street to be nuisances, which she handles by following them around and harassing them. See affidavit of B. Christoff filed December 2, 2020 at page 6.) Unfortunately for the defendants, neither Harley nor Elmore is a veterinarian or any

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

other kind of expert in equine medicine or physiology, and their statements about horses—especially when combined with the evidence of malice cited throughout—demonstrate their convictions are not only unsupported by commonly known matters about horses, but also fly in the face of the rules of physics. As an Alabama trial lawyer famously said: the rules of physics do not cease to exist at their front porches. See affidavit of B. Christoff, filed February 25, 2020 for detailed explanation of the physics of horse-drawn carriages. Elmore and Harley are so uninformed about 7th grade science, they believe that the weight of a carriage is a material factor to the force necessary to pull it. (To be as fair as possible to the defendants, the weight of a carriage has a small effect on the force necessary to overcome its inertia relative to the street, but once the wheels are turning, the weight of the carriage matters little, which is why a car with one passenger does not get better gas mileage than the same car with six. And, as explained in Mr. Christoff's affidavit, carriages with large diameter, narrow, ridged wheels are easily moved about by the smallest person in the barn. A fully grown Percheron or Belgian weighs 2000 pounds!) What they lack in knowledge about horses, they more than make up for as masters of fund-raising, and only after getting sued do they attempt to hide behind a patina of respectability when the evidence shows their expertise is in inducing third parties to send them money, and misleading donors about carriage horses is good for the business of putting the plaintiff out of business. South Carolina has a well developed body of law on defamation, both in slander and in libel, and while both Harley and Elmore are free to express their opinions about any topic of their choice, they are not free to publish knowingly false information and label Brody an animal abuser and manufacture false evidence to promote fund raising and stir up hostility for a lawful business. The plaintiff in this case has demonstrated the existence of genuine issues of material facts on all the elements of defamation and conspiracy.

Respectfully submitted,

August 16, 2021

/s/ Thomas R. Goldstein
Thomas R. Goldstein S. C. Bar No. 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554 4291; (843) 554 5566 (fax)
tgoldtein@cobblaw.net

ELECTRONICALLY FILED - 2021 Aug 19 6:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-04083
	)	
Charleston Carriage Works, LLC,	)	
	)	
Plaintiff,	)	**DEFENDANT CHARLESTON ANIMAL SOCIETY'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Defendant Charleston Animal Society's (CAS) Motion for Summary Judgment, filed November 16, 2020. This lawsuit concerns the public and divisive issue of the carriage horse industry, an issue that has evoked strong feelings on all sides, as well as differing opinions from a number of angles, for decades.

The crux of this lawsuit is Plaintiff Charleston Carriage Works' (CCW) claim that the use of the word "collapse" in a video[1] of an incident in which one of its horses, Big John, fell during a carriage tour and remained on the pavement for over 10 minutes until, with assistance, he was able to stand, was defamatory. Plaintiff's Complaint also includes causes of action for civil conspiracy, "Violation of Plaintiff's Civil Rights under Art. I, § 3, South Carolina Constitution – Gross Negligence, Recklessness", and tortious interference with business relations.

Because there are no genuine issues as to any material fact, CAS is entitled to judgment as a matter of law. Rule 56, SCRCP.

[1] https://www.youtube.com/watch?v=WLXdlMsxBZM (last accessed 8/18/21).

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

PROCEDURAL HISTORY

Plaintiff's first complaint against Defendants arising out of the "Big John incident" was filed in this Court on May 29, 2018 (C/A No. 2018-CP-10-2704). Because that complaint alleged the violation of Plaintiff's rights under the United States Constitution, Defendants removed it to federal court (C/A No. 2:18-cv-1980-RMG). Rather than proceed in federal court, Plaintiff filed a Notice of Dismissal on August 15, 2018. Plaintiff then initiated the current action by filing the same complaint (the "Complaint"), albeit without the references to federal law, in this Court on August 17, 2018.

The parties began engaging in discovery almost immediately. In addition to extensive written discovery, the depositions of the following individuals have been taken:

Broderick Christoff	Sole member/owner of Plaintiff CCW
Amber Christoff	Wife of Broderick Christoff
Katie Clarey	Accountant/tax preparer for Plaintiff CCW
Elizbeth Fort	Eyewitness to Big John incident, former member of CCHA
CCHA 30(b)(6)	Designated witness was Ellen Harley, founder of CCHA
Tyler Jones	Principal of public relations firm hired by Plaintiff CCW
Tara Little, DVM	Equine veterinarian that examined Big John shortly after collapse
Justin Miller, DVM	Esquire veterinarian designated by Plaintiff CCW as an expert
Dan Riccio	Director of the City of Charleston's Department of Livability and Tourism (which oversees the carriage industry)

By Consent Scheduling Order filed July 16, 2019, the parties agreed on a discovery deadline of February 7, 2020, a mediation deadline of March 9, 2020, and a trial not before date of May 11, 2020.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases [that] do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "[W]hen a party has moved for summary judgment[,] the opposing party may not rest upon the mere allegations or denials of his pleading to defeat it." Fowler v. Hunter, 380 S.C. 121, 125, 668 S.E.2d 803, 805 (Ct. App. 2008). "Rather, the non-moving party must set forth specific facts demonstrating to the court there is a genuine issue for trial." Id.

"A jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror." Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). "However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." Id. (quoting Small v. Pioneer Mach., Inc., 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct. App. 1997)); Hall v. Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) ("Our appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence."); id. at 175–76, 561 S.E.2d at 657 (hearsay inadmissible to refute a motion for summary judgment).

Furthermore, "where the federal standard applies or where a heightened burden of proof is required, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "[T]he summary judgment device occupies a position of great importance in libel actions as compared with other civil actions, due to the possible chilling effect which can result from the defense of defamation claims." Peeler v. Spartanburg Herald-Journal Div. of The New York Times Co., 681 F. Supp. 1144, 1146 (D.S.C. 1988).

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

LEGAL ARGUMENT

I. Defendant CAS is entitled to summary judgment on Plaintiff's defamation cause of action.

Plaintiff alleges it was defamed by CAS's publication of a video showing Plaintiff's horse, Big John, and describing the horse as having "collapsed" (the content of the video will be discussed in more detail below). Plaintiff has also maintained that there are additional defamatory statements at play unrelated to the Big John incident but has consistently failed to specifically identify any statements/publications by CAS that are "of and concerning" CCW or that are provable as false. These other allegedly defamatory statements will be addressed separately below at I(E).

In order to prove defamation, a plaintiff must show: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). Several presumptions accompany these elements. First, common law generally presumes that the statement is false. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 519, 506 S.E.2d 497, 506 (1998). Additionally, when a statement is actionable *per se*, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages. Erickson, supra. As the Supreme Court of South Carolina has explained, "libel is a written defamation" and "essentially all libel is actionable *per se*." Id. Therefore, in a defamation suit involving libel in which the plaintiff is a private figure, both common law malice and general damages are typically presumed.

However, although a plaintiff might be able to prove all of the elements of South Carolina common law defamation, the First Amendment places limitations on tort liability for defamation. See City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 531 S.E.2d 518 (2000) (when

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

confronted with First Amendment issues, South Carolina courts are guided by precedence from the United States Supreme Court); see also Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998) ("[T]his area of the law is constantly evolving, and consequently all prior decisions must be read in the context of the current state of the law.").

The First Amendment limitations differ based upon: 1) whether the defamed individual is a public figure, public official, or private figure; and 2) whether the subject matter of the alleged defamatory statement is a matter of public or private concern. See, e.g., New York Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964) (concluding that the First Amendment prevents a "public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not"); Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 776–77 (1986) (holding that when a plaintiff is a private figure and the speech is a matter of public concern, the First Amendment requires the plaintiff to prove falsity of the statement).

A. CAS is entitled to summary judgment on Plaintiff's defamation claim because Plaintiff is, at a minimum, a limited-purpose public figure and therefore must prove actual malice, which it cannot do.

"[A]n important initial step in analyzing any defamation case is determining whether a particular plaintiff is a public official, public figure, or private figure." Erickson, 368 S.C. at 468, 629 S.E.2d at 666. This determination is a matter of law which must be decided by the court. Id. Even a limited purpose public figure must show, by clear and convincing evidence, that defamatory statements were made with knowledge that they were false or with reckless disregard of whether they were false or not. George v. Fabri, 345 S.C. 440, 456, 548 S.E.2d 868, 876 (2001).

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

At the summary judgment phase, the appropriate standard "on the issue of constitutional actual malice is the clear and convincing standard." Id. at 454, 548 S.E.2d at 875.

Clear and convincing evidence is that "degree of proof which will produce in the [fact finder] a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 374 n. 2, 496 S.E.2d 17, 18 n. 2 (1998). Furthermore, "where the federal standard applies or where a heightened burden of proof is required, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"Unless the [circuit] court finds, based on pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice, it should grant summary judgment for the defendant." McClain v. Arnold, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980).

1. Plaintiff is a limited-purpose public figure in the context of the debate concerning the Charleston carriage horse industry.

The United States Supreme Court generally has defined a public figure as follows: "For the most part those who attain this status [of public figure] have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment." Gertz, 418 U.S. at 345; George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001) (plaintiff political candidate's engineering firm was a limited public figure under Gertz test in defamation action arising from statements candidate made during political campaign). In determining whether a

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

claimant is a private or public figure, the court must focus on the "nature and extent of an individual's participation in the particular controversy giving rise to the defamation." Gertz, 418 U.S. at 352; Parker v. Evening Post Pub. Co., 317 S.C. 236, 243 n. 3, 452 S.E.2d 640, 644 n. 3 (Ct. App. 1994) (automobile dealer invited public's attention through extensive media advertising and, as to statements regarding his dealership, was a public figure).

A limited public figure, the type more commonly found, is an individual who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions." Gertz, 418 U.S. at 351.

The United States Supreme Court has identified a third category of involuntary public figures who become public figures through no purposeful action of their own. Erickson, 368 S.C. at 473, 629 S.E.2d at 668.

All three types of public figures, just as public officials, must meet the New York Times standard of actual malice in order to recover damages for defamation. Erickson, 368 S.C. at 473, 629 S.E.2d at 668. Public figures and public officials are entitled to less protection from defamation than private figures because they enjoy greater media access and are less vulnerable to injury from defamatory statements due to their ability to publicly rebut such statements. Id.

In order for the court to properly hold that a plaintiff is a public figure for the limited purpose of comment on a particular public controversy, the defendant must show: (1) the plaintiff has access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory

ELECTRONI Y FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P .3 - CASE#2018CP1004083

statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation. Id. at 474, 629 S.E.2d at 669.

In George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001), George, a county councilmember, and his engineering firm GRGA, brought an action against Fabri, alleging that during the course of the county council election, Fabri (who was running against George) made false and defamatory statements, including that GRGA was improperly awarded certain country contracts. On appeal, George argued that GRGA was not a public figure and that the lower court erred in applying the actual malice standard. The South Carolina Supreme Court disagreed, noting that George identified himself as the founder and principal engineer of GRGA in his campaign materials and, in his affidavit, stated that his own reputation was basically intertwined with GRGA's reputation for experience, ability, quality, ethics, and professionalism. The Court concluded that, under the circumstances of that case, GRGA was properly considered a public figure. Id. ("We find that GRGA voluntarily injected itself into this campaign—or at the very least was fairly drawn into it—and thereby assumed the special prominence of a public figure.").

Just as in George, CCW through the actions of its owner, Mr. Christoff, has injected itself into the heated debate over the operations of the carriage industry in Charleston, something that even Mr. Christoff admits is a matter of public interest. Christoff Depo., Vol. I, pp. 302-303, Exhibit 1. For example, the minutes of the following City meetings reflect that Mr. Christoff made comments concerning various carriage-related issues and was identified as being with and/or owning CCW (minutes are attached collectively as Exhibit 2):

11/23/15: Tourism Subcommittee: Routes, Parking and Touring Rules (p. 3)

2/4/16: Tourism Subcommittee: Routes, Parking and Touring Rules (p. 1)

8/25/16: Tourism Subcommittee: Routes, Parking and Touring Rules (pp. 1, 2)

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

3/14/17: City Council (p. 8)

In his Second Supplemental Affidavit, p. 2 (filed August 19, 2021), Mr. Christoff concedes that he "frequently" opposed Defendants at meetings of City Council and the Tourism Commission.

Additionally, an article published by the Post & Courier on August 23, 2016, concerning the temperature ordinance identify Mr. Christoff as the owner of CCW before reporting on his comments. See Exhibit 3; see also Christoff Depo., Vol. II, pp. 77:21-78:14 (attached as Exhibit 4) (confirming comments made at meeting). A February 20, 2017, article, titled "Carriage Company Owner Responds After Minor Incident Over the Weekend", contains comments Mr. Christoff made in an interview with the Post & Courier and identifies Mr. Christoff as the owner of CCW. See Exhibit 5. A December 14, 2016, article also identifies Mr. Christoff "of Charleston Carriage Works" before reporting on his comments at a committee meeting. See Exhibit 6. All of these meetings and articles occurred prior to the Big John incident. See Atlanta Humane Soc. v. Mills, 274 Ga.App. 159, 618 S.E.2d 18 (Ga. Ct. App. 2005) ("Even a single interview given to the media may be sufficient to establish a defamation plaintiff as a limited-purpose public figure.").

Mr. Christoff has appeared in at least two online videos designed to affect the public controversy and in which he is identified as being the owner of CCW.[2] The first is an interview by Quintin Washington posted on June 17, 2017, the second is an interview posted on October 10, 2017, by Charleston C.A.R.E.S. CCW, along with two other carriage companies, founded Charleston C.A.R.E.S. (Carriage Association for Responsible Equine Safety), representing on its website that CCW (along with the other two companies) are "committed to being advocates and educators for the often misunderstood and misrepresented horse carriage industry." See Exhibit 7.

[2] https://www.youtube.com/watch?v=foIbs_6JmLA; https://www.youtube.com/watch?v=K7KWEiAFZsw.

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

Additionally, Plaintiff has published on its Facebook page a number of position statements and even a lengthy "manifesto" addressing almost every aspect of the various issues that are debated in relation to the carriage industry. See Exhibit 8 (CCW Facebook post, 4/21/17); Exhibit 9 ("Mr. Joe Elmore and the Charleston Animal Society" Facebook post, 5/7/17); and Exhibit 10 ("Solutions are on the way!!" Facebook post, 5/17/17). In the April 21, 2017, post, on pages 11-12, CCW responds to a number of comments (taking the opportunity to disparage CAS). CCW clearly has access to channels of effective communication. CCW's own actions show that it has greater media access than a private figure and the ability to rebut allegedly defamatory statements. As a result, CCW is an integral part of the public controversy—and voluntarily so—and is therefore a limited-purpose public plaintiff for purposes of the controversy concerning the Charleston carriage industry. At a minimum, CCW chose a course of conduct, both before and after the Big John incident, that invited public attention. See Reuber v. Food Chemical News, Inc., 925 F.2d 702, 709 (4th Cir. 1991) ("Even 'involuntary' participants can be public figures when they choose a course of conduct that invites public attention.").

In conclusion, Plaintiff is a limited public figure for the purpose of comment on the Charleston carriage horse industry.

2. Plaintiff cannot prove actual malice by clear and convincing evidence.

A plaintiff who is a public figure must prove by clear and convincing evidence that the defendant acted with actual malice in publishing a false and defamatory statement about the plaintiff to survive summary judgment. Erickson, 368 S.C. at 467–68, 629 S.E.2d at 665–66 (citations omitted). Actual malice exists when a statement is made "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times, 376 U.S. at 279–80; see also George v. Fabri, 345 S.C. at 456, 548 S.E.2d at 876 (actual malice is governed by a

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

subjective standard which tests the defendant's good faith belief in the truth of her statements). "Actual malice under the New York Times standard should not be confused with the concept of [common law] malice as an evil intent or a motive arising from spite or ill will." Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 510 (1991). It is black-letter law that failure to investigate does not constitute malice. St. Amant v. Thompson, 390 U. S. 727, 731 (1968). "The mere fact that a defamation defendant knows that the public figure has denied harmful allegations or offered an alternative explanation of events is not evidence that the defendant doubted the allegations. As the United States Supreme Court has noted, 'such denials are so commonplace in the world of polemical charge and countercharge that, in themselves, they hardly alert the conscientious reporter to the likelihood of error.'" Carr v. Forbes, Inc., 121 F. Supp. 2d 485, 495 (D.S.C. 2000), aff'd, 259 F.3d 273 (4th Cir. 2001) (quoting Harte–Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 692 n. 37 (1989)).

When the First Amendment requires a plaintiff to prove actual malice, he must prove "that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement." Bose Corp. v. Consumers Union of United States, Inc., 466 U. S. 485, 511 n. 30 (1984); accord, Peeler v. Spartanburg Herald-Journal Div. of New York Times Co., 681 F. Supp. 1144, 1147 (D.S.C. 1988). Thus, as long as the defendant believed in good faith that what he said was true, it does not matter whether he acted out of spite or ill will toward the plaintiff. See Scott v. McCain, 272 S. C. 198, 201-02, 250 S.E.2d 118, 120-21 (1978).

Moreover, recklessness under the constitutional standard is measured not by whether a reasonably prudent man would have published or investigated further before publishing, but rather by evidence that the defendant actually had "serious doubts" in his mind as to the truth of the publication at the time it was published. St. Amant v. Thompson, 390 U. S. 727, 731 (1968). When

ELECTRONI(Y FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P 3 - CASE#2018CP1004083

a person makes a statement based on information received from elsewhere, recklessness may be found only "where there are obvious reasons to doubt the veracity of the informant or the accuracy of [its] reports." Horne v. WTVR, LLC, 893 F.3d 201, 211 (4th Cir. 2018), cert. denied, 139 S. Ct. 823 (2019); see also Church of Scientology Int'l v. Daniels, 992 F.2d 1329, 1333 (4th Cir. 1993) (indicating that "deliberate misrepresentation," "knowing fabrication," or "purposeful avoidance of the truth" are required to show actual malice). "Establishing actual malice is no easy task, because the defamation plaintiff bears the burden of proof by clear and convincing evidence." Carr, 259 F.3d at 282. "[W]here the factual dispute concerns actual malice . . . the appropriate summary judgment question will be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not." Anderson, 477 U.S. at 255–56; McClain v. Arnold, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (S.C. 1980) ("Unless the trial court finds, based on pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice, it should grant summary judgment for the defendant.").

The question of whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law. Harte-Hanks Commc'ns, Inc. v. Connaughton, 491 U.S. 657, 685 (1989). Central to that determination is the recognition of "the importance of the actual malice standard to a wide-open and vigorous discussion of critical public issues." CACI Premier Tech., Inc. v. Rhodes, 536 F.3d 280, 294 (4th Cir. 2008). The South Carolina Supreme Court also has expressed a preference for the dismissal by summary judgment of libel cases where, as here, the New York Times standard of "actual malice" is applicable:

> The presence or absence of actual malice is a constitutional issue and 'where a publication is protected by the New York Times immunity rule, summary judgment, rather than trial on the merits, is a proper vehicle for affording constitutional protection in the proper case.' Unless the trial court finds, based

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

> on pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice, it should grant summary judgment for the defendant.

McClain, supra (citations omitted).

Plaintiff has presented no evidence that CAS acted with malice of any sort, it certainly has not produced clear and convincing evidence that CAS published any statement about Plaintiff which it knew was false or even had serious doubts as to its truth.

As to the Big John video, the only evidence in the record compels the conclusion that CAS did not act with any malice, actual or common law, in publishing that video or the accompanying subtitles. Joe Elmore, CEO of CAS, states in his affidavit (filed on September 11, 2020, and attached as Exhibit 11) that, on April 19, 2017, CAS was contacted by members of the public who reported that a horse, which was identified as Big John, had collapsed to the pavement during a carriage tour and was unable to get up without assistance. Elmore Aff., ¶ 8. At Mr. Elmore's direction, CAS took videos of the Big John provided by eyewitnesses, added subtitles, and published the resulting video on CAS's social media sites and website. Elmore Aff., ¶ 9. At the time Mr. Elmore instructed that the video be published, he was not in possession of any information that would call into question the veracity of using the term "collapse" to describe what occurred that left Big John lying there on the pavement. Elmore Aff., ¶ 10. Mr. Elmore testified that even as of May 27, 2020, the date he signed his affidavit, he was still not in possession of any such information. Elmore Aff., ¶ 10. In fact, one of the eyewitnesses who sent CAS footage that was used in the Big John video testified in her deposition that she believed then, and continues to believe to this day, that what she witnessed was a horse that had "collapsed". See Depo. of Elizabeth Fort, pp. 22-25; 49-50 (attached as Exhibit 12).

ELECTRONI(Y FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P ›- CASE#2018CP1004083

Mr. Elmore further explained that he directed that the video be published for the purpose of bringing awareness to the carriage horse issue and, specifically, CAS's push for an independent, prospective, science-based, peer-reviewed study of the Charleston carriage industry. Elmore Aff., ¶ 11. Mr. Elmore confirmed that in no way was it his intent to harm CCW or injure its business. Elmore Aff., ¶ 11. See Dongguk Univ. v. Yale Univ., 734 F.3d 113, 123 (2d Cir. 2013) ("When there are multiple actors involved in an organizational defendant's publication of a defamatory statement, the plaintiff must identify the individual responsible for publication of a statement, and it is that individual the plaintiff must prove acted with actual malice.") (citing New York Times, 376 U.S. at 287 ("[T]he state of mind required for actual malice would have to be brought home to the persons in the [defendant's] organization having responsibility for the publication of the [statement].")).

Based on the record, no reasonable juror could possibly find that CAS published the Big John video, or used the word "collapse", with actual malice. If the Court concludes that Plaintiff is either a limited-purpose public figure or an involuntary public figure in the context of the debate over the Charleston carriage horse industry, then its failure to show actual malice is fatal to its defamation claims.

B. CAS is entitled to summary judgment on Plaintiff's defamation claim because all statements made by CAS relate to a matter of public concern and are protected by the First Amendment.

Even if Plaintiff were not a public figure for purposes of the carriage industry issue, CAS is still entitled to summary judgment because all statements at issue relate to a matter of public concern and are protected by the First Amendment.

At the heart of the First Amendment's protection is speech on matters of public concern. Garrard v. Charleston Cty. Sch. Dist., 429 S.C. 170, 195, 838 S.E.2d 698, 711 (Ct. App. 2019),

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

reh'g denied (Mar. 18, 2020) (citing Snyder v. Phelps, 562 U.S. 443, 451–52 (2011)). "The First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" Id. (quoting Snyder, 562 U.S. at 452; New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964)). Thus, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." Id. (quoting Connick v. Myers, 461 U.S. 138, 145 (1983)) (citations and internal quotation marks omitted). "Every person has the right of fair comment and criticism in a matter of public interest; this stems from the constitutional guaranty of freedom of speech." Hospital Care Corp. v. Commercial Cas. Ins. Co., 194 S.C. 370, 9 S.E.2d 796, 798 (1940).

Whether speech addresses a matter of public concern is a matter of law for the Court. "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." Id. at 196, 838 S.E.2d at 712 (quoting Snyder, 562 U.S. at 453) (citations and internal quotation marks omitted). "Whether ... speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." Id. (quoting Connick, 461 U.S. at 147–48). "In considering content, form, and context, no factor is dispositive, and it is necessary to evaluate all the circumstances of the speech, including what was said, where it was said, and how it was said." Id. (quoting Snyder, 562 U.S. at 454); see Connick, 461 U.S. at 148 n.7 ("The inquiry into the protected status of speech is one of law, not fact.").

In a defamation suit involving a private plaintiff on a private matter, both common law malice and general damages are presumed. However, there are three important caveats (the "Erickson caveats") that apply when the allegedly defamatory statement relates to a matter of

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

public concern. First, the presumptions of common law malice and general damages do not apply, and instead the plaintiff must prove both common law malice and actual damages. Erickson, 368 S.C. at 466, 629 S.E.2d at 665 (citing Gertz, 418 U.S. at 346-50. Second, the presumption that the statement is false does not apply, and the plaintiff must prove that the statement is false. Id. Finally, the plaintiff cannot recover punitive damages unless it proves by clear and convincing evidence that the defendant acted with actual malice. Id.

The Erickson court discussed these caveats in the context of cases involving media defendants. It does not appear that South Carolina courts or the U.S. Supreme Court has the opportunity to consider whether these caveats, rooted in the First Amendment of the U.S. Constitution, apply to cases involving non-media defendants in defamation actions.[3] However, our federal courts have and the U.S. Supreme Court has repeatedly held that it is the content of speech, not the identity of the speaker, that matters. See Anderson v. The Augusta Chronicle, 355 S.C. 461, 472, 585 S.E.2d 506, 512 (Ct. App. 2003) ("Although defamation is substantively a matter of our state common law, the federal Constitution 'may reshape the common-law landscape to conform to the First Amendment.'") (quoting Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 775 (1986)).

In Snyder v. Phelps, 580 F.3d 206 (4th Cir. 2009), the Fourth Circuit found any distinction between media and non-media defendants to be meaningless in affording First Amendment protections to statements on matters of public concern that fail to contain a "provably false factual connotation":

> Neither the Supreme Court nor this Court has specifically addressed the question of whether the constitutional protections afforded to statements not provably false should apply with equal force to both media and nonmedia defendants. See Milkovich, 497 U.S. at 20 n. 6, 110 S.Ct. 2695. The Second and Eighth Circuits, however, have rejected any media/nonmedia distinction. See Flamm v. Am.

[3] CAS does not concede that it isn't a media defendant. This is addressed at I(C) below.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

> Ass'n of Univ. Women, 201 F.3d 144, 149 (2d Cir. 2000); In re IBP Confidential Bus. Documents Litig., 797 F.2d 632, 642 (8th Cir. 1986); see also Foretich v. Capital Cities/ABC, Inc., 37 F.3d 1541, 1563 n. 39 (4th Cir. 1994) (implying in dicta that Milkovich applies equally to media and nonmedia defendants). Like those two circuits, we believe that the First Amendment protects nonmedia speech on matters of public concern that does not contain provably false factual assertions. Any effort to justify a media/nonmedia distinction rests on unstable ground, given the difficulty of defining with precision who belongs to the "media." And, more importantly, the Supreme Court has concluded that the "inherent worth of speech ... does not depend upon the identity of its source, whether corporation, association, union, or individual." First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 777, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). Thus, for our purposes, the status of the Defendants as media or nonmedia is immaterial.

Snyder, 580 F.3d at 219, n. 13, aff'd, 562 U.S. 443 (2011); see also McGlothlin v. Hennelly, No. 9:18-CV-00246-DCN, 2020 WL 1876275, *10 (D.S.C. April 15, 2020) (relying on Snyder and finding that the Erickson caveats apply to non-media defendant in defamation actions); aff'd 2021 WL 2935372, *2 (4th Cir. July 13, 2021) (noting that although Erickson drew a distinction between the publishing of a statement by media and nonmedia defendants, the Fourth Circuit has since held that distinction to be immaterial).

The U.S. Supreme Court emphasized the point in Citizens United v. Federal Election Commission: "We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers." 558 U.S. 310, 352 (2010) (internal quotations omitted). In construing the constitutionality of campaign finance statutes, the Citizens United Court cited with approval the position of five Justices in Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., that "in the context of defamation law, the rights of the institutional media are no greater and no less than those enjoyed by other individuals engaged in the same activities." 472 U.S. 749, 784 (1985) (Brennan, J., dissenting); id. at 773 (White, J., concurring in the judgment) ("[T]he First Amendment gives no more protection to the press in defamation suits than it does to others exercising their freedom of speech."). In its Citizens United decision, the

ELECTRONI (FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Court warned that any distinction in the context of the First Amendment between the traditional media and other speakers is impractical: "With the advent of the Internet and the decline of print and broadcast media...the line between the media and others who wish to comment on political and social issues becomes far more blurred." Id. at 352. The Fourth Circuit is joined by the other circuits that have considered this issue. See Flamm v. Am. Ass'n of Univ. Women, 201 F.3d 144, 149 (2d Cir. 2000) (holding that "a distinction drawn according to whether the defendant is a member of the media or not is untenable"); In re IBP Confidential Bus. Documents Litig., 797 F.2d 632, 642 (8th Cir. 1986); Garcia v. Bd. of Educ., 777 F.2d 1403, 1410 (10th Cir. 1985); Avins v. White, 627 F.2d 637, 649 (3d Cir. 1980); Davis v. Schuchat, 510 F.2d 731, 734 n. 3 (D.C. Cir. 1975); Obsidian Fin. Grp., LLC v. Cox, 740 F.3d 1284, 1290–91 (9th Cir. 2014) ("In defamation cases, the public-figure status of a plaintiff and the public importance of the statement at issue—not the identity of the speaker—provide the First Amendment touchstones.") cert. denied, 572 U.S. 1142 (2014).

Following the Fourth Circuit, as well as the guidance from the U.S. Supreme Court, compels the conclusion that the distinction between media and non-media defendants is irrelevant. It is the content of the speech itself, i.e., whether or not it relates to a matter of public concern, that determines the applicability of the Erickson caveats.

1. The operations of the Charleston carriage horse industry are a matter of public concern.

Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public. Snyder, 562 U.S. at 453 (internal citations omitted). The arguably "inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

concern." Rankin v. McPherson, 483 U.S. 378, 387 (1987); see also McGill v. Parker, 179 A.D.2d 98, 107, 582 N.Y.S.2d 91, 96 (1992) ("While plaintiffs suggest that defendants are not entitled to the protection of the public concern privilege because of their 'extremist animal rights agenda', it is beyond dispute that it is the subject of the communication, not the particular viewpoint expressed, that determines whether a matter is of public concern.").

The response to the Big John video alone shows that the carriage industry's operations are a matter of public concern. But beyond, and before, that video was published, carriage industry related news has consistently been widely reported by local and even state-wide media. See 4/18/17 Email from Post & Courier to Christoff (Exhibit 13) (including summaries of numerous incidents going back to 2014, indicating that he was doing a story on "incidents where horses get spooked and take off running")[4]; see also 8/1/16 Email from CCW to Live 5 News (Exhibit 14) (discussing debate spanning over 20 years between carriage industry and animal welfare activists, specially mentioning Defendants and indicating that same email was being sent to Channel 4 News); 10/25/16 Email from CCW to Charleston City Paper reporter (Exhibit 15) (CCW responding to Charleston City Paper's request for information concerning the carriage industry).

Various committees of city council have been formed to address issues concerning the operation of carriage horses in Charleston. In fact, Plaintiff's sole owner has conceded that the carriage industry in Charleston has been a matter of public debate for some time now. Christoff Depo., Vol. II, p. 61. He testified that to say it is a "very public" issue is an "understatement." Christoff Depo., Vol. I, pp. 302-303. He further conceded that "people care a lot about animals." Christoff Depo., Vol. II, p. 58. Dan Riccio, the City's Director of Tourism and Livability, the

[4] This email pre-dates the Big John incident by a day and is particularly relevant to the "public concern" inquiry because it indicates the media believed there to be public interest in incidents distinct from, and pre-dating, the Big John incident.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

department charged with overseeing the carriage industry, testified that when he took over that position 10 years ago, he "learned quickly that [the health and welfare of the animals] was – it was an area of tourism that a lot of passionate people were concerned about" and that he "didn't realize it would be so controversial." Riccio Depo. Vol I, pp. 8, 26, 27-28 (Exhibit 16). In fact, Mr. Riccio testified that he ensures his department is doing everything they can do to let the public know they are looking out for the animals, and, when there is an incident involving one of the carriage horses, his department is typically first notified by the media. Riccio Depo. Vol. I, pp. 27, Vol. II, p. 56. In 2016, he recommended that the City created an "Equine Manager" position based in part on "complaints and concerns from the community that the animals aren't being taken care of and treated inhumane[ly]." Riccio Depo., Vol. II, pp. 100-101.

There can be no serious question that the carriage industry's operations in Charleston, and elsewhere, is a matter of heated public debate, which strong feelings on all sides. See Holtzscheiter v. Thompson Newspapers, Inc., 332 S.C. 502, 531–32, 506 S.E.2d 497, 513 (1998) (Toal, J., concurring in result) ("[M]atters of public concern are those related to the 'unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'"). As a matter of public concern, CAS's speech is entitled to the "highest rung of the hierarchy of First Amendment values and is entitled to special protection." Connick, 461 U.S. at 145.

2. None of the statements made by CAS are actionable as they are not provable as false and/or cannot reasonably be interpreted as stating actual facts.

Because the speech at issue relates to a matter of public concern, the presumptions of falsity, common law malice, and general damages does not apply. Rather, CCW must prove that the statements at issue are false, that CAS acted with common law malice, and the existence of damages. Erickson, 368 S.C. at 466, 629 S.E.2d at 665; Snyder, supra. Furthermore, in order to be

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

entitled to punitive damages, CCW must prove, by clear and convincing evidence, that CAS acted with actual malice. Id.

It appears that the majority, if not the entirety, of Plaintiff's lawsuit against CAS rests on its claim that the Big John video is defamatory and implies that Plaintiff abuses its animals. The video, which can be viewed here: https://www.youtube.com/watch?v=WLXdlMsxBZM, was posted in YouTube's "Nonprofits & Activism" category with the following description:

> On April 19, another working horse collapsed in the streets of Charleston. Was the load "Big John" carrying weighed, as it is suppose[d] to be by law? Was he exhausted or did he "trip?" Eyewitnesses documented Big John's ordeal. despite those on the scene who wanted them to stop filming. It is time for an independent, scientific, peer-reviewed study to determine if Big John and other horses are truly working in a safe and humane environment. Visit: www.CharlestonAnimalSociety.org/humane-carriage-tours for more information.

In his deposition, Mr. Christoff testified that it was the subtitles added by CAS that rendered the video defamatory. Christoff Depo., Vol. II, pp. 35:19-43:19. The subtitles added by CAS are as follows:

	Time	Statement
1)	0:15	Why were eyewitnesses intimidated to stop taking video when a horse collapsed?
2)	1:15	Was Big John exhausted or did he just "trip"?
3)	1:19	By law, the horses are not supposed to pull more than three times their weight. However, loaded carriages are never weighed, and Charleston does not enforce this provision.
4)	1:43	Big John could not get up on his own. A team of people had to try and pull him up.
5)	2:26	After several minutes of trying, finally some good news for Big John!
6)	2:45	Charleston Animal Society and several local and national animal welfare

groups want an independent, scientific, peer-reviewed study to answer questions (with research) on whether the working environment for horses like Big John is truly safe and humane.

7) 3:02 Is this too much to ask for Big John and other working horses?

There are certain statements that cannot reasonably be interpreted as stating actual facts about an individual. Garrard v. Chas. Cty. Sch. Dist., 429 S.C. 170, 199, 838 S.E.2d 698, 713 (Ct. App. 2019), reh'g denied (March 18, 2020); (citing Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 50 (1988)). Statements such as opinion, satire, epithets, or rhetorical hyperbole cannot be the subject of liability for defamation. Id. "This provides assurance that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation." Milkovich v. Lorain Journal Co., 497 U.S. 1, 20 (1990). "[A] statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection." Id. at 20.

In Garrard, members of a high school football team, as well as the team's coach claimed the defendants defamed them by publishing articles labeling them as "racist" and "racist douchebags." The articles were published after a press conference was held by Charleston County School District's superintendent, during which she announced that an investigation had been done into a post-game ritual that the football players engaged in, consisting of smashing a watermelon (which the players named after two locally-celebrated African American educators) and making monkey noises.

Former Chief Justice Toal, serving as a visiting circuit court judge, granted summary judgment, finding that the statements concerned matters of public interest, were not actionable, were statements of opinion susceptible to varying viewpoints, and were protected by the First Amendment. The Court of Appeals agreed:

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

> We do not find that the term "racist douchebag" can "reasonably [be] interpreted as stating actual facts" about Appellants. See Milkovich, 497 U.S. at 20, 110 S.Ct. 2695 (indicating there is protection for statements that cannot "reasonably [be] interpreted as stating actual facts" about a person to ensure "that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' [that] has traditionally added" to topics of great debate); cf. id. at 21–22, 110 S.Ct. 2695 (finding statement written in newspaper that high school coach lied under oath was actionable because the "language [was] an articulation of an objectively verifiable event").
>
> Additionally, whether someone "more or less behaved like [a] racist douchebag" or whether someone condoned an act that was "racist" is susceptible to varying viewpoints and interpretations. One person may view certain behavior as disrespectful and offensive, but another person might view the same behavior as non-controversial and socially acceptable. Importantly, we note that all of the Appellants agreed during their deposition testimony that whether something is racist is a matter of opinion.
>
> Furthermore, the opinion editorials at issue were published in the "Views" section of the newspaper. This is a section of the newspaper that is dedicated to the expression of opinions by the newspaper's editors, guest editorial writers, and readers. Essentially, the article was published in a section devoted to opinions and commentary. See Potomac Valve & Fitting Inc., 829 F.2d. at 1288 ("Even when a statement is subject to verification, however, it may still be protected if it can best be understood from its language and context to represent the personal view of the author or speaker who made it."). Thus, we find that the use of the term "racist" in an opinion editorial to describe a sequence of events related to a racially sensitive matter does not assert any verifiable, objectively provable fact about Appellants. We find the circuit court correctly held the use of the terms "racist" and "racist douchebag" in the articles were not actionable because they were expressions of opinion and rhetorical hyperbole. See 3 Dan B. Dobbs et. al., The Law of Torts § 572 (2011) ("'[R]acist' is sometimes said to be mere name-calling and not actionable in some contexts[; however,] the term can be actionable where it plainly imputes acts based on racial discrimination." (emphasis added)); see also 50 Am. Jur. 2d Libel and Slander § 200 (2017) ("However, general statements charging a person with being racist, unfair, or unjust, without more, such as contained in the signs carried by protestors, constitute mere name calling and do not contain a provably false assertion of fact as required for defamation.").

Id. at 200–01, 838 S.E.2d at 713–15.

Plaintiff argues that the Big John video is defamatory in that it implies that Plaintiff is inhumane to its animals and/or abuses its animals. These are matters of opinion not capable of being proven to be false. Smith v. Humane Society of U.S., 519 S.E.3d 789, 801 (Mo. 2017)

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

(finding that the term "puppy mill", although having a negative connotation, is not action because it was used as "rhetorical hyperbole" and a "lusty and imaginative expression of the contempt" of political advocates and therefore cannot reasonably be interpreted as stating actual facts). Notably, in Smith, the court found:

> Likewise, the general statements that the kennels included in the report had "atrocious violations of basic humane standards," "unconscionable violations of minimal humane care standards," "major continuing problems," and an "undeniable record of flagrant disregard for even the most minimal humane care standards" are not objective facts and do not imply objective facts provable as false. What is an "atrocious," "unconscionable," "major," or "flagrant" violation is purely subjective.

Id. at 802. Here, Plaintiff's owner even testified that whether or not a practice is humane is a matter of opinion. Christoff Depo., Vol. II, p. 45:11-14.

Just as in Garrard, the statements made, and questions posed, by CAS in the Big John video cannot be viewed as anything but opinion, and hyperbolic rhetoric at most. CAS has advocated for the humane treatment of the carriage horses for years and its position as an advocate in this realm is well-known. In fact, at the end of the video, CAS asks that the study be done. It is clear that this video was published as part of CAS's advocacy for the carriage horses.

Additionally, even if not protected opinion or hyperbolic rhetoric, Plaintiff cannot establish the falsity of any of the statements published along with the video. As to the use of the word "collapse", Plaintiff cannot prove that Big John didn't collapse. Mr. Christoff testified that Big John didn't "collapse", but that he "tripped over his feet." Christoff Depo., Vol. I, p. 222:17-25. However, he also testified that he did not witness the incident, that the person that told him about it did not witness it, that he did not talk to the driver of the carriage, that he never talked to anyone that said they saw him trip, and that he is not aware of anyone that can say he/she saw Big John trip over his own feet. Christoff Depo., Vol. I, pp. 221-225. Rather, Mr. Christoff testified that the

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

vet, Dr. Nikki Byrd Little, "would know whether the horse collapsed or not" and that she told him Big John tripped and did not collapse. Christoff Depo., Vol. I, pp. 253:9-254:23. However, Dr. Little's testimony not only fails to support CCW's position, it actually contradicts it. Dr. Little testified that she was not asked to opine as to why Big John fell, that she wasn't there to try to diagnose the cause of the fall, that she did not observe the fall, and that she was told by someone else that he slipped while he was in the harness, which is what she wrote in her report. Little Depo., pp. 21-23, Exhibit 17. Importantly, Dr. Little agreed that the definition of "collapse" as it relates to equines is "partial or complete loss of posture that can occur either at rest and/or at exercise" and that tripping and falling would classify as collapsing. Little Depo., pp. 70-71. Thus, rather than support CCW's position (which is clearly not based on personal knowledge) that Big John did not collapse, Dr. Little establishes that he did, in fact, collapse.

The only other two statements (as opposed to questions posed to viewers) in that video that could possibly be at issue are as follows:

> *By law, the horses are not supposed to pull more than three times their weight. However, loaded carriages are never weighed, and Charleston does not enforce this provision.*
>
> *Big John could not get up on his own. A team of people had to try and pull him up.*

As to the first[5], Mr. Christoff testified that none of his loaded carriages had ever been weighed. Christoff Depo., Vol. II, p. 40:6-9. As to the second, Mr. Christoff testified that "there were a number of people involved" that "assisted" and "helped" Big John to his feet. Christoff Depo., Vol. I, pp. 225:25-226:23. Additionally, there is no credible evidence that the statement is false, only speculation and conjecture (because, clearly, we can't talk to Big John and ask him).

[5] Like many of the allegedly defamatory statements identified by Plaintiff, this statement is not "of and concerning" the Plaintiff. This issue is addressed below.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

At best, the cause of Big John's fall remains unknown and is incapable of being established with any certainty. A statement not subject to objective verification is not likely to assert actual facts. Chapin v. Knight-Ridder, Inc., 993 F.2d 1087, 1093 (4th Cir. 1993). "Where readers know that an author represents one side in a controversy, they are properly warned to expect that the opinions expressed may rest on passion rather than factual foundation." Milkovich, 497 U.S., at 21 n.8.

Because none of the allegedly defamatory statements can reasonably be interpreted as stating fact as opposed to opinion and rhetorical hyperbole, and/or because Plaintiff cannot show that they are false, CAS is entitled to summary judgment.

3. Plaintiff cannot prove that CAS acted with common law malice.

Because the allegedly defamatory statements relate to a matter of public concern, CCW cannot rely on the traditional presumption of common law malice. Rather, CCW is required to "plead and prove common law malice." Erickson, 368 S.C. at 466, 629 S.E.2d at 665.

Common law malice means that "the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference towards plaintiff's rights." Hainer v. Am. Med. Int'l, Inc., 328 S.C. 128, 134, 492 S.E.2d 103, 107 (1997) (quotation omitted). Accordingly, to survive summary judgment, Plaintiff must demonstrate that a jury could find that CAS published the statements at issue "in an improper and unjustified manner." Tharp v. Media Gen., Inc., 987 F. Supp. 2d 673, 688 (D.S.C. 2013) (quoting Hainer, 492 S.E.2d at 107). Plaintiff cannot do so.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Plaintiff has produced no evidence that CAS published the Big John video, or any of the statements made therein, for the purpose of injuring Plaintiff. Likewise, Plaintiff cannot show that CAS was reckless or that it showed a conscious indifference towards Plaintiff's rights.

As to the Big John video, the uncontroverted evidence shows that on April 19, 2017, CAS was contacted by members of the public who reported that a horse, which was identified as Big John, had collapsed to the pavement during a carriage tour and was unable to get up without assistance. See Affidavit of Joe Elmore, ¶ 8 (Exhibit 11). At Mr. Elmore's direction, CAS took videos of the Big John provided by eyewitnesses, added subtitles, and published the resulting video on CAS's social media sites and website. Elmore Aff., ¶ 9. At the time Mr. Elmore instructed that the video be published, he was not in possession of any information that would call into question the veracity of using the term "collapse" to describe what occurred that left Big John lying there on the pavement. Elmore Aff., ¶ 10. Mr. Elmore testified that even as of May 27, 2020, the date he signed his affidavit, he was still not in possession of any such information. Elmore Aff., ¶ 10. In fact, Elizabeth Fort, an eyewitness who sent CAS some of the footage of the Big John video, testified repeatedly in her deposition that she believed then, and continues to believe, that what she witnessed was a horse that had "collapsed". See Fort Depo, pp. 22-25; 49-50 (attached as Exhibit 12).

Mr. Elmore further explains in his affidavit that he directed that the video be published by CAS for the purpose of bringing further awareness to the carriage horse issue and, specifically, CAS's push for an independent, prospective, science-based, peer-reviewed study of the Charleston carriage industry. Elmore Aff., ¶ 11. Mr. Elmore confirmed that in no way was it his intent to harm Plaintiff CCW or injure its business. Elmore Aff., ¶ 11.

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

There is no evidence to the contrary, and CAS is entitled to summary judgment. See Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010) ("To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture.").

4. Plaintiff cannot prove that CAS acted with actual malice and is therefore CAS is entitled to summary judgment on Plaintiff's claim for punitive damages.

As set forth hereinabove (see I(A)(2)), and incorporated herein, CCW has failed to present any evidence, let alone clear and convincing evidence, that CAS acted with actual malice, i.e., that CAS published the statement with knowledge that it was false or with reckless disregard of whether it was false or not. As such, CAS is entitled to summary judgment on Plaintiff's claim for punitive damages. Erickson, 368 S.C. at 466-67, 629 S.E.2d at 665.

C. CAS is entitled to summary judgment on Plaintiff's defamation claim because CAS is a media defendant.

Even if the Erickson caveats were only applicable to media defendants, CAS is still entitled to summary judgment, based on the arguments set forth above, because it is a media defendant.

The U.S. Supreme Court has recognized that the "press" is not limited to "traditional" media. In explaining the purpose and scope of freedom of the press, the Court stated:

> Freedom of the press is a 'fundamental personal right' which 'is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. . . . The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. The informative function asserted by representatives of the organized press in the present cases is also performed by lecturers, political pollsters, novelists, academic researchers, and dramatists.

Branzburg v. Hayes, 408 U.S. 665, 704–05 (1972) (internal citations omitted); see also Glik v. Cunniffe, 655 F.3d 78, 84 (1st Cir. 2011) ("changes in technology and society have made the lines between private citizen and journalist exceedingly difficult to draw. The proliferation of electronic

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

devices with video-recording capability means that many of our images of current events come from bystanders with a ready cell phone or digital camera rather than a traditional film crew, and news stories are now just as likely to be broken by a blogger at her computer as a reporter at a major newspaper. Such developments make clear why the news-gathering protections of the First Amendment cannot turn on professional credentials or status.").

The blurring of the line between traditional media and non-media defendants in the age of the internet is particularly evidence when looking at CAS. CAS utilizes numerous forms of communication to educate and inform the public about animal welfare, relevant legislative developments, its advocacy efforts, animal cruelty and its prevention, opportunities for community involvement, current events, and the services it provides, amongst other things. See Supp. Aff. of Joe Elmore, ¶ 3 (attached as Exhibit 18). CAS has approximately 250,000 "followers" on Facebook, with most of its posts garnering hundreds, if not thousands, of "likes", "shares", and "comments."[6] Id. at ¶ 4. CAS's posts range from those related to its various advocacy efforts, to current news, to local events, to legislative initiatives, to requests for assistant and support, and more. Id. Some posts, such as those concerning the carriage horse industry, often spark spirited debates by commentors. Id.

CAS publishes a quarterly newsletter, Carolina Tails, that has a circulation of approximately 25,000-30,000 per issue. Id. at 5 (copy of most recent edition is attached to affidavit). Carolina Tails is designed to shape public perceptions of animal rescue and the many issues that face pets in South Carolina. Id. It is the largest pet magazine in the Carolinas and is distributed each quarter to supporters of Charleston Animal Society, public officials, every

[6] https://www.facebook.com/CharlestonAnimalSociety (last accessed 11/30/20)

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

veterinarian in the state and is offered for free at Harris Teeter Supermarkets in the metro Charleston area and in several other area businesses. Id.

CAS regularly sends out e-blasts via email to approximately 60,000 users. Id. at 6. These emails vary from current events to advocacy and legislative issues to calls to action to promotion of adoption events. Id. CAS also maintains a blog on its website with all its latest news here: https://charlestonanimalsociety.org/1728-2/ . Id. at 7. On average, articles are posted on a weekly basis. CAS also publishes several websites, including www.charlestonanimalsociety.org, www.nokillsouthcarolina.org, and www.carolinatails.org. Id. Additionally, CAS broadcasts "CAS TV" within its main shelter with exposure to over 50,000 visitors each year (pre-pandemic). Id. at 8. It also has a YouTube channel with over 1200 subscribers. Id.

Finally, that CAS is recognized as a source of information is evidenced by the fact that is regularly asked to comment and give interviews concerning current events relating to animals. Id. at 9. It frequently issue press releases and hold press conferences, including a number related to the carriage horse industry. Id. Mr. Elmore also has a regular column in the Charleston Mercury. Id.

CAS is undoubtedly "media", even when viewed through a traditional lens of what constitutes media. As such, for the reasoning set forth above, even if the Erickson caveats only applied to media defendants, CAS is entitled to summary judgment.

D. CAS is entitled to summary judgment on Plaintiff's defamation claim because all statements made by CAS were true, or at a minimum, substantially true.

Regardless of the status of the parties or the subject matter of the speech, the truth of the matter published is, of course, a complete defense to an action based on defamation. Ross v. Columbia Newspapers, Inc., 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976). A sufficient defense is made out where the evidence establishes that the statement was substantially true. Id.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

To the extent the use of the word "collapse" to describe Big John is the basis of Plaintiff's defamation claim, that claim must fail because it is a true, or substantially true, statement. Merriam-Webster defines "collapse" as "to fall or shrink together abruptly and completely".[7] In his deposition, Mr. Christoff, Plaintiff's sole-owner, testified that Big John fell suddenly and completely to the ground. Christoff Depo. Vol. II, p. 24. As discussed hereinabove (see I(B)(2)), CCW's vet, Dr. Little, examined Big John shortly after his fall. She has testified that if Big John tripped and fell, which what CCW claims, that it would still be accurate to classify the incident as a "collapse." Little Depo., pp. 22-25, 71 (Ex. 17).

E. CAS is entitled to summary judgment on Plaintiff's defamation claim because all remaining allegedly defamatory statements made by CAS are not actionable were not "of and concerning" the Plaintiff.

Apart from the Big John video and the statements made therein, CCW's identification of any additional allegedly defamatory statements made by CAS has been a moving target. CCW has repeatedly refused to specifically identify the statements it alleges are defamatory that were made by CAS, despite an order compelling it to do so. Instead, it has dumped thousands of files on Defendants, baldly asserting that the defamatory statements are contained therein and ignoring discovery requests requiring specific identification.

In response to discovery requests asking that it produce copies of all published statements alleged to be defamatory, and for each allegedly defamatory statement, identify the speaker, the method of publication, the date of publication, why the statement is false, etc., Plaintiff identified, as "examples", certain files, showing screenshots of social media sites, news articles, websites, and the like, which it contends contain defamatory statements made by CAS about CCW. See CCW Ans. to CAS Int. No. 6 (attached as Exhibit 19); see also Exhibit 20 (files/documents

[7] https://www.merriam-webster.com/dictionary/collapse (last accessed 8/19/21).

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

identified in CCW's Ans. to Int. No. 6). However, none of the identified publications contain actionable defamation. The publications and/or statements therein either are not actionable or are not "of and concerning" CCW. For example, in its answer to this interrogatory, CCW identifies the following:

File No. 85: CCW contends this "shows [a] news article quoting Joe Elmore for the false statement that the carriage companies are using a loophole to keep horses working past the regulated temperature allowed accompanied by a photo of one of Brody's horses." First, the photo of one of CCW's horses was clearly published by ABC News 4 in connection with its article, not by CAS. Second, none of the statements attributed to CAS in the article are "of and concerning" CCW. In fact, one could conclude that this article is criticizing the City's regulation and oversight of the carriage industry. Furthermore, even if this article identified CCW, it is clear that it is advocacy and that it does not contain any statements that are provable as false.

File No. 87: CCW contends this screenshot "depicts the Charleston Animal Society Facebook page calling for a complete ban of the use of carriage horses 'because the regulations protecting them are not fully followed or monitored!'" Again, this statement does not identify CCW, nor does it contain any false assertion of fact. Mr. Christoff testified that CCW has been cited on more than one occasion for violation of the carriage ordinances. Christoff Depo.. Vol. I, p. 235. Moreover, both Mr. Christoff and Mr. Riccio were shown videos of CCW's carriages running stop signs and both testified that this was against the law. Christoff Depo., Vol. II, pp. 126:21-129:16; Riccio Depo., Vol. II, pp. 155:9-159:17 (attached as Exhibits 4 and 16).[8]

File No. 98: this is a copy of an article, titled "Are Things About to Get Worse for Carriage Horses in Charleston?" that was published in Carolina Tails, CAS's magazine. CCW does not specify any statement in this article that is defamatory. A review of the article shows that it does not identify any specific carriage company and is, instead, a discussion of the changes to the temperature regulations and CAS's position that an independent, peer-review study should be done.

File No. 110: CCW contends that this screenshot of CAS's Facebook page "is a typical example of Charleston Animal Society's efforts to control the narrative to prevent accurate information [from] reaching the public." Bizarrely, the screenshot shows two individuals, not affiliated with CAS, who have posted comments criticizing CAS's advocacy and expressing support for the carriage industry. There is no statement by CAS.

Files 136-141: CCW contends these "are examples of the Charleston Animal Society purchasing advertising to divert internet traffic from [CCW] to Charleston Animal Society and its false narrative." These files are screenshots of the Google search results for the following search terms: "palmetto carriage works"; "classic carriage works"; "carolina polo and carriage company"; "old

[8] Notably, Mr. Christoff's deposition, during which he was shown the videos of three of CCW's carriages running stop signs, was taken on March 28, 2019. Although he testified he was going to reprimand his employees, CCW allowed the practice to continue as evidenced by the fact that the videos shown to Mr. Riccio during his deposition, of five CCW carriages running stop signs, were shot in December 2019, seven months after Mr. Christoff's deposition.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

south carriage company"; "charleston carriage"; and "charleston carriage works". In the screenshot of the search results for "charleston carriage works", CAS's paid ad is displayed at the top of the results, followed by CCW's website. There is no viable defamation cause of action for using a Google ad words campaign, and a Google ad campaign is not designed to "divert" traffic. These screenshots do not show any actionable defamation.[9]

Given CCW's complete failure to identify the specific statements it alleges to be defamatory in this lawsuit, CAS filed a Motion to Compel on July 22, 2019. On July 31, 2019, CCW produced a CD with two folders named "False Statements by CAS". In written responses to CAS's Request for Production asking for copies of all allegedly defamatory statements, CCW responded: "See Compact Disc provided July 30, 2019. The Plaintiff broke down the comments and publications by entity on the disc." See CCW's Responses to CAS RFP, ¶ 21 (attached as Exhibit 21). Copies of the documents in the "False Statements by CAS" folders are attached hereto as Exhibit 22 (and have been bates-stamped "CAS_Stmts 1-42"). A review of those documents shows that, yet again, CCW failed to produce statements made by CAS containing false statements of and concerning CCW. For example, CAS_Smts_1 is a copy of a news article published by CAS titled: "A K9's Fall Prompts Change." It is inconceivable how this article, concerning police dogs, has anything to do with any of the allegations of this lawsuit. CAS_Stmts_19 & 20 are copies of pages from South Carolina's Statutes at Large from 1874, showing Act. 532, which was titled "An Act to Incorporate the South Carolina Society for the Prevention of Cruelty to Animals." CCW provided no explanation as to how these documents are relevant to its defamation cause of action.

[9] Notably, the claim that CAS "targeted" CCW and "diverted" web traffic is also made by Mr. Christoff in his Supplemental Affidavit, p. 11. This entire portion of the affidavit should be stricken. Not only is it impossible for Mr. Christoff to have personal knowledge of this without knowing CAS's actual ad words, the allegations are patently false. As explained in the Affidavit of Kelly Ghom, attached as Exhibit 23, CAS's ad campaign did not target CCW and CAS's paid advertisement was capable of being displayed when a user searched for any of the other carriage companies. The display of paid ads is ultimately up to Google's algorithm based on numerous factors. Ghom Aff., ¶ 6. Moreover, as set forth in the Supplemental Affidavit of Joe Elmore, ¶ 10(e) (attached as Exhibit 18), CAS has never paid for Google ads, let alone used "taxpayer money" to purchase them as alleged by Mr. Christoff. His Supplemental Affidavit, or at least this portion of it, should be stricken.

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

Following a hearing on CAS's Motion to Compel, CCW was ordered to supplement its discovery responses by "specifically identifying each allegedly false or defamatory statement Plaintiff contends was made by CAS." See July 30, 2020, Order (attached as Exhibit 24). In response to that Order, CCW produced a spreadsheet which has been reformatted in order to be capable of being filed, and that spreadsheet is attached hereto as Exhibit 25. That spreadsheet is the most vague and incomplete identification of allegedly defamatory statements to date. For example, it lists the following: "Charleston has the harshest and most extreme conditions in the nation." That is not actionable defamation, it does not identify CCW, and CCW has failed to produce, or identify, anything showing the actual publication of this statement. Hospital Care Corp. v. Commercial Casualty Ins. Co., 194 S. C. 370, 9 S. E. 2d 796 (1940) ("If a group or class of individuals has been defamed, there is no cause of action for defamation on the part of a member of the group, unless it can be shown that the language specifically points to that particular individual."); Kendrick v. Citizens & S. Nat. Bank, 266 S.C. 450, 454, 223 S.E.2d 866, 868 (1976) (publication includes proof that the complaining party was the person with reference to whom the defamatory matter was spoken).

Based on CCW's repeated failure to identify statements (other than that related to the Big John incident) with specificity, and its repeated production of documents completely unrelated to this lawsuit, CAS is entitled to summary judgment.

II. CAS is entitled to summary judgment on Plaintiff's civil conspiracy cause of action.

Plaintiff alleges CAS conspired with CCHA and Mrs. Harley for the purpose of harming it. Plaintiff's civil conspiracy claim is based upon the same allegations and statements upon which Plaintiff's defamation claim is based.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

A plaintiff asserting a civil conspiracy claim must establish: (1) the combination or agreement of two or more persons; (2) to commit an unlawful act or a lawful act by unlawful means; (3) together with the commission of an overt act in furtherance of the agreement; and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston Cty. Sch. Dist., Op. No. 28030, -- S.E.2d. -- (S.C. August 18, 2021) (abolishing the requirement that special damages be pled (or proven) in a civil conspiracy cause of action) (copy of opinion attached as Exhibit 26).

As an initial matter, to the extent Plaintiff's civil conspiracy claim is based upon speech protected by the First Amendment, such as the Big John video, CAS is entitled to summary judgment. See Snyder, 562 U.S. at 460.

Moreover, even if not protected, CCW has not produced evidence: 1) that Defendants combined or had some agreement to commit an unlawful act or a lawful act by unlawful means; 2) that there was any overt act in furtherance of an agreement; or 3) that it was damages as a direct and proximate result of an overt act in furtherance of an agreement. The acts of the individual Defendants that CCW complains of constitute clearly protected core political speech. Even if there were some evidence of a combination or agreement amongst the Defendants, it is not unlawful to join with others in a common effort to bring about change by lawful means.

The Complaint's allegations pled purportedly to support CCW's civil conspiracy cause of action have all been disproven by the testimony of Mr. Christoff himself. For example, the Complaint alleges: "From time to time, persons acting on or at the direction of the defendants would approach the plaintiff's carriages to interfere in the operation of the plaintiff's business by shouting materially false information at the plaintiff's clients..." Compl., ¶ 6. Mr. Christoff's deposition testimony establishes that he has no evidence to support the allegation that people shouting at his carriages were acting as agents of CAS, let alone that it was the result of some

ELECTRONI((FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P ›- CASE#2018CP1004083

agreement amongst the Defendants. When asked what it is that makes him believe that anyone shouting at Plaintiff's carriages was acting at the direction of CAS, Mr. Christoff testified that his belief stems from the fact that the things people shout are aligned with CAS's position, such as the industry being cruel and inhumane. Christoff Depo., Vol. II, pp. 9-11. However, he admitted that CAS is not the only entity that expresses concerns about the industry and people shouting at the carriages very well could have formed their opinions on their own or based on information from other sources. Id.

The remaining allegations do no more than restate CCW's defamation cause of action, and the majority of those allegations concern the Big John incident and video. Mr. Elmore avers that his intent in publishing the video was to bring awareness to the carriage horse issue and, specifically, CAS's push for an independent, prospective, science-based, peer-reviewed study of the Charleston carriage industry. Elmore Aff., ¶ 11. Mr. Elmore further avers that in no way was his intent, or purpose, in publishing that video to harm CCW or injure its business. Elmore Aff., ¶ 11. There is nothing unlawful about the publication of that video.

Importantly, Mr. Elmore clarifies in his affidavit that any actions taken by CAS with regard to the carriage industry, whether or not in conjunction with Mrs. Harley and/or Charleston Carriage Horse Advocates, have been for the singular purpose of advocating for the humane treatment of the animals. The Paradis Court, after initially filing its opinion on May 19, 2021, refiled it on August 18, 2021, in order to emphasize that intent to harm is an integral part of a civil conspiracy claim:

> Since civil conspiracy is an intentional tort, an intent to harm, which has also been discussed in our conspiracy law, remains an inherent part of the analysis. See 16 Am. Jur. 2d Conspiracy § 53 (2020) ("Since one cannot agree, expressly or tacitly, to commit a wrong about which they have no knowledge, in order for civil conspiracy to arise, the parties must be aware of the harm or wrongful conduct at the beginning of the combination or agreement. Thus, civil conspiracy is an

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

> intentional tort requiring a specific intent to accomplish the contemplated wrong." (footnotes omitted)).

Paradis Order, p. 22, fn. 9; see also August 18, 2021, Order (denying petition for rehearing and explaining that "for clarification, a new footnote 9 has been added in the attached opinion, which is substituted for the previous opinion…") (attached as Exhibit 27).

No acts can be shown to prove a ground for relief against the Defendants from a conspiracy to commit any activity other than that which is lawful and constitutionally protected. If the Defendants "conspired" to participate in activities and aims that are constitutionally protected, there is no actionable civil conspiracy. Nor is there here any element of unlawfulness in the means by which CAS's objective was to be reached. A conspiracy to carry on an activity that is lawful and constitutionally protected cannot be deemed tortious.

III. CAS is entitled to summary judgment on Plaintiff's intentional interference with business relations cause of action because there is no evidence that any contract was breached.

In order to prevail on a claim for intentional interference with a contractual relationship, a party must prove: (1) the contract; (2) the wrongdoer's knowledge of the contract; (3) its intentional procurement of the breach; (4) absence of justification; and (5) resulting damages. Todd v. South Carolina Farm Bureau Mut. Ins. Co., 287 S.C. 190, 336 S.E.2d 472, 473 (1985). CCW's Complaint alleges that it has a contractual franchise relationship with the City of Charleston and that the "defendants have frequently and intentionally attempted to procure a breach of that franchise contract by publishing false and defamatory information about the plaintiff." Compl., ¶ 24. However, Mr. Christoff testified as follows:

> Q. Has any -- have you ever received any type of notice from anyone acting on behalf of the City of Charleston that your franchise contract was in jeopardy or anything related to your franchise

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

contract?

A. No.

Q. Okay. So this is all hypothetical or potential that my franchise contract might someday in the future might be --

A. Correct.

Q. Okay. So just to clarify, no threats to your franchise contract currently by the City?

A. Not that I'm aware of.

Christoff Depo., Vol. II, pp. 51:23-52:10; see also Christoff Depo., Vol. I, p. 342:20-23 (testifying that at no time has CCW's franchise contract ever been terminated).

There has been no breach of the franchise contract, the subject of CCW's "Tortious Interference with Business Relations" cause of action, therefore CAS is entitled to summary judgment on this claim. See First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994) (interference with a contract is not enough, without a breach of the underlying contract, there can be no recovery).

IV. CAS is entitled to summary judgment on Plaintiff's "Violation of Plaintiff's Civil Rights under Art. I, § 3, South Carolina Constitution – Gross Negligence, Recklessness" cause of action.

It appears that in this cause of action CCW is claiming that CAS, acting under color of state law, deprived it of some constitutionally guaranteed right through its publication of false information. Compl., ¶¶ 15-17. CCW seeks monetary damages for this alleged deprivation. Compl., ¶¶ 18-19.

A. South Carolina does not recognize a cause of action for monetary damages for constitutional violations.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Because the State Constitution does not provide for a private cause of action for state constitutional violations and because the General Assembly has not enacted a statute enabling this type of action, Plaintiff's claim seeking monetary damages for alleged violations of Article I, § 3 of the South Carolina Constitution fails as a matter of law. See Palmer v. State, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019), reh'g denied, (July 12, 2019) and cert. denied, (S.C. May 28, 2021) (holding the S.C. Constitution does not provide for monetary damages for civil rights violations). CAS is entitled to summary judgment on this cause of action.

B. CAS is entitled to summary judgment on this cause of action because Plaintiff has not shown any deprivation of a cognizable liberty or property interest.

Plaintiff alleges that, by publishing defamatory statements, Defendants "conspired to deny the plaintiff and reasonable opportunity to conduct a business." Compl., ¶ 15. In order to demonstrate a due process violation, Plaintiff must first show it was deprived of a constitutionally protected liberty or property interest. Am. Whitewater v. Tidwell, 959 F. Supp. 2d 839, 865 (D.S.C. 2013), aff'd, 770 F.3d 1108 (4th Cir. 2014); see also Tigrett v. Rector & Visitors of Univ. of Virginia, 290 F.3d 620, 628 (4th Cir. 2002) ("Whether a deprivation of constitutional rights has occurred is not dependent upon the subjective feelings or beliefs of a plaintiff. In order to properly maintain a due process claim, a plaintiff must have been, in fact, deprived of a constitutionally protected liberty or property interest.").

The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause. Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Greene v. McElroy, 360 U.S. 474 (1959)). The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment. Id.

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Plaintiff has produced no evidence that CAS has deprived it of its liberty interest to practice its chosen profession or its property interest in the specific employment – CCW's carriage business is in full operation and, at the time of Mr. Christoff's deposition, had the most horses it has ever had, which Mr. Christoff testified correlates to anticipated demand. Christoff Depo., Vol. I, p. 94. And, as stated above, Mr. Christoff testified that at no time has CCW's franchise contract with the City been terminated or even threatened. Christoff Depo., Vol. I, p. 342:20-23; Vol. II, pp. 51:23-52:10. There is no evidence that Plaintiff has been deprived of any liberty or property interest.

C. CAS is not a governmental entity and, even if a quasi-governmental entity, was not acting under the color of state law in making any of the statements at issue.

There is no evidence of state action, or of CAS acting under the color of state law, in this lawsuit. Plaintiff alleges that CAS is a "quasi-governmental entity as Charleston County taxpayers' money subsidizes its operations." Compl, ¶ 16. CAS is a private, charitable 501(c)(3) organization. Elmore Aff., ¶ 4. For many years, Charleston County has contracted with CAS to provide certain animal-related services. Elmore Aff., ¶ 14. The contract between the county and CAS provides that CAS "shall receive and provide for the humane disposition of dogs and cats running at-large, and such other animals as delivered into its custody…". See Animal Shelter Agreement, § 1.02 (attached as Ex. 5 to Elmore Aff.). The funding provided to CAS by the County under the contract fails to cover the cost incurred by CAS in performing its obligations under the contract. Elmore Aff., ¶ 15. Each year, CAS is required to use its reserves, donations, and grants to fund the shortfall. Elmore Aff., ¶ 15.

However, even if CAS was to concede that CAS is a "quasi-governmental entity" (which it does not), Plaintiff's claim still fails because it has made no showing that the government was substantially, or even minimally, involved in the challenged activity (i.e., CAS's advocacy for the carriage horses and publication of the allegedly defamatory statements). Jackson v. Metro. Edison

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Co., 419 U.S. 345, 351 (1974) ("the inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself"); Brentwood Academy v. Tennessee Secondary Sch. Athletic. Ass'n., 531 U.S. 288, 295 (2001) (state action may be found if, though only if, there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself); New York City Jaycees, Inc. V. U.S. Jaycees, Inc., 512 F.2d 856, 858 (2nd Cir. 1975) ("The mere existence of government ties to a private organization is not sufficient to support a finding of state action...the state must be involved not simply with some activity of the institution alleged to have inflicted injury upon a plaintiff but with the activity that caused the injury") (internal citations omitted). The requisite connection between government and the actions complained of has not been shown. Plaintiff's constitutional challenge is addressed solely to the advocacy and speech of CAS as it related to the carriage industry, yet Plaintiff has made no showing that the government is substantially, or even minimally, involved in these activities. See Blum v. Yaretsky, 457 U.S. 991, 997 (1982) (noting that whether there is state action is an issue of law). CAS is entitled to summary judgment on this claim.

D. If Plaintiff is asserting a negligence claim, CAS is entitled to summary judgment on that claim because CAS owed no duty to Plaintiff.

To the extent Plaintiff is asserting a negligence or gross negligence claim, CAS is entitled to summary judgment because it owes Plaintiff no legally cognizable duty.

CONCLUSION

For the above reasoning and law, Defendant Charleston Animal Society respectfully requests that its Motion for Summary Judgment be granted.

ROSEN HAGOOD, LLC

By: /s/ Elizabeth J. Palmer
Elizabeth J. Palmer
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

ATTORNEYS FOR DEFENDANT
CHARLESTON ANIMAL SOCIETY

Charleston, South Carolina
August 20, 2021

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-04083
CHARLESTON CARRIAGE WORKS, LLC, Plaintiff, vs. CHARLESTON ANIMAL SOCIETY, ELLEN HARLEY, CHARLESTON CARRIAGE HORSE ADVOCATES, INC. Defendant.	VIDEO DEPOSITION OF BRODERICK CHRISTOFF DECEMBER 7, 2018

Deposition on oral examination of BRODERICK CHRISTOFF, reported by Kathryn B Bostrom, Court Reporter and Notary Public in and for the State of South Carolina; pursuant to Rule 30 of the South Carolina Rules of Civil Procedure; said deposition was taken at the offices of Hall Boone & Smith, 111 Coleman Boulevard, Suite 300, Mt. Pleasant, South Carolina, on Friday, the 7th day of December, 2018, commencing at the hour of 10:08 a.m.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

have all those records.

Q All right. Is it fair to say, based on what I've seen on your website, the general trajectory of your business since you started it in 2013 is toward growth? Is that fair to say?

A Generally, yes. Then we had -- We had a dip, you know, last year.

Q Okay. But 2018, back on track of a trajectory of growth. Correct?

A I mean, getting back on track. Correct.

Q Okay. You have more horses in service now than you've ever had at any time in the history of the company. Correct?

A That's true.

Q Okay. And those horses correlate to the demand that the company is experiencing for carriage tours. Correct?

A I mean, a little bit, yes.

Q Well what do the correlate to if they don't correlate to the demand of carriage tours?

A Anticipated demand.

Q Okay.

A Because you -- Seldom do you buy a horse that's ready to just put on tour. So horses have to go through a process that sometimes can take, depending on the

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. -- I may have heard from him --
A. I understand.
Q. -- I want to know the ones you recall.
A. Yeah. Those are the only -- the only two that I can recall.
Q. Well, now wait. So now you definitively you recall talking to the driver?
A. No, no, no, no. I'm talking about the two that I can remember that I know I talked to are Grace, Sara Onderkah and Chase. I don't recall my conversation with a driver.
Q. Okay. So you talked to Sara and to Chase.
A. Yes.
Q. And you do not recall anyone else who described to you the events or any conversation that you had with anyone else other than those two regarding the events on April 19, 2017, correct?
A. Correct.
Q. Okay. The accident occurred at approximately 3:20 that afternoon, correct?
A. That sounds right.
Q. All right. When did Big John begin hauling carriages on April 19?
A. I believe that it was somewhere around 3:00, so somewhere -- 2:45, 3:00 is when that tour left.

Q. All right. That's that carriage, 2:45 to 3:00 that carriage left?
A. That's right.
Q. When did he begin hauling that day?
A. I don't understand.
Q. That wasn't his first tour, was it?
A. That was his first tour.
Q. That was his first tour today?
A. Yes, it was.
Q. How do you know that?
A. How do I know that? Because that was the first tour that we sent him on that day. I mean, that's -- and that's in our records as well.
Q. So you've looked at a record that's told you that was his first tour of the day?
A. Yes.
Q. Okay. How did he fall?
A. He -- he tripped over his feet.
Q. How do you know that?
A. Because that's what was described in the reports.
Q. In the reports by whom?
A. By the first responders that were on the scene.
Q. And you'll admit to me that the responders got there after he fell, correct?
A. Yes.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. They responded to him falling, correct?
A. As far as I know.
Q. Okay. What evidence do you have -- you've brought a lawsuit alleging that we've mischaracterized the way in which he fell. Today is your day to tell me the evidence that you have that you're going to put in front of a jury that says he tripped. What is it?
A. He was examined by the city's equine person that day. He was also examined by our veterinarian that same day, and none of them found any evidence of anything else happening.
Q. They didn't find any evidence of anything else happening?
A. That's right.
Q. Okay. So if the horse got tired and fell asleep and collapsed, there would be evidence of that?
A. Yes.
Q. What would that evidence be?
A. Somebody would have noticed that happening.
Q. Who?
A. The driver, passengers on the carriage.
Q. But you don't recall ever talking to any of them, correct?
A. They talked to the people that wrote the reports that I read.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. Okay. So you're relying on -- your basis for saying that he tripped is relying on reports that you believe that they may have given to the first responders who then turned around and issued a second report in their own words regarding what happened, correct?

A. I -- I can't follow all that, but what I'm telling you is that I wasn't there, so my determination is what I read based on the reports of the people that were there.

Q. Okay.

A. That's what I'm telling you.

Q. Okay. But you've never talked to anyone who's first hand told you, "I witnessed him trip," correct?

A. Correct.

Q. Okay. And as we sit here today, you're not aware of any person who can testify that they saw him trip over his own feet, correct?

A. I'm not aware of that person.

Q. Okay. So as we sit here today, you're not aware of anything, any evidence, firsthand witnessing evidence of this event, that he did not collapse, correct?

A. That's not correct.

Q. Okay. What is it -- what firsthand evidence are you aware of that I can go and call this person and ask them the questions of what happened that day? Who do

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

I talk to?

A. You could talk to our veterinarian.

Q. Okay.

A. Because they examined him right after.

Q. But you'll concede to me that your veterinarian was not there that -- when he fell, correct?

A. That's -- that's correct.

Q. Okay. I need to know the name of the person that I can talk to that tells me he tripped over his own feet that day that saw it. Who is that?

A. I don't know who that person would be.

Q. Okay. All right. So your version of the story is he tripped. I think you said -- at sometime I believe you said that his -- his front legs got locked up, and he gave way, correct?

A. I don't -- I don't know that I ever said that.

Q. Okay. Tell me -- tell me what -- what your version of the events is.

A. My understanding is that he tripped over his feet.

Q. Okay.

A. And he fell down to his side.

Q. Fell down to the ground.

A. That's correct.

Q. All right.

A. And they -- and he was alert the whole time. They

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

unhooked the carriage from him, unhooked his harness from him, and then within a couple of minutes he was helped to his feet, and then he was walked back to the barn where he was examined, and there were no -- there were no bad results in his examinations.

Q. Is it your understanding that he got up unassisted?

A. No, he was assisted.

Q. He was assisted.

A. Right.

Q. And by assisted, there was a strap that was placed under him, and I -- I believe as many as five people had to pull him back up to his feet, correct?

A. Yeah, there were a number of people involved. You know, part of that was -- part of that was you don't want the horse to get injured trying to get up on an asphalt street, too. And -- and you know, arguably, and I even said so publicly, that we didn't do a very good job getting him back up on his feet. You know, the -- the scene was kind of chaotic at that point, and I think that the people that work for me got a little stressed, and there's certainly a few things they could have done better, but -- but, yes, he was helped -- helped to his feet.

Q. Okay. Just so that I'm sure that the facts here are undisputed. You will concede that Big John on April

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

A. Fall doesn't mean -- collapsed does not mean fall.
Q. Okay. What does collapse mean with respect to a draft animal?
A. Collapse means -- it means to suffer some kind of, you know, physiological or medical event or some negative event that causes an animal to drop.
Q. Okay.
A. Or fall.
Q. Let's just assume for the sake of this question that -- let's say I agree with you. I don't. Let's say I agree with you, okay. You don't have any evidence that the animal didn't have a medical even prior to falling, do you?
A. Yes.
Q. Okay. What is your -- what's your evidence?
A. The horse was examined by; a vet.
Q. Okay. And your testimony here today is the vet would be able to tell if the animal fainted?
A. The vet would know whether the horse collapsed or not.
Q. Okay. So -- so how would a vet arriving on the scene after Big John has fallen -- let's say the vet gets there five minutes after the fall, which is pretty fast. Say the vet gets there five minutes after the fall, how would the vet know that Big John didn't fall asleep, that he wasn't narcoleptic?

A. They can tell by -- you know, they -- they -- I'm not a veterinarian.
Q. Right.
A. So I -- I can't answer that question other than tell you what the -- what I was told by the people that did that work.
Q. Who was the veterinarian who told you that the animal did not collapse, that the animal fell?
A. That would have Dr. Nickie Byrd.
Q. Doctor --
A. Her last name is Little now.
Q. Dr. Nickie Byrd, now her last name is Little. And does she still do veterinary work for Charleston Carriage Works?
A. No. She left Charleston Equine and went, I believe somewhere to North Carolina just recently --
Q. Okay. If I take -- I'm sorry to interrupt. Go ahead.
A. I'm finished.
Q. You're finished, okay. And if I take her deposition, your testimony here today is that she's going -- her dep -- her testimony is going to be that she told you the animal tripped, that it did not collapse?
A. Yes.
Q. Okay. Have you ever asked her, "Did the animal collapse," using the word, "collapse"?

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q Okay. What else you got?
A Okay. Here's a - this is - this is an example of the - the kind of posts that made that - we end up having to deal with. This would be Number 392.
Q 392? Okay. All right. First of all, is that your horse?
A No, that's not my horse.
Q Okay. And does anywhere on this page, does it reference Charleston Carriage Works, LLC?
A It does not.
Q Okay. What else you got? Let me ask you this while you're going through this?
A Sure.
Q This thing - you'll concede I think maybe even in your lawsuit, this thing has become a very public fight between you and the defendants, correct?
A Very public is an understatement.
Q Okay.
A Very public. That's an understatement. I mean, this - this has consumed a giant portion of my life.
Q Right.
A To say that's very public. Do you realize almost a hundred million people have watched this video?
Q Right.
A And you realize the backlash that has occurred as a

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

result? And not only that, that continues to occur. So this went to bed a little bit by the end of 2017? All of sudden this year, in what, August, July or August comes up again? Starts all over again.

Q No question, it's an issue that playing -

A It's a nightmare. To say that we have some sort of public whatever you said is a complete understatement.

Q Okay.

A This is an all consuming thing. I've been here all day.

Q Uh-huh.

A I don't think - I think when you look at the - at these files I don't want you to get the impression that, you know, I'm trying to be some kind of a smart guy and I've given you like all these thousand files because I'm trying to bury you in whatever. These are all things that I think are important and are connected. I'm not -

Q That's what we -

A -I'm not here to waste your time.

Q No.

A So you can imagine the manhours or person hours, if you want, that it takes and took for me to collect all this and to -

Q Uh-huh.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q Okay. When?
A Same meeting. At that meeting in April.
Q All right. So someone, you contend from CCHA -
A That's correct.
Q - stood up and used the word "collapsed"?
A Yes.
Q All right. Do you know who that was?
A It was Elizabeth Fort.
Q Elizabeth Fort? Okay. And do you know if Elizabeth Fort is a member of CCHA?
A I don't now. At that time she said, on their record, that she represented CCHA.
Q Okay. And other than the word "collapse" did she present any, to your mind, any false and misleading information concerning Charleston Carriage Works, LLC's business operation?
A From what I remember, yes. But again, I don't have the transcript of those meetings. We haven't gotten that information yet.
Q Okay. And I believe you testified earlier at no time has your franchise contract ever been terminated with the city, correct?
A That's correct.
Q Tell me about -- well, let me ask you this: you alleged that you received arson threats, correct?

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Council, and these are cards in support of the carriages. So, rather than make 13 copies, I wanted to let you see them."

Councilmember Gregorie said, "Just for clarification, in support of the amendment or in support of what exists now?"

The Clerk said, "It's in support of the carriages."

Mayor Tecklenburg read from the cards, "I live in Charleston and enjoyed a Palmetto Carriage Works experience. I found the staff friendly and the animals well cared for. Please support the carriage tour industry in Charleston."

Councilmember Gregorie said, "Thank you."

Mayor Tecklenburg said, "Okay, so, we have, I'm not even sure that all of these by ordinance require Council approval, but I have before you, four of the different Boards and Commissions with some recommendations, and I had sent you all the candidates some weeks ago. So, these are the actual appointments now coming back to you for the Community Development Advisory Committee, the Municipal Election Commission, the Recreation Commission, and the Redevelopment and Preservation Commission. We did not bring to you the Accommodations Tax Advisory Committee. I'll have that one to you next time."

Councilmember Moody said, "Move for approval of the four."

Councilmember Williams said, "Second."

Mayor Tecklenburg said, "Move for approval of the four. Is there any discussion, comments, or questions?"

Mayor Tecklenburg recognized Councilmember Moody.

Councilmember Moody said, "Yes, I just wanted a little clarification. As I was going through all of this stuff and looking at it, there were a couple names that appeared that were kind of on one list, or didn't show up as a new appointment. I was just kind of curious, for example, on the Community Development Advisory Committee, there were three new appointments, and then there was, well, an Annabelle Seabrook and a Gary Crossly. Are these two positions ex-officio or something?"

Mayor Tecklenburg said, "I think they were previously on the Advisory Committee."

Councilmember Moody said, "But it says that the seats are vacant, and I was trying to figure out what, I just didn't understand. I mean they're on here as vacant, and then you have the other ones down here that show extended that are the ones that are on there now, and those were replaced, but several of these committees had that kind of gap, and I was curious as to what was going on."

Mayor Tecklenburg said, "I'm going to ask Ms. Griffith to address that question."

Robin Griffith said, "Hi, Councilmembers. For this Committee, there are the new appointments, and then everyone else is reappointments. So, they had served before."

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Councilmember Moody said, "Okay, so, this vacancy that's showing up on this list really doesn't mean anything?"

Ms. Griffith said, "No."

Councilmember Moody said, "Their title of Director of the South Carolina Employment Security Commission, that's not an ex-officio position?"

Ms. Griffith said, "No, sir."

Councilmember Moody said, "That was the only one that had a name of a job on it."

Ms. Griffith said, "Right. So, for this, these are the names. We pulled this list in February, and this is how they register."

Councilmember Moody said, "Yes, but that gentleman, for example, he did sign up again?"

Ms. Griffith said, "Right."

Councilmember Moody said, "He applied. I was just curious about that. I mean, I don't have any problem with these people. I was just curious about our process."

Ms. Griffith said, "Right, and so we encourage folks, if you want to continue, we ask you to reapply."

Councilmember Moody said, "Alright. If you go to the Recreation Committee, for example, we've got one, two, three, four appointees there, we've got one, two, three, four, five people that are listed here as being reappointed, and then there are two, there is a Brad Nettles, he's up here, and again, it's a vacancy, but he's just reapplied. Is that right?"

Ms. Laurie Yarbrough said, "Everyone reapplied. We had several members who had served for a great length of time and decided to come off the Commission this time, but everyone else that had been serving reapplied."

Councilmember Moody said, "For the Commission. Alright. Well, what about John Scott?"

Ms. Yarbrough said, "John Scott has been on the Commission. He asked to resubmit his name. His application, something funky happened to it in the process, but he has served, and he did reapply verbally to me."

Councilmember Moody said, "But his name is not on the reapplication list."

Ms. Yarbrough said, "That is correct. I did speak with Robin. He did verbally reapply. He's served on the Commission for the last three years. He had a problem with the computer."

Councilmember Moody said, "Well, now I'm starting to have some problems with the process, because I see some names on here of people that maybe I would like to have on there that did apply, that followed the rules. I'm not going to hold this thing up, but I just think when you start doing something like that, you start creating issues. Anyway, that was my observation

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

as I was going through all of this. So, anyway, thank you."

Mayor Tecklenburg said, "Right. So, I would just urge you, and the other Councilmembers, that when we give you a new list like we did this evening, that we're going to come back to you in a couple of meetings on whatever these were, for example, Children, Youth, and Families, the Colonial Commons, if you see someone like that on the list, give us your feedback. To be honest with you, I hadn't gotten a lot of feedback the last few submittals we've given to you."

Councilmember Moody said, "I understand."

Mayor Tecklenburg said, "So, you see somebody you want to plug, let us know."

Councilmember Moody said, "The problem with that is that you, not you, but we receive that stuff, I think, Friday or Saturday maybe, I mean, the final appointments. We got the list, but we didn't get the final appointments until, I don't know, it wasn't there Thursday. I think it was Friday or Saturday. So, by the time I sat down and looked at it, and had some time with it, anyway, what I'll say is that I am going to vote in favor of all of these because I am 99.65 percent assured that this was done correctly."

There was laughter in the Chamber.

Mayor Tecklenburg said, "Thank you. Are there any other questions or comments?"

No one else asked to speak.

On a motion of Councilmember Moody, seconded by Councilmember Williams, City Council voted to approve the appointments and reappointments to the Community Development Advisory Committee, Municipal Election Commission, Recreation Commission, and the Redevelopment and Preservation Commission.

---INSERT APPOINTMENT MEMOS---

Mayor Tecklenburg said, "Thank you very much. I'll just reiterate. I need the input before I go to come up with the final list."

Councilmember Moody said, "Right."

Mayor Tecklenburg continued, "It helps me come up with the final list, if you know what I mean. So, next, we'll have our Council Committee Reports. Could I call on Councilmember Wilson to give a report on Committee on Public Safety."

Councilmember Wilson said, "Yes, the Committee on Public Safety met on Friday, March 10, 2017, and we heard standard updates. We did not hear an update from Emergency Management, however, we heard brief Fire and Police updates and their role in Ride-Along. In the Fire Department, we have a new partnership with Trident Tech. Two candidates are to get their EMT certifications through Trident Tech, and it's kind of an experimental thing, but we think it's going to yield some good results. We have a recruit class that's due to finish in June and another one that will begin later on in 2017. We have 300 applications, about 300 for this class, and whittled it down to 41 candidates who will begin. The Police Department, they're doing quite well, as well. Let's see, the testing facility at Mary Ader is due to open in April, which is

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

going to be great news. The Illumination Project is moving along very nicely. They had three more listening sessions. It's going well. They continue to schedule these sessions because there is a demand for them. There is a public video now for youth on how to handle a police stop, so I think that will be of great service to the Department. The Police Department is tied into Turning Leaf, out of South Carolina Strong, which are both re-entry programs for those who have been incarcerated, who are trying to move back into society, and then there are various legislative items that they're working on at the State level. So, by and large, all good news."

Mayor Tecklenburg said, "Thank you. I believe that's just a report. There's nothing for Council to act upon."

Councilmember Wilson said, "Correct. There was no action taken in the meeting. Thank you."

Mayor Tecklenburg said, "Thank you for that report. Next, the Committee on Public Works and Utilities."

Mayor Tecklenburg recognized Councilmember Williams.

Councilmember Williams, Chair of the Public Works and Utilities Committee, said, "The Committee on Public Works and Utilities met today at 3:30 p.m. We approved two items, the Acceptance and Dedication of Rights-of-Way and Easements. I make a motion for approval."

Councilmember White said, "Second."

Mayor Tecklenburg said, "Is there any discussion or questions on those?"

No one asked to speak.

On a motion of Councilmember Williams, seconded by Councilmember White, City Council voted unanimously to adopt the Committee on Public Works and Utilities Report as presented:

—INSERT COMMITTEE ON PUBLIC WORKS AND UTILITIES REPORT—

a.) Acceptance and Dedication of Rights-of-Way and Easements:

i. Acceptance and dedication of a new exclusive 13-foot wide entry and use permanent storm drainage easement as noted on the plat entitled "Oakland Subdivision and Stonecreek Subdivision, City of Charleston, Charleston County, SC (TMS 310-12-00-119) to allow access for maintenance of storm drainage piping at 399 Clayton Drive.

   a. Plat
   b. Exclusive Storm Water Drainage Easements

ii. Acceptance and dedication of a new exclusive 7-foot wide entry and use permanent storm drainage easement as noted on the plat entitled "Oakland Subdivision and Stonecreek Subdivision, City of Charleston, Charleston County, SC (TMS 310-12-00-043) to allow access for maintenance of storm drainage piping at 403 Clayton Drive.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

a. Plat
b. Exclusive Storm Water Drainage Easements

Mayor Tecklenburg said, "Next, Chairman Moody, Committee on Ways and Means."

Councilmember Moody said, "Move for approval of the Ways and Means Committee Report."

Councilmember Gregorie said, "Second."

Mayor Tecklenburg said, "Okay. Is there any discussion or questions?"

No one asked to speak.

On a motion of Councilmember Moody, seconded by Councilmember Gregorie, City Council voted unanimously to adopt the Committee on Ways and Means Report as presented:

---INSERT COMMITTEE ON WAYS AND MEANS REPORT---

(Bids and Purchases
(Budget Finance and Revenue Collections: Approval of the 2017 Master Lease Purchase Financing Agreement with TD Equipment Finance, 40 Calhoun Street, Charleston, SC in the amount of $6,025,853; Solicitation #17-B001C [Ordinance]
(Budget Finance and Revenue Collections: Approval to renew the Workers Compensation Excess Insurance contract with Safety National in the amount of $311,960. The 2017 policy renewal rate is flat, but the premium is increasing by 7% due to the increased payroll. This policy runs April 1, 2017 to April 1, 2018. Councilmember Riegel, the HR Committee Chair, has been briefed on the recommendation and approved adding this item to the Ways and Means agenda.
(Fire Department: Approval to apply for a SLED grant in the amount of $96,000 for the Low Country Regional Collapse Search & Rescue Team-Charleston. Funds will be used to purchase new and replacement equipment. No City match is required.
(Mayor's Office for Children Youth & Families: Approval to accept the Youth Volunteer Corps Grant award in the amount of $200 for the Service-Learning Implementation program. No City match is required.
(Office of Cultural Affairs: Approval to submit a grant application to the SC Arts Commission in the amount of $10,000 for the Lowcountry Quarterly Arts Grants Program. A City match of $10,000 is required. The grant period is 7/1/17 through 6/30/18. The matching funds will be included in the 2018 Community Assistance budget if the grant is awarded.
(Office of Cultural Affairs: Approval to submit a grant application to the USDA Agricultural Marketing Service Farmers Market Promotion Program in the amount of $250,000. Funds will be used for the Charleston Farmers Market and the West Ashley Farmers Market. No City match is required.
(Parks-Capital Projects: Approval of a Construction Contract with MUSCO Sports Lighting, LLC in the amount of $559,500 for the purchase and installation of eight new MUSCO lighting structures at Governors Park athletic fields. This is being done through a cooperative purchase agreement with the National Joint Powers Alliance. The project timetable is scheduled for 100 days. With the approval of the project budget, Staff is authorized to award and/or amend contracts less than

$40,000, to the extent contingency funds exist in the Council approved budget. The Construction Contract will obligate $559,500 of the $700,000 project budget. The funding sources for this project are: S.C. Sports Development Funding Grant ($350,000) and 2013 General Fund Reserves ($350,000).

(Parks-Capital Projects: Approval of a Construction Contract with MUSCO Sports Lighting, LLC in the amount of $462,500 for the purchase and installation of six new MUSCO lighting structures at Bayview Soccer Complex. This is being done through a cooperative purchase agreement with the National Joint Powers Alliance. The project timetable is scheduled for 100 days. With the approval of the project budget, Staff is authorized to award and/or amend contracts less than $40,000, to the extent contingency funds exist in the Council approved budget. The Construction Contract will obligate $462,500 of the $505,000 project budget. The funding sources for this project are: 2012 General Fund Reserves ($9,269.18) and 2013 General Fund Reserves ($495,730.82).

(Parks-Capital Projects: Approval of the Louis Waring, Jr. West Ashley Senior Center Fee Amendment #3 to the Professional Services Contract with Liollio Architecture in the amount of $43,100 for an additional 135 days of construction administration. This approval will result in a budget transfer of $43,100 to the Liollio Architecture Professional Services Contract from the Project Contingency. The total project budget remains unchanged. The total contract time is increased by 135 days. The approval of Fee Amendment #3 will result in a $43,100 increase to the Liollio Architecture Professional Services Contract from $623,437 to $666,537. The funding sources for this project are: 2012 General Fund Reserves, 2014 GO Bond, 2013 General Fund Reserves, 2014 General Fund Reserves, and Capital Contribution from Roper St. Francis.

(Public Service: Approval for B&C Land Development to install a pipe check valve in the amount of $53,625 at the Limehouse Street/Battery outfall. This replaces a failed Tideflex valve. The work was performed as an emergency repair due to the need to prevent potential flooding of the surrounding streets and properties.

(Police Department: Approval of a law enforcement assistance and support agreement with the United States Marshal Service. They have agreed to sign once approved by and signed by all necessary parties from the City.

(Police Department: Approval of the Law Enforcement Assistance and Support Agreement with Colleton County Sheriff's Office.

(Police Department: Approval of a contract between CPD and Turning Leaf Project. Turning Leaf Project provides pre-release and post-release reentry programs for CCDC inmates. The amount to be paid by the City is $85,000. This is the same amount for a similar contract approved in 2016.

(Request approval of the Agreement whereby Charleston County School District and the City agree to reestablish the southeast quadrant of Hampstead Square for use as a public park (TMS: 459-09-02-151). The property was established as a Public Mall in 1871.

(Request approval of the Second Amendment to Agreement of Purchase and Sale whereby the City and SC State desire to remove certain reversionary interests benefitting the City from the Deed requirements set forth therein, and language imposing a deadline for the construction of the Community Center. (Corner of Lee and America Street; TMS: 459-05-04-210). The property is owned by the City of Charleston. [Ordinance]

(Consider the following annexation:

- 1522 Grimball Road (TMS# 427-00-00-008) 0.41 acre, James Island (District 6); This property is owned by Francina Backman.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

-- 2205 Ramsay Street (TMS# 343-05-00-125) 0.25 acre, James Island (District 11); This property is owned by Edward Mungo.
-- 1524 Grimball Road (TMS# 427-00-00-085) 0.58 acre, James Island (District 6); This property is owned by Clyde J. Smalls and Carol J. Smalls.
-- Grimball Road Extension and Cooper Judge Lane (TMS#'s 427-00-00-081 and 427-00-00-113) 1.19 acres, James Island (District 6); This property is owned by JJR Development LLC.
-- Vacant property off of Folly Road (TMS# 427-00-00-114) 0.99 acre, James Island (District 6); This property is owned by Clyde J. Smalls and Carol J. Smalls.

First reading was given to the following bills:

An ordinance to authorize the execution and delivery of Lease/Purchase and Security Agreements with TD Equipment Finance, Inc. in order to provide for the acquisition of certain Police, Fire, Public Service, Fleet, Stormwater and IT equipment and vehicles; to provide the terms and conditions of such Lease/Purchase and Security Agreements; to provide for the granting of a security interest to secure all obligations of Lessee under the Lease/Purchase and Security Agreements; to authorize the execution and delivery of all documents necessary or appropriate to the consummation of such Lease/Purchase and Security Agreements; and to provide for other matters related thereto.

An ordinance authorizing the Mayor to execute on behalf of the City a Second Amendment to the Purchase and Sale Agreement between the City and South Carolina State University pertaining to property located in the Cooper River Bridge Redevelopment area and such other documents as may be required to effect the transfer of said property.

An ordinance to provide for the annexation of property known as 1522 Grimball Road Extension (0.41 acre) (TMS# 427-00-00-008), James Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 6. The property is owned by Francina Backman.

An ordinance to provide for the annexation of property known as 2205 Ramsay Street (0.25 acre) (TMS# 343-05-00-125), James Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 11. The property is owned by Edward Mungo.

An ordinance to provide for the annexation of property known as 1524 Grimball Road Extension (0.58 acre) (TMS# 427-00-00-085), James Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 6. The property is owned by Clyde J. Smalls and Carol J. Smalls.

An ordinance to provide for the annexation of property known as Grimball Road Extension and Cooper Judge Lane (1.19 acres) (TMS# 427-00-00-081; and 427-00-00-113), James Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 6. The property is owned by JJR Development LLC.

An ordinance to provide for the annexation of property known as vacant property off Folly Road (0.99 acre) (TMS# 427-00-00-114), James Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 6. The property is owned by Clyde J. Smalls and Carol J. Smalls.

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P 3 - CASE#2018CP1004083

Mayor Tecklenburg said, "Next, we move all the way to our bills up for second reading."

Councilmember Seekings said, "Items K-1 through K-6, so moved."

Councilmember Waring said, "Second."

Mayor Tecklenburg said, "We have items K-1 through K-6 that can all be taken together. Did we get a second on that?"

The Clerk said, "Yes."

Mayor Tecklenburg said, "Are there any questions or discussion on any of those?"

No one asked to speak.

On a motion of Councilmember Seekings, six (6) bills (items K-1 through K-6) received second reading. They passed second reading on motion by Councilmember Waring and third reading on motion of Councilmember Seekings. On further motion of Councilmember Gregorie, the rules were suspended, and the bills were immediately ratified as:

2017-020 AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF CHARLESTON BY CHANGING THE ZONE MAP, WHICH IS A PART THEREOF, SO THAT 573 MEETING STREET AND 35 WALNUT STREET (PENINSULA) (2.145) (TMS #463-16-04-022 AND 463-16-04-035) (COUNCIL DISTRICT 4), BE REZONED FROM GENERAL BUSINESS (GB) CLASSIFICATION TO MIXED-USE/WORKFORCE HOUSING (MU-2/WH) CLASSIFICATION. THE PROPERTY IS OWNED BY CHARLESTON INTERFAITH CRISIS ASSISTANCE MINISTRY.

2017-021 AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF CHARLESTON BY CHANGING THE ZONE MAP, WHICH IS A PART THEREOF, SO THAT 1991 HOLLIDAY ST (WEST ASHLEY) (0.20 ACRE) (TMS #355-15-00-101) (COUNCIL DISTRICT 2), ANNEXED INTO THE CITY OF CHARLESTON JANUARY 24, 2017 (#2017-007), BE ZONED SINGLE-FAMILY RESIDENTIAL (SR-1) CLASSIFICATION. THE PROPERTY IS OWNED BY SABRINA A. PERKINS.

2017-022 AN ORDINANCE TO AMEND SEC.14-50(A) OF THE CODE OF THE CITY OF CHARLESTON TO PROVIDE THAT ELECTRONIC WASTE SHALL NO LONGER BE COLLECTED BY THE CITY.

2017-023 AN ORDINANCE TO REPEAL ORDINANCE NO. 2008-52, AS AMENDED BY ORDINANCE NO. 2008-66 AUTHORIZING THE TRANSFER OF 26 REID STREET TO CHARLESTON AREA COMMUNITY DEVELOPMENT CORPORATION.

2017-024 AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY A TRANSFER AGREEMENT BETWEEN THE CITY AND HABITAT FOR HUMANITY, INC. PERTAINING TO PROPERTY OWNED BY THE CITY AT 26 REID STREET, TO INCLUDE ANY AND ALL DEEDS, BILLS OF SALE OR OTHER DOCUMENTS AS MAY BE NECESSARY TO EFFECTUATE THE TRANSFER.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

2017-025 AN ORDINANCE TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 2935 MAYBANK HIGHWAY AND ADJACENT VACANT LOT (4.60 ACRES) (TMS# 313-00-00-091 AND 313-00-00-089), JOHNS ISLAND, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 5. THE PROPERTY IS OWNED BY JAMES COYNE AND LAURE VANDERMOERE.

Mayor Tecklenburg said, "If you all will bear with me for just a moment. I think I got them all. Next, we have I think just one bill up for first reading. That's the ordinance regarding the temperatures for the horses."

Councilmember Lewis said, "So moved."

Mayor Tecklenburg said, "We have a motion to approve. Is there a second?"

Councilmember Shahid said, "Second."

Mayor Tecklenburg said, "We have a second. The floor is open for questions, comments, or discussion. Councilmember Shahid, did you have your hand up?"

Councilmember Shahid said, "No, Councilmember Moody."

Mayor Tecklenburg said, "No, Councilmember Moody said he made the second."

Mayor Tecklenburg recognized Councilmember Moody.

Councilmember Moody said, "Mr. Mayor, I've looked at this thing since I got all this information. I've talked with a bunch of people and, in my opinion, this ordinance is nothing more than an attempt to make some folks feel good. I appreciate Mr. Riccio's committee and the efforts of the citizens that got involved in this thing, but I've just got several comments to make. As for the two vets that the City hires to monitor these five tour or carriage companies, and we have an inordinate amount of data that's collected by these tour companies or carriage companies, and these vets look at it. The two vets on the Study Committee, and Dan can correct me if I'm wrong, were asked if the current system was 99.65 percent good or effective in preventing overheating, and their answer was 'yes'. So, these carriage operators, as these horses come back, every time they come back, they take their temperature. They are monitoring regardless of where the thermometer is, and I'll get to that in a minute, but if we drop this temperature from 98 to 95, we will then go from 99.65 to 99.77. In doing that, we're doing harm to our carriage operators. These are small business operators in this City trying to make a living that employ, each one of them probably employs a half a dozen, I don't know, but we talk about this 95 degrees or 98 degrees on the top of the Dock Street, or the top of the DoubleTree, when, in reality, if they really wanted to know what the temperature was, they ought to hook some kind of a thermometer to that carriage and follow it all the way around the different routes. Even though it may be very hot on that pavement in the front of The Market there where they use the Bingo machine before they go out, the rest of the streets if you observe them, they're under shade. They're in the shade of the buildings and the shade of the trees. So, I don't know, 95 degrees, if you go to Austin or Atlanta or Philadelphia, where are they measuring, how are they measuring? I just don't think there's anything that's magic about that if you're just taking it at some time.

ELECTRONI(FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

There was a study, and Mr. Doyle alluded to it, and it was in the, let me see if I can get this right, The Journal of the Equine Veterinary Science. It was a retrospective review of carriage horse and mule welfare in Charleston, and what they did was they looked at five different things. They looked at the animals that work, how many geldings, how many mares, how many mules, how many horses, what kind of horses, and all that kind of stuff. They looked at the animal and the veterinary care. They looked at the management practices, how they feed them, how they water them, and how they shoe them. They looked at environmental conditions, they checked for overheating, the data accumulation, and how all that was done. Then they also looked at the veterinary reports, how and what data was actually collected I don't know. I'll read it again. I think this was the same paragraph that Mr. Doyle was reading, but it says, 'The carriage company reported the detail here clearly provides exceptional welfare for their animals. Based on competence with the five welfare demands as previously outlined. They could be used as an example for the whole carriage industry.' They kind of held up Charleston, this article did, as the crème de la crème. So, what we end up doing is, we get all this feel-good stuff, and I can't help my friend, Ms. Abigail Darlington (Reporter) is in the back, in the newspaper this morning, did you all see this article? In the newspaper, I saw the picture of 'Blondie', the horse that was on her haunches laying all over the street. It said, 'Council ought to consider changes to rules on carriage horses' heat.' That (the article) had absolutely nothing to do with heat. Again, it's just a feel-good type of effort here, and it just, for us to be attacking one of our local small businesses or actually five of our local small businesses, somebody needs to speak on their behalf. I'm here tonight to ask you to not support this ordinance. If we want to do something else in terms of how you want to measure heat, I don't think moving it down to the ground in one spot is the answer. I just think, for this minute increase in effectiveness, I just don't see this but, thank you, Mr. Mayor. I'm going to vote against this ordinance."

Mayor Tecklenburg said, "Thank you very much. Does anyone else have a question or a comment?"

Mayor Tecklenburg recognized Councilmember Shahid.

Councilmember Shahid said, "Thank you, Mr. Mayor. I had the pleasure of meeting with the Doyle Family several months ago and touring their facility, and it's a wonderful facility and, as Councilmember Moody has alluded to, it's a small business. Wherever you may fall, whether or not you like the carriage tours in the City, you oppose the carriage tours in the City, you like the carriage tours in the City, this is not the issue before us tonight. That's not what we're talking about. I had the opportunity to talk to Councilmember White, and Dan Riccio, who is standing up ready to answer questions for us, but I don't want to pass an ordinance for the sake of passing an ordinance, just so that we please people and think we've done something and accomplished something along the lines. If the ordinance has got something good about it that is going to improve the overall condition of these working horses, that's fine, and that was the impression I got this afternoon in my telephone conversations, that the ordinance is designed to make an improvement on the overall conditions. If that's what we're going to do tonight, then I'm in favor of it. If it's there just to put a whitewash on something, then we don't need to pass this ordinance. So, I think if we can hear from Dan Riccio about some of the issues that came up, as far as how temperatures are taken because of the location being at a certain place, and the measurement of the heat index provides us, as I understand, a measuring stick of sorts for the health of the horses. If you can sort of just address those two questions for us, it would help us."

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Dan Riccio said, "Yes, sir. First, I would like to comment or add that this was a process. It involved several stakeholders, okay. We had eight voting members, two equine veterinarians, we had a representative from the Historic Ansonborough Neighborhood, a representative from the Charlestowne Neighborhood, a representative from the carriage industry, a representative from NOAA, a meteorologist, a representative from the Charleston Animal Society, and including myself as the Chair. The ordinance before you was not brought to you without a lot of discussion. We began discussion in meetings back in August. The issues that came up, and the process that we wanted to address was obviously the concerns for the animals in the industry and public perception. Regarding the thermometers, the City of Charleston utilizes a Weather Bug company that is a well-known, world-known company. There are over 8,000 tracking stations throughout the world. They are on top of buildings, however, they have to triangulate through satellites. The Weather Bug system is utilized by the Federal Government, emergency managers throughout the United States, and it's also utilized by the National Weather Service itself. It's very dependable, it's credible, they're validated, and that's what we use as a validation for the weather. The app is available on our phone, and you can have it downloaded on your phone. The City of Charleston employees have more rights to it than an average citizen, but anybody can look at the DoubleTree Hotel temperature at any time, and it shows on the phone. So, that's validation. It's not one person giving you information about a temperature. It's a credible source that is used throughout the United States. So, what we did getting to this point, we had to come to a conclusion at some point. How do we do that? We use facts, scientific facts. We wanted to use data that was credible, so we went back four years with Weather Bug information, temperatures. We decided we will go ahead and pull four years of data at temperatures at 90 degrees and above for all those days during those four years. At the same time, we engaged all the carriage companies. By ordinance now, they are obligated or mandated to maintain records regarding their horses and their animals. One of those record systems is the internal temperatures of these animals to make sure they're doing what they're supposed to be doing in accordance to the ordinance. I should become a veterinarian after all of this."

There was laughter in the Chamber.

Mr. Riccio continued, "When the internal temperature of the horse starts to rise above 103, that's a danger sign, above 103. Our ordinance mandates that if the horse's temperature rises above 103, you pull that horse off the street, and you take care of that horse or animal to make sure it falls below that 103. So, what we did is we gathered all the horses' data, their internal temperature for four years on the same exact days that the temperature was 90 degrees and above and with the heat indices, and we correlated the numbers. We gathered all that information and we gave it to the two veterinarians who are well-known throughout the State. They compiled all the data, 20,625 data points went into this database, and the conclusion was the horse's temperature began to rise when the heat index reached 110 degrees. So, we used scientific facts to figure this out. The average temperature during that time was 95 degrees. Based on all that, we went ahead forward and said, the Committee agreed, that the data is correct, it's believable, it's valid, and the Committee voted 5 to 1 to go ahead and have the temperature dropped from 98 to 95 and the heat index from 125 to 110."

Councilmember Shahid said, "Can I ask just one question?"

Mr. Riccio said, "Yes."

Councilmember Shahid said, "So, the 103 temperature is what the experts are telling us the internal temperature of a horse at 103 is a danger point?"

ELECTRONI FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Mr. Riccio said, "Yes."

Councilmember Shahid said, "Thank you."

Councilmember Gregorie said, "Question. How many of our horses have died from heat exhaustion?"

Mr. Riccio said, "None."

Councilmember Gregorie said, "Thank you."

Mayor Tecklenburg recognized Councilmember Williams followed by Councilmember Riegel.

Councilmember Williams said, "Right quick, I had an opportunity to read the ordinance and had a meeting with you, Dan, and you spoke with Gary (Councilmember White) because you've been on the Commission for quite a long time, and I spoke with one of the persons who voted against the ordinance that sat on the Tourism Commission, which was 9 to 2. There were several things that they pointed out that I don't know if this is the venue to deal with that. One was, the fact of the matter is, why the City is not weighing the horses. Two, was this peer study and how the approval of the industry to allow this study to take the blood sample of a horse. I don't know, and the other one that I got was, there is a consensus, not from me, but a consensus out there that cities across the country, their activists are saying that they need to change the business model in terms of carriages and horses. All those things, I just don't know. I'm going to vote in favor of this because I think it's just made good common sense to a layman person like me, but I would say that I would like the opportunity for this group to state their whole case, the entire case before the Tourism Commission, and we talked about sickness. I don't know, after eight years of doing this, but I would like to see them have an opportunity to state their whole case, because the white elephant in here is there is a consensus, a movement across the country and here, that some people think that we should change the business model. We can do a better business model than what we do now with how we do the horse carriages. I don't know, but those are some things I got out of the study, and spending three or four hours with that person with the videos and showing me a whole lot of different things. It's very interesting, and I'm going to support it based on that, but I'd love to see them get back to the Commission to state their whole cases. One thing that was kind of interesting is, how would we approve, and how can we make the carriage company send blood samples of their horses? Because that's what the peer review would be to do."

Mr. Riccio said, "Correct."

Councilmember Williams said, "I don't know if we have legal boundaries and can do that. So, in all my study, I will be supporting it, but those are the points, and, also, I would ask, if in the original ordinance, why aren't we weighing the horses? It was said that they offered to buy the weight scale for the horses. These are just things in my preliminary discussion to get out, but I'm going to support the ordinance. Thank you."

Mayor Tecklenburg recognized Councilmember Riegel.

Councilmember Riegel said, "Thank you, Mr. Mayor. Kind of the tipping point for me here is the Weather Bug that's been at four stories up at the Dock Street Theatre for I don't

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

know how many years. Then, the correlation between that and the body temps, and heat indexes down the street, that is historical data which has been vetted, and it seems like it's scientific and very valid data. I'm tending to want to support this ordinance. I don't think it hurts the carriage industry a great deal, and just another issue of control over their businesses, but I'm interested in the horses' temperatures. I've had a lot of experience with horses' asses over the years, so the Weather Bug and the horses' temperatures, I think you've already established that correlation, and it's valid. Please correct me if I'm wrong."

Mayor Tecklenburg recognized Councilmembers White and then Wilson.

Councilmember White said, "I'm not sure how to follow that."

There was laughter in the Chamber.

Councilmember Moody said, "He was speaking from experience."

Councilmember White continued, "Actually, let me ask one question. Vanessa, if you can help me remember, the temperature used to be in a black box at the Police Station on the ground."

The Clerk said, "That is correct."

Councilmember White said, "Back then the discussion was, 'Well, that was too far away.'"

The Clerk said, "Yes, and there was one in The Market."

Councilmember White said, "So, it came over to The Market area, and then it was, so, I say that just to tell you all and share with my colleagues on Council, so I've been on the Tourism Commission probably about nine years, I think, and in that nine years, every year it gets hot, and every year we debate this same exact thing, and every year we've done absolutely nothing about it. Nothing. Nine years, nothing has changed. When this Committee got put together, my initial thought was 'good luck, probably nothing is going to happen'. So, when they came out with some level of consensus, I was absolutely shocked. I really didn't think anything was going to come out of that Committee, because you've heard from the two groups here, the industry and those on the animal welfare side, and they're farther apart than oil and water. They just absolutely don't find themselves agreeing really on anything. To your point about the study, there is no way these groups are ever going to work collectively together on that study, even if we were to make it a law, and I don't think we can legally do it. But my point in all of this is, after nine years, there has been absolutely no positive movement whatsoever. So, when they did come together, and came up with these couple of changes, and it was supported by the data that Mr. Riccio pointed out, all I can say is, I'm not here to say and I'm not for the industry or against the industry, or for the animal welfare groups otherwise, I'm just saying that I have watched, for nine years, nothing occur. To see something come out that they could at least collectively agree upon and that we've got scientific data that says it's supported, that it's probably a good idea for the benefit of the animals. It's hard for me not to agree to at least get some forward momentum, and that was really the premise behind my supporting this under the Tourism Commission and moving forward. I'm not saying it's perfect, I'm not saying if it's done, I'm not saying that this peer review shouldn't happen, and I don't know how it would, but all of these other things, by no means, am I saying that I think this is over once this happens tonight. I suspect we'll continue to move forward, and I think that we'll do some further incremental

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

process improvements over time, up to and including whether it be weighing the horses and how we do all of that. The reality is, by either deferring or not doing anything, we will be basically doing exactly what we've done for the last nine years that I've been on the Tourism Commission, and quite frankly, after I've spent this much time on the Tourism Commission, I'd like to see something done."

There was laughter in the Chamber.

Councilmember White continued, "Just a little bit. So, really, I wanted to just give everybody a little bit of background and so everybody understands sort of where this thing has gone and where it's come from."

Mayor Tecklenburg said, "Thank you."

Mayor Tecklenburg recognized Councilmember Wilson.

Councilmember Wilson said, "Thank you. I have a question for Dan. According to the data, how many times, or if you have any idea, how many times has a horse been pulled off the street for exceeding that 103 degrees?"

Mr. Riccio said, "Not, to my knowledge, any. I can further explain that. People don't realize this is one small part of this big ordinance. There are many mechanisms in place to make sure that the animals are taken care of. One of the primary ones is that you don't have to wait until 95 or 98. When the ambient temperature reaches 85 degrees outside, they're mandated by the ordinance to monitor the horse and take the temperature every time they come off the street. So, they're already in the precautionary mode, if you will, before it gets to a point to where they're out in the weather above that 85, close to that 95, or close to that 98. That precaution is already in place, so I can tell you 'none' because they're already doing what they're supposed to be doing with taking the temperatures at 85 degrees."

Councilmember Wilson said, "In just looking at this in a broad sense, the only thing that I will say is I have tremendous respect for small business and the fact that they're trying so hard to earn a living. I have tremendous love for animals. I've supported the Charleston Animal Society. So, it's kind of like the Legare bike lane. I find a foot in both canoes."

Councilmember Moody said, "You would have to mention that."

Councilmember Wilson said, "Sorry, I just had to pour a little salt in there."

There was laughter in the Chamber.

Councilmember Wilson continued, "The only thing, and I've been thinking about this even before I was on City Council, and I've been thinking about it the whole time I've been on Council, the only thing, if we were to ever do anything, I would like to see the thermometer come down to street level. I think that's probably a good provision. I don't know whether it will happen or not, but that would be the only change that I would like to see."

Mr. Riccio said, "I can tell you, Councilwoman, that I've been in contact with other cities in the Southeast Region, Savannah, we talked quite a bit. Their official thermometer is five miles away at Hunter Army Airfield, and the same with St. Augustine. It's at the local airport. They just go by that reading, but the way we do it, I think, is more sensible because we can, again, using the

word 'validate', we can validate it. Any individual can gather the data in their hand and know that we're doing what we're supposed to be doing. So, no offense, I believe that the thermometers are in a good place but, again, we would take any consideration or any information from anyone else that could provide another area for it."

Mayor Tecklenburg recognized Councilmember Moody.

Councilmember Moody said, "Dan, a question. The vote of 5 to 1, that was what group? Tourism Commission? The Study Committee?"

Mr. Riccio said, "No, the vote 5 to 1 was our committee, those eight members."

Councilmember Moody said, "Okay."

Mr. Riccio continued, "On that day, two were absent, six were remaining, five voted 'yes', and one voted 'no'."

Councilmember Moody said, "The one that voted 'no'."

Mr. Riccio said, "Charleston Animal Society."

Councilmember Moody said, "Yes, so, we kept hearing tonight, let's do it one time and we're over, but they don't like this ordinance for this temperature and this information. They're rejecting it, so, all that tells me is we're going to be back again. To me, this whole thing is death by a thousand cuts, and this is just one of those cuts against small businesses in the community and so, again, I'm not in favor of this."

Mayor Tecklenburg recognized Councilmember Riegel.

Councilmember Riegel said, "Thank you, Mr. Mayor. Let me ask first a specific question. If you bring the Weather Bug, the thermometer from four stories down to street level, how are you going to validate what you're reading at street level with all these years and years of temperature information, all these data points that you've taken from the horses? Is that going to invalidate that data? How are you going to recalibrate your relationship?"

Mr. Riccio said, "I think we need a system like we have now, that we can go back four, five, or six years with the information that's collected. In the old days, it was at the Police Department. It's a little thermometer, literally, a glass thermometer that one person would read. How do you validate that? It just makes sense the way we're doing it now."

Councilmember Riegel said, "But, no, I think the way it's validated, as I understood, is you've got a temperature up four stories, and say that's whatever it is, and that level is consistent with levels that you're reading on the horses when you take their temperatures."

Mr. Riccio said, "Correct."

Councilmember Riegel continued, "So, that's not mind-boggling to me. The question I'm asking is, if that's been your relationship, four stories and the horses at street level, you drop the thermometer to street level, how are you going to validate all of these years of information that you got for the horses with something now at street level?"

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Mr. Riccio said, "I'm not sure, to be honest with you."

Councilmember Riegel said, "You can't do it."

Mr. Riccio said, "No."

Mayor Tecklenburg recognized Councilmember Lewis.

Councilmember Lewis said, "Mr. Mayor, I've been sitting here 20 years, it gets hot out there sometimes. We've got people that get heatstroke and die. I've never heard of a horse getting a heatstroke and dying since I've been in Charleston."

There was laughter in the Chamber.

Mayor Tecklenburg said, "Yes, sir."

Councilmember Lewis said, "So, apparently the people that are taking care of these horses, they're doing the best. Why? Because they're protecting their living. They're going to take care of these horses. They have taken care of them, and they want to take care of them, and we, the City, try to make every effort to make sure that we improve everything that we can do to check behind them to make sure that they're doing their job. So, I think, we're doing what we can do. I think we just need to go ahead and vote for this ordinance tonight, and get it over with. Thank you."

Mayor Tecklenburg said, "Thank you. Would anyone else like to be heard?"

Mayor Tecklenburg recognized Councilmember Waring.

Councilmember Waring said, "I appreciate all of the input from everybody, but when I sit around, and I see like the people talking about business models, the most successful business model is put together by successful business people, not elected officials. It's actually done in the private sector. The most successful part of the business community in the United States are small business people, people just like these over here. Councilmember Lewis, you said it right. It's in their interest to see that these animals are treated first, the best, the best practices being applied to their most important asset. The most important asset isn't the carriage, it's actually the animal, and you know what, the City of Charleston has managed this. We haven't just started managing this successfully. We've been doing this successfully for decades. You said that too, Councilmember Lewis. Where's the proof in the pudding? You said it, Mr. Riccio, and I'll ask you to say it again. How many animals have died as a result of heatstroke?"

Mr. Riccio said, "None."

Councilmember Waring said, "In the history of these carriages?"

Mr. Riccio said, "None ever reported."

Councilmember Waring said, "When it comes to horses that were pulled off the street for exceeding the 103 temperature, how many times has that happened?"

Mr. Riccio said, "None."

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Councilmember Waring said, "Because you actually recanted that the system works. They monitor their horses. We have a system that's not out of whack, and for nine years the reason you haven't done something is because you're doing it right. Now, I'm not saying it's a perfect business model, but the business model that's in place works, and it has worked successfully. We should be proud of the fact that a horse has never died from heatstroke in the City of Charleston. We shouldn't hide that as a secret. We should be proud of the fact that we monitor the owners, and the owners monitor the horses to see that they do not exceed the 103 degree internal temperature. They get pulled off the streets. I think we're making this a little bit more complicated than it has to be. The City of Charleston hasn't just started doing this right. We've been showing best practices for the nation for a while. So, now, we have to change that. I do appreciate the people who are volunteering their time. God knows, we all know about the importance of volunteering, and that's what makes this City great. It's not us, quite frankly, it's the people that help us. It's people like you, Mr. Riccio, people like our Clerk. It's people like you, Councilmember, who has been on that Tourism Commission for all those nine years, because if something had gone on wrong for nine consecutive years, you would have brought it right here to the public square.

So, the feel that we have to do something because a report came to the right or left of center, I'm encouraged, and I have confidence in the fact that we've been doing it right. Because of it's in the interest of the business person, it's in their interest to do the business model, not us. The facts point to, and even the Animal Society, and they do a good thing; I'm not knocking them, but they can't change the facts. The fact is no horse has died from a stroke in the history. No horses have been pulled off the street because the owners were pushing them a little too hard, and the temperature got to be 103 and 104, that's not the case. I think we're doing it right, and I think we ought to commend the people who helped that record to come to a place that we can now brag on. We can brag on the fact that no horses died and no horses have been pulled off the street, because we have a system that works. We heard a lot about greed today, and Mr. Mohammed, you are right about that, but greed would have been having a record of horses being pushed beyond the point, to the point where they die. If the record showed that they're out there at a 103 and 104 or maybe worse, that would have been cruelty, but that's just not happening. I've actually seen the facilities, Peter (Councilmember Shahid), you're right, those horses are getting treated pretty well. So, for those reasons above, I'm going to vote against it. I think we're doing it right."

Mayor Tecklenburg said, "If I may just add a comment of my own, and that's first, to thank Dan Riccio, in his efforts, and the committee, including the participation of the Animal Society, who really applied a lot of due diligence to this temperature matter, understanding there are other matters that need to be looked at from time to time about the weights or whatever, but after a lot of study, after a lot of due diligence, the committee did vote 5 to 1, and it went to the Tourism Commission and was voted on 9 to 2. I think it's incumbent upon the City to really provide for compassionate use of these wonderful animals in our City. They represent our City, as well, and so, Councilmember Moody, there is a difference when you take the heat index from 125 to 110. I know I could tell the difference in that difference of heat index. That's a 15 degree difference, and based on all the factual information that we have, that's the point at 110 degrees where some difference starts to occur in the horses' internal temperature. So, that's what led the committee and the Commission to that recommendation. I think it makes sense, I think it's a compassionate thing to do, and I appreciate everybody's input. I'm going to vote in favor of the matter."

Mayor Tecklenburg recognized Councilmember Seekings.

Councilmember Seekings said, "Thank you, Mr. Mayor. Just very briefly, we've been debating this a long time. Three things, one is, I want to thank Councilmember White. Nine years is a long time without hazardous duty pay, it's hard work doing all this. So, thank you. Two, is I

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P... - CASE#2018CP1004083

agree with Councilmember Wilson, and, I think, Councilmember Riegel, in that whether we're talking about business or government, perception becomes reality. If you're going to take a temperature to monitor something, you ought to take the temperature in close proximity of what you're monitoring, and if there's a way to get the temperature taken closer to where the horses are, I think that would be good for everybody. Lastly, I don't understand, and maybe Dan or Gary, you can tell us this really quickly, this whole thing about the four readings. Why do we do four? I don't quite get that. Isn't two enough? Again, this is sort of a backdrop ordinance. A lot of people come here and visit, perception being reality, what we've heard tonight is that the industry is monitoring itself, no dead horses in the street, and no one failing tests of heat, but there's a backdrop somewhere along the way, and why is the backdrop for tests?"

Mr. Riccio said, "I can explain that to you."

Councilmember Seekings said, "Okay, that's fine. It's just seems like a lot of numbers to impose on somebody."

Mr. Riccio said, "When the temperature starts to rise, we start getting alerts on our mobile devices. We, me, other staff, Tourism Enforcement Officers, go to The Market area and begin to monitor. The DoubleTree Hotel is right there where the horses queue. That's where the thermometer is directly over ahead of them. The current ordinance requires two consecutive readings 15 minutes apart, that's 30 minutes. It is historically proven that by the third reading, every time that we had an issue last year when it raised closer to 98, the temperature would not maintain, it would drop, rise, drop, rise, typically every minute. That puts us in a situation that we can't baseline the temperature. Will you stop it, or you go? You stop, you go. The four readings, and again, all voted on by the Committee, and there was a lot of input, those four readings will give that baseline temperature and maintain that steady temperature to pull the horses off the street. Now, granted, it's going to take a shorter amount of time for 95 than 98, but still, no matter what, a cloud could go over, and it drops the temperature, so it fluctuates. It just makes it very difficult to enforce, because I had to make decisions last year of pulling the horses when the temperature wasn't even 98. I just erred on the side of caution. So, I need the tool to enforce it, and by four consecutive readings, it's not inhumane, the veterinarians on the staff, on the Committee, were in agreeance that it would not harm the animal going that one hour versus 30 minutes to establish that baseline temperature, and that's why we're going to four."

Mayor Tecklenburg recognized Councilmember Shahid.

Councilmember Shahid said, "Just a couple of follow-up questions, please. The placement of the Weather Bug thermometer at DoubleTree, is that done by the City or by Weather Bug?"

Mr. Riccio said, "That's done by Weather Bug, but it's a contract we have with the Weather Bug. I've got the IT guy back here."

Councilmember Shahid said, "I mean that's their placement of that, and it's their decision to place it at that location, not the City's location?"

Mr. Riccio said, "That is correct."

Councilmember Shahid said, "Then they get the readings that they need to get the readings on."

Mr. Riccio said, "Exactly. They could not put it any lower because of the triangulation of all the satellites. It's not our decision. It was their decision to do that."

Councilmember Shahid said, "My other question is, how many carriage companies do we have?"

Mr. Riccio said, "Five."

Councilmember Shahid said, "Have you polled them as to what their position is on this ordinance?"

Mr. Riccio said, "They're all for it. They saw the data, they accepted it, and they went for it."

Mayor Tecklenburg recognized Councilmember Moody.

Councilmember Moody said, "I don't know that I agree with that last statement. I think the vote maybe says something different. In my opinion, the Animal Society and that group voted against it, because anything short of taking the animals off the street is unacceptable to them. I believe the carriage tours, or the carriage operators, voted, 'well, maybe if we give them a little bit of something, they'll go away.' I think that's what the vote was. I don't think that they were in favor of this ordinance at all. If they were, it was a compromise."

Mr. Riccio said, "It was a compromise, but it was the individual representing the five carriage companies that agreed."

Councilmember Moody said, "I understand, but my understanding is that they voted because they thought we might better do this, and again, it goes back to that death by a thousand cuts."

Mr. Riccio said, "Compromise. Yes, sir, but it's still compromise across the board. We had more opposition from the neighborhoods and more questions asked of the neighborhoods, because they were represented on the Committee. So, everybody on that Committee compromised, and that came to this decision of the temperature and the heat index."

Councilmember Moody said, "I understand, but we had two carriage operators get up tonight and they didn't sound to me like they were approving this ordinance."

Councilmember Shahid asked, "Can we ask them?"

Councilmember Waring said, "They spoke, both of them spoke. They spoke to Council."

Councilmember Shahid said, "Are they in favor or opposed to this?"

Mr. Doyle said, "My son isn't here tonight, and he runs the carriage company. The reason he's not here--"

Councilmember Seekings said, "Dad, he's right behind you."

There was laughter in the Chamber.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

Mr. Doyle continued, "He thinks that feeding the alligator at hand is going to shut them up, and I don't think so."

Mr. Riccio said, "I do not. I wasn't aware of that information."

Councilmember Moody said, "I just heard what I heard."

Mayor Tecklenburg said, "Well, I get back to the point that the heat index at 110 is where some impact happens to the horses' internal temperature, number one. Number two, I don't know if you all remember last summer, and you can blame it on whatever you want, but I believe the climate is changing on this planet, and it's getting hotter, so we need to be sensitive to the temperature for the horses and their working conditions. Thirdly, the word that Dan used in the study was 'correlation'. So, you correlate the temperature of the horse to the ambient temperature, no matter where it's taken. As long as it's taken at the same place, you have a good correlation. Over four years of data, maybe it would have been a degree different on the street, but you have that consistent location reading of the temperature from the same place on which to base the correlation, and so my little bit of science background tells me that that's a good thing. So, are there any further questions before we call for the question?"

Councilmember White said, "Mr. Mayor."

Mayor Tecklenburg recognized Councilmember White.

Councilmember White said, "One last comment, having gone through this exercise now for a number of years, as I stated before, and to Councilmember Moody's point, sort of the death by a thousand cuts, let me assure you, it will be moving forward as a death by 999 cuts. This isn't over tonight, I promise you. For nine years, this will continue debate. We will continue to hear from both sides. Neither side will ever get exactly what they want. It will just continuously move forward inch by inch by inch. So, no one should think that this is going to be done or over. I have no expectations that's the case. I think it's just the Mayor's point, if it's incremental progress, not even anecdotal data, the 20,000 points of data say that this is probably a better thing for the animals. I'm not a horse person, I don't know anything more than anyone else in this room, I can just say that seems to make sense, but this should not be assumed to be over. It's not going to be. It's going to continue to be a discussion. It has been for nine years. It will be for another nine."

Mayor Tecklenburg recognized Councilmember Gregorie.

Councilmember Gregorie said, "Just a point of clarification, did you say that the 20,000 data points say that this will make things better? I think that's what Councilmember White just said. I just want to make sure we're on the same page."

Mr. Riccio said, "You're asking me, Councilmember?"

Councilmember Gregorie said, "Yes."

Mr. Riccio said, "Do I think it will make things better?"

Councilmember Gregorie said, "No, according to what I just heard from Councilmember White, it will based upon the data."

Mr. Riccio said, "The data is factual."

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Councilmember Gregorie said, "Yes."

Mr. Riccio said, "You can, I hate using the word, again, 'validate' it, but it's something you can look at and compare and make your decision based on the facts that are shown."

Councilmember Gregorie said, "We concluded that this would make it better."

Mr. Riccio said, "Exactly."

On a motion of Councilmember Lewis, seconded by Councilmember Shahid, City Council voted to give first reading to the following bill:

An ordinance to amend Chapter 29, Article V, Sec.29-212 (g), Weather Conditions, Subparts (7) and (8) of the Code of the City of Charleston pertaining to weather conditions for the operation for animal-drawn vehicles used for the purposes of touring.

The vote was not unanimous. Councilmembers Gregorie, Waring, and Moody voted nay.

Mayor Tecklenburg said, "You want to record the nays?"

The Clerk said, "So, against would be Councilmember Gregorie, Councilmember Waring, and Councilmember Moody. Is that it?"

Mayor Tecklenburg said, "The motion carries. The next order of business is simply to announce to you that our next City Council meeting on March 28, 2017 will not be here. We will be the guest of Councilmember Wilson on James Island at the James Island Recreation Complex. Is there any other business to come before Council?"

Mayor Tecklenburg said, "One more second, one more announcement. We will have our workshop meeting next Thursday from 2:00 p.m. to 5:00 p.m. at 75 Calhoun Street."

The Clerk said, "Also known as the HR Training Room."

Mayor Tecklenburg said, "This meeting is adjourned."

There being no further business, the meeting was adjourned at 7:07 p.m.

Vanessa Turner Maybank
Clerk of Council

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

TOURISM COMMISSION SUBCOMMITTEE:
ROUTES, PARKING AND TOURING RULES REPORT

November 23, 2015

A meeting of the Tourism Commission Subcommittee: Routes, Parking and Touring Rules was held this date at 4:00 p.m., City Hall, Council Chamber, 80 Broad Street.

Notice of this meeting was sent to all local news media.

PRESENT

Mrs. Jane Jilich, Chair, Mr. Robert Seidler, Mr. Robert Conley and Ms. Vanessa Turner Maybank, Mayor's Designee. **STAFF:** Ms. Davida Allen, Tourism Manager, Mr. Dan Riccio, Director, Department of Livability and Tourism, and Mr. Robert Somerville, Assistant Director, Department of Traffic and Transportation.

The meeting was opened with a moment of silence.

Public Input

Virginia Bush of the Charlestowne Neighborhood Association also spoke for the French Quarter and Historic Ansonborough Neighborhood Associations. She noted the neighborhoods issued a position statement which had been distributed to the Subcommittee members and Tourism Commission members. The neighborhoods appreciated the work done to date regulating the carriages. While they considered the ordinances a great start, they felt the ordinances needed to be tweaked and fine-tuned so there would be fewer unintended consequences, fewer questions and better opportunities for enforcement.

Richard Wiegman, owner of Charming Inns (John Rutledge House, Fulton Lane, Inn, Wentworth Mansion and King Charles Inn), said their groups liked a choice of transportation and many preferred taking carriages to an outside venue.

Mr. Wiegman was opposed to the time limitation on transporting for hire, which prohibits the use of carriages for hire after 7 p.m. The Convention and Visitor Bureau sets up a holiday packages that are a part of Christmas in Charleston to attract people during the off season in December. Charming Inns serves over 1000 people. They sellout every day and every night in the month of December. It represents $100,000 in revenue for the Circa 1886 restaurant, which is over 50% of their business in the slow month of December. Local residents comprise 75% of the business in the month of December.

The Kings Courtyard Inn, Circa 1886, the Wentworth Mansion and the John Rutledge house are all on the commercial thoroughfares. The traveling of the carriages is mainly through these thoroughfares and not through neighborhoods. As December is one of the slowest months of the year, there is no impact on the residential areas as well as traffic in general. If the 7 p.m. regulation was enacted it would end their 30 years of the dinner at the restaurant. He asked them to please look at what he viewed as an arbitrary regulation.

Glenda Nemes of 11 George Street distributed a list of statistics to the Committee members. She said they were not looking to end carriage rides or other commercial industries. They were looking to improve the quality of life. As there were no regulations or limits on carriages routes in Zones 4 and 5, cruise ships, tour groups, hotels or other specialties, she estimated there over 100,000 carriage rides allowed by the ordinance per year. Of that amount 54%, or 56,039 carriage rides, goes through Ansonborough 10-block neighborhood. Zones 1 and 2, which is in the French Quarter and South of Broad, are allowed 46% or 47,736 carriage rides per year. The proposed changes are for a 4% change or a lower level. She noted Ansonborough has had an onslaught of quality of life issues because of their location and other issues that were listed on the statistics. She said they hoped the Committee will look to regulate and make a balance so that it's more an equal balance to the residents of the City of Charleston as opposed to the commercial and tourism industry.

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Tommy Doyle asked the Committee to consider deferring the ordinances as many issues remained to be worked out for the T- tags as there was no industry input. In reference to the requiring 24 hours advance for transportation, he said if he had a carriage sitting at the barn that wants to do a Mills House to Mills House, and there is a T-tag sitting there, the way is ordinance is written it can't do the tour. It has to wait 24hours even though the T-tag could possibly be sitting there. He also indicated near the end of Sec. 29-289 it said if someone has not turned the T-tag in the day before or if they don't turn it in by 10 a.m. the next morning, the $200 reservation deposit will be forfeited, as well as the T-tag will not be released to next user.

Joe Elmore of the Charleston Animal Society asked the Committee to reconsider the proposed regulations for three reasons:

- They were concerned about the safety of animals
- Since Mayor-Elect John Tecklenberg has asked for a comprehensive review of tour bus and carriage horse operations, they asked the Committee to postpone the new regulations until the comprehensive review can be done.
- They asked that the recommendations Mayor Riley added regarding the safety of animals, passengers and vehicles be incorporated into the process and that the regulations be postponed until the first of the year.

A gentleman from Old South Carriage spoke in reference to the T-tags. He questioned why the Committee singled out the carriage industry. Peddle cabs are slow moving vehicles, they can also transport passengers from the John Rutledge House, and they operate until 3 a.m. He also noted Black Cabs will have five or six cabs picking up a group at Charleston Place Hotel. He felt it was unfair that the carriage industry is the only one of the transportation industry being singled out for this.

Ellen Farley of Charleston agreed that it should all be deferred until the new administration and the reconstituted City Council have had a chance to review the ordinances and being to put something in place that makes sense. She quoted Charlotte Robinson, an expert in port cities and urban environment, who wrote some comments to the Subcommittee on Animal Drawn Vehicles in 2006. Ms. Robinson said the interaction of horse drawn vehicles and automobiles in urban congestion have too often been dangerous and deadly for both horses and humans. She felt local code must address the safety of both and while decreasing the liability for the City. Regardless of how well the horse is trained or well driven, when horses panic the results are often deadly for the horse and dangerous or deadly for the passengers both of carriages and automobiles. The "extreme close quarters " in Charleston, in the evenings, made the interactions of a car with a horse and carriage highly likely. Since this will occur on a public street, the liability to the City can be very high if there are deaths and damages to people or property. Once adopted, the City has essentially put a seal of approval on horse car and interactions.

Ms. Farley concluded noting the lawsuits and liabilities to the City can be avoided by adopting good ordinances from the beginning.

Richard Knoth, owner of Green Horse Equine Sanitation, said no one has talked about clean-up of the routes 4 and 5, and they are not contracted to cleanup anything north of Calhoun Street. That represents about a 25% to 30% increase in coverage area. He asked if there was someone he could speak to or could he contact someone.

Ms. Turner Maybank said that has been referred to the Procurement Staff.

Tom Doyle, a resident of Charleston and owner of Palmetto Carriage Works, commented it is disheartening to listen to what might be in the numbers that come out because they are all very misleading. Everything that one does has an element of risk to it and they do their best to minimize it. If you looked back in the records to the number of tours they have done over the years and the number of incidents there has been, you would see they have very high standards.

In reference to the number of tours that were quoted earlier, Mr. Doyle said he knew those numbers were reached. It would be easy to multiply the number of tags times the number of hours. That would incorporate every carriage full beginning at every hour of arrival at the same time without taking into account any time it takes to issue tags as soon as they are back, they get them to fill up again, not

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

take that 15 minute rest period, go down the road to the gate and go out again. The numbers of tours they actually do compared to the number of projected tours they could possibly do are very different.

Mr. Doyle stated he has done this for 35 years and have enjoyed his relationship with Kings Courtyard Inn. He hoped they can continue this. He has enjoyed providing a great service for all visitors who come to Charleston, not only for the touring but transportation. These tours and transportation are limited in commercial areas. To allow commercial operation to not operate in a commercial area seemed counter-intuitive to him.

While he appreciated the time and effort of the neighborhoods, Mr. Doyle said to try to cram this all in so quickly is not going to work. He agreed with Mrs. Farley and Mr. Elmore that this will take a while and put it off.

Ravi Sanyal, an attorney representing Palmetto Carriage Works, said they were here on October 28th and his notes said Councilmember Gary White made the motion to defer the ordinances. It has only been about 2 ½ weeks. Normally on a deferral you're going to have more time from when the meeting happens until the next time it is brought back up again for a vote. He said the whole sense of this is more study needs to happen from the industry side and the citizen side. He suggested they take the time and it be deferred as Councilmember White indicated.

Dezarae Jones-Hartwig, board president of Association Professional Humane Educators, read a letter into the record. The organization were concerned about the plight of horses in Charleston's carriage industry, especially in the case of a horse named Blondie who collapsed on the street and remained on the pavement for two hours. They asked the city to review this accident to minimize the chances for it to reoccur.

Bobby Knoth of Carolina Polo and Carriage said he appreciated all of the people who moved to Charleston to help refurbish all of the old homes and come back with all of these good ideas. He said he has bookings for 8 p.m. for Spoleto, weddings in April and nightclubs in March at 9 p.m. He questioned what was he to do with his clients. He said they will have some booking problems if the ordinance went through.

Broderick Christoff of Charleston Carriage said one of the recommendations that came down from the Tourism Advisory Committee, third one down below changing these two items, was to leave everything the same until a comprehensive traffic study was done. He felt this would be in the best interest of everyone as he didn't think enough have gone into the writing of the ordinance. At the last Tourism Commission meeting many representatives of the carriage industry objected to not knowing about this until the last minute and wanted to be included in the discussion. He noted had it not been for Mr. Riccio they would not have known about this subcommittee meeting. They were also told they could not speak at the Tourism Commission meeting, which will take place in an hour.

Mr. Christoff pointed out 56,000 tours sound like a big number until you realize 23,000 cars go down Lockwood Drive every day. The city has a traffic problem. The carriage industry carts are slow moving but it takes an hour to get off the peninsula and you spend ten seconds behind a carriage. He indicated they spoke about Blondie the horse that fell down and got back up. Everyone knows the horse's name but he questioned if anyone know the name of the College of Charleston student who was killed on his bicycle last month on Meeting Street between George and Society Streets. His name was Christopher Bates.

Mr. Christoff said the City had bigger issues related to traffic and transportation and not related to carriages. If change is going to happen it needs to include the industry. It needs to be done in a way that satisfies all parties involved. He encouraged them to defer this and take the time to get some more answers.

A gentleman from the Charlestowne Neighborhood Association said at the last Tourism Commission meeting the carriage operators and the neighborhood associations seemed to agree on deferring this. He said he would think the new mayor would bring the carriage operators and the neighborhood associations together to try to figure out how to make this work. He didn't think the neighborhoods wanted fewer carriages. They need more quiet time in their neighborhoods. He believed there is a solution that would benefit the neighborhoods and the carriages operators.

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Chair Jilich closed the public input period.

Ms. Turner Maybank stated for every meeting that was held where this item was discussed there was notice and there was representation from the carriage companies. No carriage operator was singled out. Whether or not someone attends a meeting is beyond their control.

Routes, Parking and Tourism Rules Committee

a. Discussion /Recommendation for Ordinance Amendment for Transportation (T-Tags)

- Chair Jilich noted no one is going to be happy with whatever the subcommittee does. The neighborhoods wanted to have five carriages for transportation. There were originally ten carriages and they compromised on eight. The subcommittee has already approved this. She brought it back up because there were a few things that were changed, one of which was staff changed the number of carriages from ten to eight.
- Chair Jilich raised the issue regarding the 7 p.m. limit. Tours are allowed in the commercial zones until 9 p.m. under current regulations. She said 7 p.m. does apply to the residential and since it is under the current ordinance, they need to honor the 9 p.m. limit to the commercial districts.
- Some of the commercial tours will come under special events.
- Mrs. Bass stated definitions for what transportation is should be written in the code and purposes for why the T-tags would be allowed should also be written in the code.
- Mr. Seidler said a need for evidence of regulation for Zones 4 and 5, as well as the T-tags, was initially generated by the people for evidence of regulation. The evidence was carriages in the street without tags. This was what was really driving the discussion on this issue. He said the carriage industry is welcomed to do that. His sense is getting into the timing, the numbers and things like that are taking it beyond what the Tourism Advisory Committee was looking to do. He felt there are ways they could initially satisfy the wishes of the Advisory Committee without getting so specific on details. He noted the actual wording of the strategy was to include carriages, not solely carriages, among the vehicles regulated for transportation (hours in areas, T-tags and manifests). He said there was cause for deferral on this because they were really talking about any kind of transportation going into the residential areas. What is driving that demand is not that carriages want to be in that area. There are events that are in these areas that are causing it.
- Chair Jilich said these ordinances are only going to be for a nine month pilot program that would give them time within that time period to see if its working, if there are problems and be able to tweak it to make it work better. At the end of the pilot program it will come back to the subcommittee before it becomes a part of the code.
- In reference to the time limitation on transporting for hire, Mr. Seidler felt they needed to hear from those who operate businesses in the residential area and what they feel what the impact will be on their ability to conduct business. He didn't think the carriage industry is trying to get away from evidence, the evidence being T-tags and similar things. He thinks the Committee is potentially creating a significant burden on not only the carriage industry but on venues that operate in the residential areas. The impact will be they will get some other form of transportation. The Committee is singling out the carriage industry. He said what they need to look at it as a whole as a joint decision between tour and transportation.
- Mr. Seidler said there is an opportunity for them to provide evidence of regulation in a pilot program that is not so quite heavy as potentially will affect the carriage industry, the venues that operate and the neighborhoods. Ms. Turner Maybank concluded if that is what the subcommittee wants then it remains as is until there is some other regulation in place. If Mr. Seidler is saying it needs to be studied, if it is being studied, everything remains as is.

- Robert Conley said both the industry and neighborhoods have smart people. He suggested they get together and bring the subcommittee and City Council an ordinance, even if it is a pilot ordinance, that works for the both of them. It's not going to happen in the hands of the subcommittee or if City Council passed an ordinance. He said their time is better spent trying to resolve this by meeting together. The process will only work if they cut the subcommittee out of it. Bringing things to the subcommittee will not get this resolved.
- Mr. Seidler moved to defer with the understanding that some member of the current Routes, Parking and Touring Rules Subcommittee will act as a facilitator to gather information that represents both the residents and neighborhoods, and carriage industry around transportation regulations. Mr. Conley seconded the motion. The motion passed.

b. Discussion /Recommendation for Ordinance Amendment for Zones 4 and 5

- Chair Jilich this was planned to be deferred. The City's Department of Traffic and Transportation wants to study it further.

Chair Jilich noted since both ordinances were deferred there is nothing to discuss and there was no need for a Special Tourism Commission meeting. Elizabeth Alston, Chair of the Tourism Commission, concurred.

There being no further business to discuss, the meeting was adjourned at 5:05 p.m.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

CITY OF CHARLESTON TOURISM COMMISSION
February 4, 2016

A meeting of the City of Charleston Tourism Commission Subcommittee: Routes, Parking and Touring rules was held this date at City Hall, 1st Floor Conference Room, 80 Broad Street.

PRESENT

Mrs. Jane Jilich, Mr. Robert Seidler and Mr. Bob Conley. **STAFF**: Mr. Robert Somerville, Assistant Director, Department of Traffic and Transportation, Ms. Davida Allen, Tourism Commission Manager, Dan Ricco, Livability/Tourism Director, Amy Southerland, Tourism and Special Events Manager, Rick Jerue, Tim Domin

Jane Jilich called the meeting to order. The meeting was opened with a moment of silence. Jane then opened the floor for public input.

Ben Doyle expressed that he was surprised and concerned about the purpose of the meeting. From the last meeting, he understood that the carriage companies and neighborhoods were supposed to get together to discuss the issues with unregulated transportation and for zones 4 and 5.

Jane Jilich then explained the purpose of the subcommittee meeting and that the public meeting to be held on Monday February 8th would be the meeting for the public to express their concerns with thoughts to move forward with the Tourism Management Advisory Plan recommendations.

Broderick Christoff, owner of Charleston Carriage Works expressed that he was under the impression that the community was to sit down with the carriage companies to come to a resolution together. He believed that by working with the neighborhoods there is a way for both parties to be happy. He felt that the Tourism Commission was coming up with their own resolution without the input of carriage companies and neighborhoods. He feels that the subcommittee has been coming up with their own rules. He felt that there wasn't enough notice for any of the meetings. Broderick mentioned that there are other portions of the updated management plan that has not been implemented as well. The carriage industry feels that it's important to do it right rather than doing it in a rush to do it right now. They feel that there should not be a timeframe.

Elizabeth Bradham, downtown business owner expressed that she would be more than happy to work along with the carriages to resolve any issues.

Glenda Nemes, a bed in breakfast owner in the historic district and a quality of life representative of Ansonborough referred to the last meeting when Bob Conley gave the idea for both parties to meet on their own. She was surprised to see that the subcommittee had agreed upon a new map for zones 4 & 5 with no traffic study being done to make any new decision. She explained that In the Ansonborough neighborhood there are 22 factors that cause an increase in traffic. She wants the voice of the residents and public to be heard and all the stakeholders opinions taken in consideration. She wants better long term solution and waste less time on various meetings.

Tim Domin, Legal Counsel communicated the appreciation for the residents and carriage companies' positions, attendance and the importance of both parties to the solution of the matter. He clarified the policies of public meetings being held through the City of Charleston. He also explained the process that has been discussed with the staff to hear and implement all parties' recommendation to resolve the problem. He apologized if both parties felt that the public meeting was last minute but there is a need to start implementing change.

Glenda Nemes express that she doesn't have contacts for any carriage companies to call a meeting with them.

Jane answered that all carriage company information is public and she ended public comments. She again expressed the purpose of the meeting. The purpose of the proposed ordinance is to have a place to begin implementation process of the recommendations. The meeting was to also bring the entire subcommittee up to speed on the recommended changes made by staff to the map for zones

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

4 and 5. She explained that no decisions are being made in today's meeting just an overview. The transportation proposed ordinance changes has not been changed at all.

Bob Seidler asked Jane to explain the changes from the last proposed ordinance to the current proposed ordinance, maps and the number of medallions.

Jane explained that the new map minimizes the overlapping of zones in the current proposed ordinance being brought before the subcommittee.

Dan Riccio explained that the current ordinance proposal does away with the "overflow" zone. He felt that decreasing the overflow of carriages and the congestion in the market area should be at the discretion of the tourism office on Easter, Memorial Day and other major holidays.

Robbie Somerville spoke about ingress and egress. The carriages are bottlenecked with the existing ordinance. With the current proposed ordinance, there will be more flexibility for the carriage routes.

Rick Jerue introduced himself as well as his duties to the Mayor. Just coming in on the conversation, he felt that there was a rush on the process and the scheduled public meeting on Monday needed to be postponed to give the carriage companies and neighborhoods time to meet on their own and talk amongst themselves.

Tim Domin explained the meeting policies as it relates to having a quorum at any public meeting. He revealed that the purpose of the meeting on Monday was to give everyone an opportunity to speak their opinions aloud.

Jane explained to Rick what the process has been since the latest Tourism Management Plan had been put into place by Mayor Riley in 2015. During the implantation of the plan, there was a 6 month timeframe for a pilot program.

Rick Jerue suggested giving the carriage companies and neighborhoods to few weeks to meet and bring something back to the subcommittee and or the Tourism Commission with Dan Riccio acting as the liaison from the City of Charleston staff.

Bob Conley feels that Robbie and Dan should have a presence at the meetings with both parties so they will know what can or cannot be done on behalf of the city staff. At some point something has to be done to fix the issues. There will come a point where there has to be a deadline put in place or things will just continue to stay the way they are. There are a lot of smart people in both parties (carriage and neighborhoods) that can figure out how to begin the process of their discussion.

Bob Seidler referred to the process of the late night ordinance committee explaining that the same process could be used for this current situation.

Tim Domin proposed that Jane gives a soft deadline to the carriage companies and neighborhoods to have the outcome of their discussion

Jane then asked the committee members whether the public meeting set for February 8th should be canceled in order to let both parties meet on their own time to begin the process. The members agreed. The carriage operators and neighborhoods will report to Dan Riccio as he will provide a report to the full Tourism Commission on February 24th.

Meeting was adjourned.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Minutes from August 24th Meeting

Members in attendance

Dr. Sabrina Jacobs, - Performance Equine Vets, LLC
Dr. Charles Ernst, Edisto Equine Clinic
Angela Drake Black, Historic Ansonborough Neighborhood
Annie Caroline Reid-Charlestown Neighborhood
Broderick Christof, Carriage Industry Representative
Ron Morales, NOAA
W. Kurt Taylor, Charleston Animal Society
Chair- Dan Riccio, Director Livability & Tourism

City of Charleston staff in attendance

Amy Southerland, Livability & Tourism
Shannon Tilman, Livability & Tourism
Janie Borden, Legal
Lin Beets, Information Technology

Dan Ricco: started the meeting by welcoming the group and introducing Rick Jerue, Senior Advisor to Mayor Tecklenbug.

Rick Jerue: Mayor Tecklenburg has been in office for 7 months now so it is his first summer experiencing as Mayor the carriage industry and Dan's first summer with the new department and implementing the Tourism Management Plan. We thought it was a good time to get folks together to think about this issue once again. I want to thank all of the committee members for being ready to delve into this and make recommendations. All the Mayor would ask of you in this process is to be as objective as possible. Try to come to this discussion with no preconceived notions. Try to figure out the best way to conduct the carriage industry in a way that treats the animals humanely and with the dignity and respect they deserve. With that, good luck and you are in good hands with Dan.

Dan Riccio: Thank you Rick. First of all, I would like to thank the committee members for taking time to help us delve into this issue with the temperature and the heat index. I am going to go over some guidelines. They are in front of you. Then I will explain the process of the approach we are going to take as we go through this process. The purpose of this committee is to discuss the current temperature and heat index and to review the process for when to resume and cease carriage operations and to determine where the official thermometer is located. The specific ordinance of the City of Charleston Code of Ordinances to be reviewed is

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Section 29- 212, g. 7 & 8 which pertains to the weather aspect of the carriage industry. The process that we are going to follow:
The discussion at the committee meetings will be limited to factual research. The committee will be made up of voting members and non-voting City staff. Non-voting City staff will be available as support for the committee. A quorum consists of five people.

All recommendations will be voted on by members. The committee will make recommendations to the Tourism Commission who will make a recommendation to City Council for approval. If no consensus can be reached, all of the recommendations on the table will be presented to the Tourism Commission for a decision on which recommendation to present to City Council.

Regarding public attendance, the committee welcomes attendance at its meetings by members of the public. While there will be no opportunity for citizen participation at the committee meetings, the public will have the opportunity to comment when the recommendations are presented at the Tourism Commission and City Council.

The makeup of the voting committee is as follows: Dr. Sabrina Jacobs, - Performance Equine Vets, LLC, Dr. Charles Ernst, Edisto Equine Clinic, Angela Drake Black, Historic Ansonborough Neighborhood, Annie Caroline Reid-Charlestown Neighborhood, Broderick Christof, Carriage Industry Representative, Ron Morales, NOAA, W. Kurt Taylor, Charleston Animal Society and Chair- Dan Riccio, Director Livability & Tourism.

The City staff is as follows: Amy Southerland, Livability & Tourism, Shannon Tilman, Livability & Tourism, Janie Borden, Legal and Lin Beets, Information Technology.

With that said this meeting will be the first discussion. I thought I would start it out with a better understanding how temperature affects heat index, so I have asked Ron Morales to give us an overview and then I have asked Lin Beets with our IT department to explain why the City uses WeatherBug and why the thermostat is located where it is now. Then we will go to the Doctors for some background on physiology of the carriage animals.

Ron Morales: As I was sitting here I was looking at Article 29 of the Code and the current temperature and heat index seems pretty high, at least in thinking of human beings. Our current excessive heat warning that takes into account temperature and humidity is 115 degrees. If you look at the heat index chart which takes into account temperature and humidity, you can't just look at temperature. For example it could be 92 degrees, but the dew point temperature is 60. Dew Point is when you get dew. Around her in the summer, June,

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

July and August you are typically getting heat index values between 98 and 103 degrees. That is a high temperature of around 92 with a dew point temperature in 70's. We have had a particularly hot summer here. We have broken records and are on track to break records for the month of August. The one thing about temperature records that is tricky is where that thermometer is located. Back in Colonial times it may have been on top of a building, then it was maybe moved to the street, then it was moved to the airport. So records can be tricky and we have to use them cautiously.

What we typically experience here is 100-103 heat index almost daily. Once we reach 105 it becomes dangerous. If we think we will reach 105-115 we will issue a heat advisory. This is for humans. Once we reach July we raise the heat advisory to 110, but the excess heat warning is always 115 or higher. If you look at these charts for heat index, what they do is they break it out by temperature and relative humidity. So as you get more humidity you get higher and higher heat indexes. It gets more dangerous to be outside. Those levels that I told you are typical are in what is considered extreme caution. This every day here in Charleston and once you get to 105 is dangerous and 115 is on the high end of the dangerous. This time of year our heat indexes are dropping and the heat indexes are generally not an issue as we get into the fall. The peak times June, July and a good portion of August, but depending on the weather patterns we can have some issues in the fall. One thing I wanted to note is that heat indexes can continue well into the evening hours. We have had the heat index around 100 in the evening and the moisture is still very high. Unless anyone has any questions, this is kind of what I wanted to get at.

Dan Riccio: Lin is from our IT department and was on the committee that tested WeatherBug and came up with the location for the units, so he can tell us about that and give us an idea of how WeatherBug works.

Lin Beets: Four or five years ago we went through this process to see how to measure temperature and at that point they were using WeatherBug, but not at its fullest potential. We started looking at other systems. We were looking for systems that would allow us to view the data and recall that data. We could go to Lowe's and buy a thermometer, but the problem comes into play is that the carriage companies want to know if that is a valid temperature, so we wanted to be sure it was valid. We did some research with Reese Scientific they work with MUSC and other hospitals around. We were ready to sign a contract with them, but when they learned of some of the strife that can come with this, they backed out. We went back to WeatherBug after that and this is the first time we really understood what they really do. Channel 2 uses it, I believe there is one at the airport and the city has four WeatherBug units. The system stores data in a database. Earth networks is the name of the company that runs

WeatherBug. We can go in online and find out how hot it was on a specific day at a specific time. They are well known, well respected, so that is why we went with them. Next we had to determine where to put the actual systems. WeatherBug will not put their systems in on ground level. They have to triangulate off of each other all over the world. They have to be at a certain height. We tried to get them to put it on the side of a building that had a step off the side, but they would not do it. There is one on the roof of the Dock Street, one on the Double Tree hotel at the market and one on the Gaillard Center. Does anyone have any questions?

W. Kurt Taylor: Would there be anything that would stop the City from purchasing its own system and storing it in its own servers and its own network.

Lin Beets: I don't know that the City would be opposed to that, but what we are up against is being objective. We can say it is 98 degrees and we need to take the animals off the streets, but then the carriage companies might say well it is only 95 on our thermometer, so who is right.

W. Kurt Taylor: As a former County administrator the City determines where the official thermometer is located. I believe that is the way that it reads in the ordinance. I am not here to debate the policy with you because I know that is not your role, but I want to know if it is technically feasible.

Lin Beets: Yes, it is technically possible.

Dr. Jacobs: I guess I would like to know a bit more from the factual information on the temperatures, what the actual temperatures were throughout the summer and the last few years. If we could retrieve that information for the next meeting for the committee members to have that would be great. How many days was the heat index at 125 etc.

Ron Morales: I would say never. That is very high- it is off the chart.

Dr. Jacobs: Can we find this out? This would be helpful when we are voting on what we like or what we think that the temperature should be it would be nice to know what that is as far as working days. Trying to approach this from as factual a base as we can. That or temperatures or anything that is in the regulations. For example if someone recommends that the temperature should be 90 I want to know what that correlates to and I think that the other committee members will find this to be good information as well. in regards to placing another thermometer, it is something that we can all discuss. What about having multiple thermometers and having an average. The horses are not just in one location in their work.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

They are traveling around the neighborhoods in the shade in some areas and in the sun in some areas. No one thermometer is necessarily the best answer.

Lin Beets: This is why we set up multiple stations, the market, Dock Street and the Gaillard. The other option we have is to look at the threshold where the horses are. We could put a thermometer at the Market and say that at this time at this location the temperature is.

Ron Morales: I need to interject here. You can get whatever temperature you want depending on where you put the thermometer, so you have to have a standard place. We don't measure temperatures on roofs and in parking lots; we have a standard way to measure temperature. They have to have air, they have to be aspirated which means they have to have air flowing around them. It is going to be very hard to reach a 98 ambient temperature. It is rare here because of the breezes off of the water. The temperature on the roof or in a parking lot you will get really hot temperatures. If you are looking at the thermometer at your house you will find a higher temperature than we will report because the thermometer at your home is not sighted properly. You don't site a rain gauge under a tree; it has to be out in the open. You could put one on a roof, one on the sidewalk and take an average, but it isn't really going to help you. Our downtown thermometer is never as hot as the one at the airport even though it is sited properly. You have to be consistent with how they are sited and that they are all at the same conditions.

Dr. Jacobs: I think that is why it is perfect that you are here because we are not temperature experts. You are here to guide us in how to actually measure these things because we may all have different ideas on how we think it should be done, but we may be incorrect. Can you explain to us why the WeatherBug doesn't want to take temperatures at lower levels?

Ron Morales: I will try, but I can't endorse anyone. The key thing is that I would keep the instruments at the same height. You never measure in the sun. I think a standard height for measuring it is 5 feet. You have to be consistent. As far as what instrument you use, I can't endorse any one company. I don't know if the WeatherBug cares about how they are sited.

Lin Beets: They do.
Ron Morales: I haven't seen one to know if it is sheltered etc.
Lin Beets: We can show the units to you.
Ron Morales: I can tell you if it looks reasonable, I am sure it is.
Lin Beets: they are very particular about where they are sited.
Ron Morales: If they are that particular about where they are sited that is good.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Dan Riccio: I think going forward with this we need to stick to an ordinance, my question is if we are taking a temperature from three different locations which one do we use. We have three stations, so we would have three different temperatures. From the legal standpoint, for us to prosecute if we had to, how do we do this?

Ron Morales: You said you would take an average. The average is what you base your answer off of, then you say our official temperature or heat index is this and it is based on the average.

Dr. Jacobs: You just said that you feel that it is important to calculate temperature and the heat index. Could you dive into the temperature as far as Charleston goes and what you consider to be hot?

Angela Drake: June July August is what he said in his initial discussion.

Ron Morales: That is not as easy because it has to do with people's ability to put up with stuff. For example, I grew up in the New England area and a day like today would be miserable for someone from that area. Typically what makes things miserable for people is the addition of that moisture in the air- that humidity. That is really what it is. People will say it is really hot, but what they are feeling is that humidity. When it is very humid and the heat index is hot, you will sweat and the sweat doesn't disappear. The sweat has to disappear to cool you. You don't want to use a fan that blows water; it adds more moisture and will not cool you. If you take moisture away and just look at temperature, once you are in the mid 90's if it is humid or not that's probably a concern. If it isn't humid, you will be sweating a lot, but animals don't perspire in the way that we do.

Dr. Ernst: Actually that is the horse's main way of cooling down. Whereas a cat or dog would pant, a horse will perspire. They are really good sweaters and they have a large surface area to dissipate heat. The point about the humidity and evaporation, there is a lot of physiological variation in horses. I have dealt with a lot of horses who are not sweating this summer, not carriages horses, but horses in my practice. These horses cannot tolerate any heat and have to remain in the shade with fans to keep them cool. The only thing I would like to comment on is that there is a lot of variance in what a horse can tolerate. Some sweat better than others, just like people. The key part is the internal temperature taking of the animals when they come in off of the street. Horses' internal temperatures are much higher than ours. They tend to be between 99 and a 101. When they get to 103 we start to worry about problems. That is when things need to change. My only caveat to this whole discussion is that this is an important to consider the internal temperature. I think in my mind the horses internal temperature is much

more important than how hot it is outside. This shows us how this particular animal is doing on that particular day.

Angela Drake: Who takes the temperature? Is it the City or is it the companies?
Dan Riccio: The carriage companies. Usually before they go out and when they come back in.
Broderick Christoff: They take the animals temperature first thing in the morning and after every single tour. There are logs kept on this and the City checks this information.

Ron Morales: It seems like you could have some threshold to start taking their temperatures.
Dr. Jacobs: We have that. As soon as the temperature hits 85 degrees they start taking the animals temperature. For all of the days that are above 85 degrees there are records.
Angela Drake: So they must be taking it almost every day.
Dr. Jacobs: Each company has binders of just horse temperature logs.
Ron Morales: You are also concerned that even if the animals' temperature doesn't get to 103 that it still might not be humane at a certain temperature.
Dr. Ernst: I think you have to take into consideration the animals' ability to withstand the heat. I am not opposed to the ambient temperature and the heat index. If they reach 103, they have to cool them down and take them off the streets. If they reach 104 they have to call the vet. I think we need to keep in mind it is important to realize that there are some individual markers as well. I think in my mind that is almost more important.

Dan Riccio: I guess at this point what we need to discuss, I know Kurt wanted to bring up his ideas. This will give everyone an opportunity to discuss their ideas on how this process should go.

W. Kurt Taylor: If I can finish that discussion for a moment and then I will start with what I wanted to discuss. I think that assigning a max temperature in order to protect the health, safety and welfare of the animals used in the tourism industry. We are not trying to find an objective temperature, what the average might be for the City of Charleston. The animals don't operate four stories in the air; they don't operate down at the harbor in the water they operate in the environment that they operate. That is kind of the point of getting the temperature in the environment in which they operate. There are in multiple places around the city as they operate their tours, but is that feasible to measure the temperature, a scientific measurement, I don't know, but that is the problem that we have with the thermometers being five stories up at the Dock Street and four stories up at the Double Tree. That is not the environment in which the animals are operating and that is not seeking to protect the health, welfare of the animals.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

To move to another point, first off let me say thank you very much. I appreciate the City taking this step and I appreciate the opportunity to be here and respect and value the opinions and views of everyone on the committee. It is very much a significant issue. It is significant to the carriage operators who have been in this industry for many years. It is significant to the tourists who like to take the rides and it is significant to the members of the Animal Society who care about the health and welfare of the animals. I am not saying that the carriage operators don't. We are aware that they do, this is their livelihood.

As I joined the Animal Society back in April after 25 years in local government with Charleston County I looked at this issue and tried to think of it in a problem solving way as I have seen that this issue has come up many times before. The first ever was in 1993 when a series of recommendations were made and again in 2006 with some other efforts in between and here we are again with the issue of what is best for the animals. I thank the City for starting the effort, but we believe that there are other issues that need to be looked at such as the compliance with all of the provisions of the current ordinance whether they are being enforced, how they are being enforced and how they are being managed. Don't want to get off topic of the committee, but we intend to continue looking at these issues and the entirety of the welfare of the animals.

As I started thinking about this to try to prevent the issue from continually coming up to everyone's discontent, the carriage operators of course and to others. How is there a way to solve it to make everyone happy? Instead of looking at it arbitrarily as in looking at what some other government has done to set their temperature limits, not knowing how they arrived at it, not knowing their differences in geography. It seemed to have a science based approach that is particularized to the industry, the horses and the terrain of Charleston, SC.
Before the formation of this committee I was working to that end and was making calls to veterinary schools and universities just to try to get information. I am a lawyer, I am not a scientist, but to go to the source to go to the expertise in seeing how we should go about this task. I have spoken with the Dean at the Veterinary School at North Carolina State University, Dr. Paul Lunn who is an equine specialist and I have also spoken with Dr. Jenny Ivy at the University of Tennessee. She is a PHD in the department of Animal Sciences there. I asked them what we can do to try to come up with some revised guidelines using the existing codes as a starting point, using science trying to pursue a reasonable solution so that there could be some consensus to the welfare and treatment of the animals.

What you have in front of you is a summary is what we came up with and I have also have tried to do some of my own research into this. The studies that I have found every one of them says even if it was as precise as the Retrospective of carriage and mule horse welfare in Charleston,

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

SC done by a man from Austria in 2012. At the end of that article that veterinarian says that additional research needs to be done to determine appropriate parameters for the welfare of the animals. She reviewed the records. They all say that studies have been done for performance animals, but nothing that has been done for carriage animals or more precisely a study of the carriage industry in Charleston, SC. Dr. Ernst's late partner even said it "if you want to the solution, you have to find the research".

What we would like to propose is to have a scientific study conducted as part of the committees operations. First off though, at the recommendation of NC State a review of the literature that exists on working animals to the extent that there has been a study in Chile on carriage horses and tourists carts. It concluded that more study is necessary. The idea is that we would assist by having independent doctors complete a study beginning first with a review of the literature and seeing what data is there and identifying the gaps that would require more study. This is something that the PHD at NC State is prepared to do and he is also an Equine Specialist. He is the Dean of the School. Dr. Ivy from the other school has submitted a research protocol that would involve first off a study of the carriage operators to collect data and face to face interviews. Then it would involve measuring the animals in the environment as they are working, a variety of measurements including heart rate, blood chemistry, temperature etc. It would be creating the data specifically for Charleston, SC to address objectively and precisely the issue that we have here and hopefully minimize the ability for it to be a decision of the committee and the City to be incomplete and arbitrary or anything of that nature.

The Animal Society is prepared to pay for the research of the Doctor at NC State. It will take him about 5 days to do this research and then Dr. Ivy would be happy to work with the other doctor with any gaps he sees in the research. Two doctors from different universities will certainly add some credence to the work and some independence of those who will review the reports. She would begin her work, logically as Ron said we are out of the heat season for this year, logically then her work would need to extend into the heat season next year in the worst part of their work environment. What I would love to offer for us is for the Society to bring Dr. Ivy hear for the committee to talk to. The bottom line is that we believe a science driven approach is the objective way, the precise way to address these issues. The objective of the animals should not be looked at as what they can do at the upper limits of their performance, but at what they should be doing so they can continue to thrive, to be happy, to continue to work and the operators can provide the tourist amenity that they do. That is my recommendation from the Charleston Animal Society. I would be happy to answer any questions.

Dan Riccio: So that would prolong reviewing the current temperature.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

W. Kurt Taylor: She would not be looking at just the temperature, but she would also look at the load on the carriage as well, so we would combine the two issues that the City initially said they would address. I realize that this does not match the intended schedule, but it seems to be a more comprehensive way to collectively.

Dan Riccio: If you look at this, I know you know it like the back of your hand and I just want to get the City's position out there. People think that we sit and do nothing and let the animals go as they will, don't monitor and don't do anything and this perception is totally false. We have in the ordinance other methods, such as taking the temperature. Since the Blondie incident last year, I did a review trying to determine the cause of that fall and it was determined that it was not related to heat and not related to treatment of the animal. I made several recommendations in this report and the first recommendation I made was for an Equine Manager on staff to check daily on the animals and we do that. We go to the barns, she checks the records, so it is not just one part of this ordinance, but it is the holistic part of it with checking the barns to be sure that the equipment is correct, making sure that they are taking the temperatures. You can go to any barn as she does and see that they are taking the temperatures. She witnesses the temperatures being taken and I want the committee to understand that this is an important part. The heat index of 125 is high, I wouldn't want to be out in that and that is why we are here today, but there is a lot of mechanisms in place to assure that the animals are being taken care of. Speaking to the industry and I am not taking sides, but I would find it difficult to believe that they would want to harm their animals if they are trying to make a living. I just want to get that out there. We receive many emails from the community which we do respond to. The media often skews what the city does and that is troublesome to me when I know we are working very hard. Yes, this is just one part of the ordinance, but all together it is to ensure that the horses are taken care of.

Dr. Ernst: To piggy back on that, I guess my other thought is that what is driving this committee forming again. Is it public perception, media driven?

Dan Riccio: I can answer that. I took over Tourism in December and now it is a component of the Livability Department. I hired a Tourism and Special Events Manager, Amy to come on board to take care of the management side of tourism. We have sat down many times to review the ordinances, they are out dated. Every part of the ordinance is out dated. We have been doing a comprehensive review since we started. We have other issues in play with the zones and things that don't deal with the welfare, but yes complaints come in obviously that brings attention from the community. That is one component of it. Coming in to this, I wanted to make it a point to review every section of Chapter 29 that deals with Tourism to make sure

that it is current and up to date, but the complaints did drive this to be reviewed sooner rather than later.

Broderick Christoff: I would like to speak to Dr. Ernst's question also because I believe that part of what drives these reviews is the same group of people. Every few years a group forms and puts us in this room together. Last time this came around it was the same group, they get the media involved and misinform the public and lead them to believe that the carriage industry is doing things that it isn't. They don't have an understanding of the type of records that we keep and how available they are and that the City actually inspects them. This time around it is the Charleston Animal Society so some of these people are on the board and Kurt with all due respect is a lobbyist for the Animal Society.

I did my own research on the Humane Society's in SC and Charleston is the only one that has its own lobbyist. The industry feels at a disadvantage because we don't have the millions of dollars that people that hire lobbyists have. We can't run full page ads in the newspaper. We can invite the public to watch what we do on a hot day, but they don't come. They would rather believe what they hear. This is about money; this is about groups that raise money on the notion that horses are somehow being mistreated. The proposed study sounds great on the surface. The 1993 study was exactly that, it was three vets from three different universities and that still wasn't good enough.

The last time we looked at this we had vets involved including Dr. Malark who is an outstanding equine veterinarian, one of the best in the field. Here we are today again and the Animal Society was involved last time also, but that wasn't good enough. So if we take on another study, one issue is that we don't know if the Animal Society has handpicked these people. There are lots of vets that will work for other animal rights groups, so we don't know if there is a way to trust in the data of the study. I honestly don't know given my history of being involved in this that another study would prevent us from doing this again four to five years from now. We have been collecting data for years and Dr. Jacob looks through it every year. It isn't a secret that it is there and I think that we could do a lot of our own analysis of this data and how the animals perform in Charleston on certain days when the temperature is whatever or the heat index is whatever. This 125 is not anything that we came up with, I am not sure where it came from. The last time we met like this the group decided to do a THI. It is simply the temperature plus the humidity. There is a lot of data out there for this and a lot of performance horses, cross country horses are stopped at 180. This is what we originally decided to use. That is what we expected to see, but for whatever reason it was turned into the 125. That is not a number that anyone in the industry supports. Also, to echo the comments too is that when NOAH looks at temperature and issues a heat index warning for

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P... - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

people. That isn't a temperature measured where peoples chests are that is the temperature measured the normal way that temperatures are measured. The government protects the people by issuing these warnings and I don't really see any advantage to establishing multiple thermometers at great expense. We will probably end up with the same numbers as if we were to measure the temperature the normal way.

Angela Drake: Gentleman, I respect both of your opinions and the science based approach is an approach that would take time and effort. This committee as you said is to discuss the heat and heat index and having the input from NOAH has taught me a lot about the temperature and heat index. You said in past studies it has been massaged and it wasn't reflected in the regulations, so let's work together to come up with the numbers. Perhaps once that agreement takes place we could have a pilot program for one season and have that program in place with the suggested index or however you want to measure it. Through this program we can have a consensus of the residents, the industry, the City etc. That would be my suggestion.

W. Kurt Taylor: If I may, since I was the one that was verbally attacked I would like to respond to the statements that were made. First of all I would be happy to share with anyone who wants the email I sent to the universities reaching out for information. Fully transparent with nothing to hide, I don't know these people and I am frankly offended that you would suggest that I would hand pick something to skew something. I am here to try to solve a problem. I am here to try to do something and to say that there have been other studies done, but they weren't good enough isn't accurate. There have not been other studies done of this sort. There have been reviews and observations, but not scientific studies. Let me say again that I would be happy to provide copies of the article called "Veterinary Care of Horses" by Dr. Kenneth Marsalas in the DVM 360 magazine. "There is a distinct lack of specific information on how carriage animals handle heat, humidity and other issues." "Studies need to be focused on these horses. If you want answers then you need to find the research. The particular area that needs research is the area of humidity that can be tolerated by horses. No other issue generates as much debate". Then the article was also a retrospective review, meaning that those who did the review looked at records and at the end it says "further studies are needed to define acceptable minimum standards for carriage animals throughout the United States. Particularly prospective, not retrospective studies should be performed to collect objective evidence based data to determine stress levels in the animals". That is what we are suggesting should be done. I would be happy to share all of the data that I have found. So once again it is an offer for a scientific based approach that would hopefully bring some confidence to everyone. Finally let me reiterate that the Charleston Animal Society's board of directors position on the subject is that the "Charleston Animal Society is not opposed to the use of working animals as long as they operate in a humane working environment and under humane

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

working conditions. We would be delighted to say that someday we have reached a level of understanding and cooperation and that we can endorse the carriage industry of Charleston so that we can all be happy and promote its benefits to tourism". We don't' believe we are there yet.

Broderick Christoff: I want to apologize if you think that I personally attacked you because I don't even know you. What I am speaking of is the organization that you represent at this table which is the Charleston Animal Society. I consider this a personal attack, full page ad in the paper showing Blondie on the ground. Blondie is fine. Had the Charleston Animal Society run an ad showing Blondie in the field saying that we had concerns about this horse, but the city did an investigation and look how great the horse is doing now. Then we might be on a different playing field. You have to understand that you are new to this and many of us are decades into this. Many times in the past people who are on your board have come to people in this room and proposed that veterinarians who have subsequently been attached to PETA and HSUS and that has happened more times than I can count. When you represent an organization that has publically attacked our industry in the media and I am just trying to point those things out to the others at the table. I don't think it is fair to say that you are being personally attacked. I am not personally attacking you. I am putting out what I think is relevant about the Society. I think that they have moved from an animal welfare organization to an animal rights organization and I think their finances point to that and that their activities point to that and I think it is relevant to the people at the table whether or not there is an animal rights group involved.

W. Kurt Taylor: The Society has always been an animal welfare organization since its inception and partly due to the treatment of the horses in the carriage industy. I would ask you again to let me bring Dr. Ivy here and you can ask her if we know her and if she has other connections.

Dan Riccio: I would like to intervene just a little bit. I think at this point lets focus on the issue at hand and never mind personal views. I know that they are strong, but we have to put that aside and work collectively together. Does anyone have any thoughts on the science based approach? Yes, it would be lengthy, but I don't have a problem with it. Of course as a whole this group would have to decide. I think we need to focus on the temperature and heat index.

Break in Meeting

W. Kurt Taylor: One thing that I failed to say is that in speaking with Dr. Ivy, she would love to have Dr. Ernst and Dr. Jacobs participate in that study if they would like to.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Dan Riccio: The next discussion should be where we go from here. The recommendation will take a lot of time, but we need to figure out what we need to do in the short term rather than the long term.

Dr. Jacobs: I think that we should probably focus on what the Mayor intended for the meetings to be. I would like to not delay what the goals are and I would like to focus on those goals and move through the process to help the horses. We are here to review the information that is available.

Angela Drake: The purpose is to discuss the current temperature and heat index. I think that since the law was put into place some time ago we need to look at changes in the weather patterns and get an adjustment of 125 and determine as a committee by studying the temperatures and indexes and the affect. As was mentioned there are differences among the horses and how these indexes affect the horses. That is what we are really looking at here. Are you seeing more heat issues in Aiken? You are looking at endurance horses and they are different than draft horses. Broderick you said they didn't look at heat index at the last meetings, so we need to do that.

Dr. Jacobs: That is what we are here to do so we should do that.

Dan Riccio: We do ne dot base it on facts and how the weather is changing and how we adapt to that.

Angela Drake: ...and how our City is changing. How the horses are when they hit Anson Street is far different than when they are in other areas with the asphalt and heat and how it is being monitored. Lin you even said when the City says pull the animals off the street, but you may not have the temperature, but you are the ones regulating this. How we regulate this is just as important as determining the temperature. Your department handles this now whereas before it was just loosey goosey.

Broderick Christoff: What that references a lot of time is that they say it is 98 and we say no it is 97. We are running on a schedule so when we know how it is done. Typically in the past it was every quarter hour they would check the temperature and if there are two readings of 98 we close. We don't open again until there are two readings below 98. If we have a day where it is 95 at 9:00am we will start monitoring it also, because we know that we may be shut down. We may not book that next tour, so when we know and we can predict when it is going to happen we can be nicer to our customers. That is the reason that having something that is

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

public like the WeatherBug is helpful. It allows the public to look at it also. When it was at the police station no one knew what was going on.

Angela Drake: I love this open dialogue between all of us. We all have a common goal.

Dr. Jacobs: How many days was the temperature above 98 this year and you had to close operations?

Dan Riccio: We closed it down 3 times based on the ambient temperature. This was also a concern with the Mayor. The length of time that it takes to pull them from the street is a concern because carriages may go out until that second reading so you then have carriages out on tour when we shut them down.

Dr. Jacobs: When do we resume tours?

Dan Riccio: Well, we haven't resumed tours the last three times which didn't make the industry happy. The temperature was fluctuating too much and I errored on the side of caution at the direction of the Mayor and kept the tours off the street because it was going between 97 and 98 for an extended period of time. This meant that I was deviating from the ordinance which is risky. The ordinance binds me to something that is unpredictable. This is something that we need to cover.

Dr. Jacobs: It needs to be black and white.
Dan Riccio: To me it is ambiguous. When do I let them go? I am always making someone mad.

Dr. Jacobs: Heat and Humidity are both important correct?
Ron Morales: That is my suggestion. Generally you will not have just an ambient temperature as an issue.
Dr. Jacobs: Is the Heat Index or the THI preferable to you?
Ron Morales: I am not familiar with the one that you add the temperature and the humidity.
Broderick Christoff: I only mentioned that because if you look at how performance horses are looked at they use this measure.
Annie Caroline Reid: I hate to say this, but the Olympics in Atlanta used 91 as the cut off.
Broderick Christoff: They had a very complex system. They used the wet bulb temperature.

Ron Morales: The wet bulb temperature is similar to the dew point temperature that I told you about. The way they used to do it is they would take a thermometer and put a wet wick on it, a little sock. You sling it around and it is evaporating and then you would get your wet bulb

reading. Then you would do another calculation. The weather uses relative humidity which tells you nothing. Relative humidity was a lot higher this morning when you woke up, but it is going to feel much warmer to you later this afternoon. What I use is the dew point temperature. You want to have to be careful with the other example that you used also because even when you feel like you are going to die when going outside the humidity may only be at 60, so if it is 100 you would only be at 160 and you were talking about 180. That is way too high. The 125 heat index is right at the border of what we would consider an extreme heat warning. What I was telling someone during the break is that it is pretty rare. When we issue a heat advisory which is for 110 to 114 or earlier in the summer it is 105-114 because of acclimation because we realize at the beginning of the summer we are not acclimated to the temperatures as well as we will be later in the summer. Feel this room- it is freezing. How many of us live and breathe in this? We have had one of the hottest summers on record, but we forget about it because we are in air conditioned buildings and cars. I think that even Charlestonians aren't as acclimated as they think they are.

Dr. Jacobs: I think it depends on where you work because some people work outside all of the time.
Ron Morales: This is true, but there are fewer and fewer of those people.
Dr. Jacobs: None of the horses live inside though.

Broderick Christoff: I completely agree with you about the humidity. Those of us in the industry spend a lot of time making sure that the animals are cool with the humidity. We have to spray them with water and give them more water. They have more recovery time when the humidity is high.

Ron Morales: I remember one time I was in Vegas and it was 120 out, but I was fine because there was no humidity.

Angela Drake: Just like Chris said the different types of horses handle the heat differently. Some sweat better than others. Mules take it differently, so what is the standard for the welfare of the animals?

Dr. Jacobs: I think this is a matter of acclimation also. If you take someone that lived in Indianapolis or you take someone from Canada and move them to Florida, at some point they become accustomed to the temperatures where they are.

Interruption from the public: Dan reminded the group that the meeting was for committee discussion only and not for public comment.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Dan Riccio: I guess that is what we have to look at. Are we going to do temperature and heat index or just heat index?
Ron Morales: I think you can do both and as long as you do it consistently. You could even put the thermometer on the back of the carriages as long as you are consistent, but it won't measure what the official temperature is out at the airport. What matters is that you establish something that is consistent. You want to measure things that are at the same height and in the shade. Temperatures should always be measured in the shade. I got to see the WeatherBug unit and it is in something like a bee hive which is shaded and has louvers to let air flow through it and this allows for aspiration.

Dr. Jacobs: I have a question so that we can try to move forward. Does anybody disagree or want to move forward with something other than temperature and heat index?

W. Kurt Taylor: With regard to that issue I don't have a disagreement with the way it is written now, but I think that the limits are too high and that is why we are here. I think that we have also illustrated the point that I was trying to make and that is that we don't have a scientific based recommendation for what those numbers should be. We are talking around it and how we measure it, but we don't know what the numbers should be.

Ron Morales: I can't tell you that. This needs to come from a veterinarian. Taking the temperatures of the animals is important and you are doing that. Who cares what the temperature is if the animal is suffering?

Broderick Christoff: This is an important part. For every one time an animal doesn't do tours because it is too hot outside there are probably three times where an animal has a long break or only gives tours until noon because their internal temperatures are not right that day.

Ron Morales: What I am telling you about temperatures is an alert zone. They all have to be somewhat included.

Dr. Jacobs: One thing that we figured out today is that we are going to use temperature and a heat index. Is that correct?

W. Kurt Taylor: I think that overall this regulation is consistent with other places that regulate this in saying that we have a limit that is too high and you can't operate at this limit. Then there is also the horses individually temperature.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Ron Morales: Here is something to think about and I don't know why I didn't think of this sooner. If we have an excess heat advisory that means that people are not supposed to be outside, so why do you need to be out on a horse carriage? That should be in your regulations. Heat Advisories mean that you should not be outside. We don't issue many of these, but there can be several days in a row of this. These are issued at 115 heat index or higher. The heat advisory is 110-114 except prior to July 1st it can be lowered to 105.

Dr. Jacobs: I like to look at things in a science based manner. Are any of the city officials affected by these advisories?

Ron Morales: We get calls from prisons because they are doing work outside.

Angela Drake: It is called Black Flag. When it hits 92 at Parris Island they have to come off the field.

W. Kurt Taylor: The outdoor workers at Charleston County when I worked there had safety protocols. If there is an excessive heat warning, they come in.

Ron Morales: I don't think there was an excessive heat warning this year. There have been several heat advisories.

Angela Drake: Can you get that data for us perhaps?

Dr. Jacobs: Who regulates the advisories?

Ron Morales: NOAH does. One of the issues we have is our observations across the land are not very good. We only have two sites that the National Weather Service maintains one at the Charleston Airport and one at the Savannah Airport. The rest are not ours, so now we have to figure out if it is legitimate. We have to figure out if the readings are correct, so they can be subjective because they are not all calibrated correctly. What does Savannah do?

Dan Riccio: Savannah has a temperature of 98 and heat index of 110, but it is not code and is only a policy.
Angela Drake: Can we can an idea for the past year?
Ron Morales: Sure I can get that.
W. Kurt Taylor: What area do you issue these warnings to?

ELECTRONI FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Ron Morales: 20 counties from Charleston County down to Savannah and inland a little. Right in the coastal zone is very tricky. The sea breeze raises the humidity, but it also cools the temperature.

Broderick Christoff: Kurt, you said that there is a standard for employees of Charleston County. What is that number?
W. Kurt Taylor: There isn't a cap on a particular temperature, but if the warning is issued by the National Weather Service they will go by that.
Broderick Christoff: It might be interesting to see if other local governments that have regulations or policies guiding when their employees should not work outside.
Ron Morales: Do you guys work with Emergency Management at all?
Dan Riccio: Yes.
Ron Morales: Mark Wilburn is very clued into us and would be a good resource.
Broderick Christoff: If we use heat index and temperature, the hurdle is where that number comes from so it might be interesting to see what the governments do for their people and where those numbers come from. If you can make a case that if there are people working outside maybe there is already a method that is established and acceptable that we could also use.

Ron Morales: For this issue it is a local environment, so the WeatherBug will measure that local environment. Set up your network that is properly sited.
Lin Beets: What is properly sited?
Ron Morales: I would have to look up the specs, but obviously not in a parking lot, in a place where air can flow. Properly aspirated so air can move through it at a proper height which I think is 5 feet. Face level temperature.
Dan Riccio: Based on what we showed you about WeatherBug do you think it is ok?
Ron Morales: I can't endorse any system, so just be sure that it is properly sited and calibrated. It is about consistently too. Maybe you come up with some heat index, but the horses aren't doing as well as they should be then you need to adjust it.

Dr. Ernst: We are trying to establish a heat index. Is there a way that we can correlate data from the heat index to temperature of animal? I want to know what the heat index means to the horses. Are they coping with it I am a little more flexible on the heat index is.
Dr. Jacobs: We have that data.
Dr. Ernst: I want to know what this means.
Ron Morales: Just like people there are ranges that some people can handle it, some horses may be able to handle more than others. You want to set that limit a little lower to be cautious.

Dan Riccio: Question for the committee. WeatherBug is expensive for the City and if we need to change the locations would be expensive.

Dr. Jacobs: We have the data from the horse temperatures and from the WeatherBug.
Broderick Christoff: I think that WeatherBug satisfies your criteria of it being consistent, accessibility is important.
Ron Morales: As you were talking about the public you could have a digital display at the gate to show the public what the temperature is.
Broderick Christoff: They have plans for the gate to add technology, so I think this is coming.
Ron Morales: You can even post something about the temperature and heat index for the public to see. Typically this type of information is not welcome because they don't want to scare people away. In this sense people tend to be more sympathetic to animals though.
Broderick Christoff and Dr. Jacobs: I think people would welcome this information.

W. Kurt Taylor: The thermometers are not at eye level as you suggested, they are four stories up.

Lin Beets: They can't go at eye level, they would disappear.
Ron Morales: Chris mentioned something very important about if you go back and do the study relative to where they are now and the horses' temperature. You correlate to what you have.
Dr. Jacobs: Were there any other options for WeatherBug?
Lin Beets: No. These were the only locations they would endorse. We have a pole 10-15 feet off the ground that we wanted to use, but the heat off of the ground affects the readings.

Dr. Jacobs: I think I am with Dr. Ernst. The heat is irrespective, it doesn't matter what the temperature is. What matters is how the horse is functioning.

W. Kurt Taylor: I think it does matter what the number is because we are trying to reach a modification of a regulation that right now has a number of 98. I don't think it is a false number; we are trying to measure where the horses are. We aren't trying to measure for WeatherBug's national network, but where the horses are right now.

Annie Caroline Reid: You also said that the measurement is a false reading because it is on the asphalt and NY measures at the asphalt where the horses are. We all know they wear rubber shoes.

W. Kurt Taylor: If we are looking at logs from years past and years past we are doing a retrospective study and are not creating our own data and readings. The specific horses on

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

duty change and retire from time to time. We aren't looking at the future. A good point that you made there is that you can't regulate an individual horse. You need to do it in a general way.

Dr. Jacobs: Just for the record so we can all speak honestly almost all of our veterinary studies are done on past data. How we scientifically come up with information to come up with future recommendations. It is looking at what has been done and what worked and what didn't work. That is how we move forward as scientists.

W. Kurt Taylor: All the articles that I read that did those studies retrospectively said we need to do more to create our own data.

Broderick Christoff: I think that Dr. Jacob's point is that we have data for where we have been taking the temperature so if we look at that data and see how the horses have performed you arrive at a temperature based on that data. If you use an arbitrary location for measurement, we have no data. I think the temperature will be hotter five feet off the ground, so if you start measuring there the temperature may be 115 degrees that the horses do well at, but no one will stand for that.

W. Kurt Taylor: I understand what you are saying, but I don't think that I agree with it.

Dr. Jacobs: Lin is it too much to ask that you pull Weather bug data for us. Can you go back as far as you can?

Angela Drake: I have to play devil's advocate. The temperatures were taken by the industry and not by an outside source. Can we agree upon a heat index?

Dr. Ernst: I think that if we do the scientific study we will delay the study. I think you need to decide what level of bias is acceptable. Do you really want additional government employees to measure the horses' temperature or can you accept the industry doing it? Having visited the barns, I don't have any reason to believe that they are biased in any way.

Dan Riccio: We spot check the records and the temperature taking as well. We are going to end it here. The next meeting is scheduled for September 14th. Homework assignments: We will check on mandatory employee shutdown, we will work with Morales and IT and get WeatherBug logs and we will get the horse temperature logs as well.

Dr. Ernst: This year was hot enough it should give us a good idea, but obviously the farther back we can go will give us a larger sample size.
Dr. Jacobs: The more data we have the better.
Broderick Christoff: Will we just use the summer months?
Angela Drake: I think we should use a year.
W. Kurt Taylor: How long have the thermometers been on the Dock Street Theatre?
Lin Beets: 3 or 4 years

Dan Riccio: We will gather again and see what we can come up with and start discussions again.
Annie Caroline Reid: Are the carriage companies going to provide data for the next meeting?
Dan Riccio: Yes, they will provide the horses temperatures.
Broderick Christoff: That is why I was asking if we were going to look at an entire year.
Annie Caroline Reid: That is a lot of trouble.
Broderick Christoff: It is not electronic.
Dr. Jacobs: Why don't we have Lin get the Weatherbug data, then Dr. Ernst and I will determine what dates we want the horse temperatures for and ask it from Broderick. Does anyone have a problem with that?

Ron Morales: I cannot make the next meeting.
Broderick Christoff: One issue that I see now is that we will not have any data when we stop giving tours which is at 98 because we stop operations.
Dr. Jacobs: We will go back to 97 and go back as far as Dr. Ernst and I think we need to go back where there are no concerns.
W. Kurt Taylor: If they call it at 98 and you have carriages coming back from tour, don't you then take their temperature at that time?
Broderick Christoff: I guess we may have some real limited data for this.
The industry never has an issue with the City coming to look at our records, but where the problems come in is with information like this are brought into a form like this it becomes public information. Then we will have animal rights groups FOIA the city for those records and do ugly things with them.
Dr. Jacobs: We are vets and we can look at them.
Broderick Christoff: Can you take the data instead of the city?
Dr. Jacobs: Is everyone ok with that?
W. Kurt Taylor: We shouldn't put Janie on the spot like this, but there are records that are required to be kept pursuant to city regulations, so it may be arguable that they are already subject to a FOIA request.
Dr. Jacobs: If we do it in this unbiased way as possible, we will compile all of the data. It will be unbiased, neutral, and factual.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

W. Kurt Taylor: When you compile it and bring it what will you be providing?

Dr. Jacobs: We will look at the temperatures, stress with heat level in the animals. We will bring back when they seem to have difficulty with the temperature and when they do not. How many horses have issues?

Dr. Ernst: If you want to suggest a temperature and heat index, I want to know what that means to the animals.
W. Kurt Taylor: When you bring this back will it be a written conclusion or will it have the numbers with it so we can all see the numbers? **Dr. Jacobs:** I think this is our expertise. You guys aren't veterinarians. Our goal is to determine the health of these animals. We work on horses all day long and I think that we are educated enough to do this.
Dr. Ernst: I think we will come back with something like this for example: at a heat index of 110 the horse temperatures was excessive, so therefore we believe that horses should or should not be at work at this index. I would be comfortable coming back with a threshold that we think is appropriate and then as a group we can decide what that number should be.

W. Kurt Taylor: So you would say that you are going to look for the temperature that you think is excessive you are going to go by the temperatures in the ordinance where it says at 85 the temperature should be measured? It is all spelled out in the ordinance. When they must take the temperatures and when they must pull the animals and that at 105 they have to call in the vet.

Dr. Ernst: I am talking about the internal temperature.
Dr. Jacobs: Kurt I think we need to go back to what we are doing. He is going to get temperatures based on the last three years and what those dates are. Then those will be provided to the companies and say that we need the animals' temperatures for those dates. There is no preparation, no changing of the log books etc. Dr. Ernst and I are going to look at that information and correlate that information with the temperature data. We will look at this to determine how the animals have been withstanding that heat and decide as a group what this means.

W. Kurt Taylor: Again I am asking because it is already written in the ordinance. There are several sections in the ordinance that say what has to be done at different temperatures. It is individualized by the animals. I am assuming that your opinion will be based on what is already in the ordinance.

Dr. Ernst and Dr. Jacobs: No, not necessarily.

Dr. Jacobs: This has nothing to do with that.

Dr. Ernst: The data comes from when they have to take the temperature, but what we are talking about is the ambient temperature.

Annie Caroline Reid: I thought we were talking about the rectal temperature.

Ron Morales: They are correlating the two.
Broderick Christoff: I think what Kurt is missing is when they look at this data is say it was 98 degrees and we had 35% horses with temperatures of over 103 and it took them over an hour to recover. This is abnormal and this is a problem. They will have a scale that will show the percentages at various temperatures etc.

W. Kurt Taylor: I understand that, but I guess I am not communicating properly. The ordinance has when the rectal temp has to be taken, so it would seem to me that is where you would say there is a problem. The ordinance was formed by veterinary opinions.

Dr. Ernst: I am not sure that the ordinance correlates very well with the heat index. Therefore I think that it is important to have both. If we are looking to change total ambient temperature and heat index I want to feel that there is a reason for it.

Angela Drake: Are you going to start at 95 or 98?

Broderick Christoff: Most companies take temperatures all year long because it is an important thing to know. What I was saying is that when the horses are pulled off the street at 98 degrees we don't have a lot of data at that point because the horses are not working. There will be a limited amount of data for anything over 98.

Annie Caroline Reid: You have lots over 85 degrees though.

Dan Riccio: So let's move forward and see what we have for the next meeting.

W. Kurt Taylor: Yes absolutely we will need to understand it as it comes in. Dr. Ernst does your practice still work with the carriage companies?

Dr. Ernst: We do not work with all of them. We work with some them.
W. Kurt Taylor: Dr. Jacobs your company works with the city?
Dr. Jacobs: I work for the City and I am unbiased.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

W. Kurt Taylor: I am not suggesting that you are biased at all. From the public's view maybe there should be someone that doesn't work for the carriage companies or the City. My suggestion and advice to all is that perhaps there should be a third vet that perhaps works for the SC Board of Veterinary Examiners.

Dr. Jacobs: Sure
Dan Riccio: I have no problem with that.
W. Kurt Taylor: I would happy to give you some names.

Broderick Christoff: I think that whoever the Charleston Animal Society suggests should be vetted. I just think it is ironic that you got upset with me earlier because you said that I claimed that you would plant someone and now here we are at the end of the meeting and you are saying that the two vets are up to something because of what 1% of your practice might be a carriage company. So he is going to compromise his entire professional integrity over 1% of his clientele? We are all here right? Are we recording? That is what he said right?

W. Kurt Taylor: I said for the public's confidence that we should add someone, not replace someone.
Broderick Christoff: It puts a bad taste in people's mouths that when you say that the professionals that we rely on would compromise their integrity and their ethics over the carriage industry.
W. Kurt Taylor: You are putting words into my mouth. I did not say that.

Dan Riccio: We are going to stop it there.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

CITY OF CHARLESTON TOURISM COMMISSION
August 25, 2016

A meeting of the City of Charleston Tourism Commission Subcommittee: Routes, Parking and Touring rules was held this date at City Hall, 1st Floor Conference Room, 80 Broad Street.

PRESENT

Mrs. Jane Jilich, Mr. Robert Seidler and Mr. Bob Conley. Vanessa Turner Maybank, Liz Alston (Chair) **STAFF**: Mr. Robert Somerville, Assistant Director, Department of Traffic and Transportation, Ms. Davida Allen, Tourism Commission Manager, Dan Ricco, Livability/Tourism Director, Amy Southerland, Tourism and Special Events Manager, Janie Borden , Legal Counsel, Rick Jerue, Tim Domin

Jane Jilich called the meeting to order. The meeting was opened with a moment of silence.

Approval of commission minutes for February 4, 2016

Jane Jilich opened the floor for public input

Broderick Christoff, owner of Charleston Carriage Works expressed that the committee compiled of the neighborhoods representatives and carriage companies really worked hard on the proposal. They felt like they came up with a great solution given the growth and need for necessary changes.

Tommy Doyle, owner of Palmetto Carriage Company also communicated they he worked with the committee on the changes and attended the meeting with hopes to come to an agreement. He hopes to get the support of the subcommittee.

Jane read a letter from Susan Bass that represents the neighborhoods. Her letter indicates that she was a part of the committee and she is on board with the proposal of the pilot program but could not attend the subcommittee meeting.

Dan Riccio started be thanking everyone that was a part of the process for their expertise and input from the neighborhoods and carriages companies. They committee met over a few months. The initial topic for the meeting was to discuss the ingress and regress of zones 4 and 5 along with the congestion that the two zones may cause in the neighborhoods. During the time of discussion, the committee began reviewing all zones 1-5. They came up with a resolution and not an ordinance. This resolution will be on a pre-trial basis for 60 days. Dan stated that the resolution will go before City Council.

Vanessa Turner Maybank indicated that the resolution will go to council first but if they have any questions, it will go back to the Tourism Commission.

Dan continued to explain more about the resolution. It contains the concerns of the neighborhoods and carriage companies. Zones 5 will be the primary zone used during the pre-trial process. It will have 30 medallions that the carriage companies will keep Each company will obtain 6 medallions. Each company will can run up to 120 tours per month which breaks down to 4 per day. Dan expressed that the impact is not as great as it may seem. This system will not go through the gate, however each company will have a runner to inform the gatekeeper of their numbers. This is will free up zones 1, 2 and 3. All

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

information has to be brought through the gate system within 5 minutes of the tour departure. The Tourism Enforcement Officers will be enforcing these rules. If a medallion is misplaced by any of the 5 companies, there will be a penalty of $300 and a 30 suspension. Zone 5 will help with congestion and alleviate traffic overflow. Dan explains that zone 4 will go into play during holidays and busy seasons with the discretion of the Tourism/ Livability director. Zones 4 and 5 can be swapped out for specific reasons. Tim Manley, owner Classic Carriage Company has a slave tour that is currently in zone 4. All of the carriages companies agreed that this system allows him to schedule tours during a specific time to accommodate his customers. The gatekeeper will alternate A and B medallions to avoid multiple carriages going in the same direction. This process is help with egress and ingress. These A and B routes are for all zones except 4. In order to accommodate and A and B routes, it is necessary to remove the prohibition of carriages on Meeting and Broad Sts. between the time of 4-6:00pm to enter and exit these zones. Dan feels that the width of Broad street provides more availability for carriages to pull over as well.

Robbie Somerville provided stats from a 2007study that was provided by Carter Burgess Engineering Firm shows that there would be a significant impact to traffic by 45-50 percent if the carriages were allowed on Meeting and Broad St. In 2015 there are another study done on intersection Meeting and Broad Street utilizing the left turning signals. This study showed that 2,500 vehicles utilize that area between the hours of 4-6:00pm. He shares that the average daily traffic on Meeting 19,000 and close to 12,000 on Broad St.

Dan tends to agree with Robbie; however he states his opinion that he feels that this system will work. He expresses that this will be monitored on a trial basis and if this system doesn't there will be other alternatives.

Broderick spoke from the carriage industry point of view that this change will only affect 2 blocks and not the entire length of Broad St.

Robbie explains that he receive numerous calls during the hours of regarding traffic congestion and his office only allows permits to be issued during certain times due to the fact that it could cause some type of congestion in the flow of traffic. He then recommended that this resolution goes to traffic and transportation. Robbie expresses his concern that he knew nothing about the resolution to have any input during the planning process from the traffic and transportation perspective. He feels that there is too much traffic on the streets.

Dan adds that if the neighborhoods agreed to the study that they should not have any issues with carriage traffic on Meeting and Broads Streets. Everyone involved in the process compromised.

Vanessa explains the proper process for the resolution approval. The resolution could be voted on by the Tourism Commission Subcommittee on this day or move forward to the Traffic and Transportation Committee followed by City Council.

Bob Seidler feels that the sense of the subcommittee should vote to move forward with the resolution provided that it moves forward to Traffic and Transportation.

Liz Alston expressed her views that over the years there has been the same issue as it related to the traffic and the carriage industry. She feels that the resolution should be viewed by traffic and transportation.

Tim Domin indicated that it's not required that traffic and transportation looks at the resolution first. The reiterated that this resolution is a 60 day trial or terminated by the director of Tourism/ Livability and if it doesn't work. It can be terminated.

Bob Seidler asked what are the perimeters and measurements of the outcome the resolution.

Dan answered that he feels that calls of complaints would decrease. If there is an increase the trial would be terminated. He also stated that the TEO's would carefully monitor traffic from the 4-6pm hour on the Meeting and Broad Streets and a traffic study would be conducted.

Jane expressed her appreciation of the committee taking a look at all of the zones and coming up the resolution and she's happy with it. She also agreed with Robbie's concern from the traffic and transportation point of view. She agreed that the resolution should go through the Traffic and Transportation Committee.

Robbie asked when the pilot is scheduled to begin.

Vanessa explained that it has to be voted on City Council for the first reading and the next meeting is on September 13th.

Dan proposed that the pilot starts on January 1, 2017. Maybe start the changes on zones 4 and 5 first.

Amy Southerland expressed that one part of the trial can't begin without affecting the other changes.

Tom Doyle asked that the complete resolution begins all at the same time.

Robbie agreed that the resolution could be viewed by the Traffic and Transportation Commission on September 27, 2016

Dan continued explaining other portions of the resolution that all medallions should be returned to the gate after 75 minutes from departure time. This prevents all the carriages from rushing out of the neighborhoods and returning at the same time at the end of the day.

Jane asked if the committee wants to take any action. The committee voted that the implementation would not be immediate.

Tim Domin suggested that City Council should set the date and time and the resolution will begin.

Jane made a motion to except the resolution as is

Vanessa suggested that a report goes to the Tourism Commission to make them aware of the resolution

Bob Conley amended the motion to ensure that the resolution goes through Traffic and Transportation before moving forward.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Meeting Adjouned

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

CITY OF CHARLESTON TOURISM COMMISSION
October 26, 2016

A meeting of the City of Charleston Tourism Commission was held this date at City Hall, Council Chamber, 80 Broad Street.

Notice of this meeting was sent to all local news media.

PRESENT

Mrs. Elizabeth Alston, Chair, Mrs. Susan Bass, Mr. Robert Conley, Ms. Leah Johnson, Mrs. Jane Jilich, Mr. Robert Seidler, Councilmember Gary White, Jr. , and Ms. Vanessa Turner-Maybank. **STAFF**: Ms. Davida Allen, Manager, Arts and History / Tourism Commission, Mr. Tim Domin, Esq. Legal Counsel, Clawson and Staubes, LLC, Mrs. Susan Herdina, Corporation Counsel, City of Charleston Legal Department, Mr. Rick Jerue, Senior Advisor to the Mayor, Mr. Dan Riccio, Director, Livability and Tourism, Mr. Robert Somerville, Interim Director, Department of Traffic and Transportation, and Mrs. Amy Southerland, Tourism and Special Events Manager.

The meeting was opened with a moment of silence.

Approval of minutes- February 24, 2016 and April 5, 2016

Councilmember White moved for approval of the minutes. Mr. Conley seconded the motion. The minutes were approved unanimously.

City Attorney

Legal Briefing – Mrs. Susan Herdina, Corporation Council, City of Charleston Legal Department

Mrs. Herdina said the city ordinances regulating the tourism industry, including the tour guide licensing, has been around many years. It has been a system that we feel has maintained, protected and fueled the economy.

The lawsuit was filed in January, 2016 by a group called the Institute for Justice, which is a public interest group based in Virginia. They are challenging the tour guide licensing ordinance on the grounds that our oral test, written test and temporary tour guide requirement of submitting a script to the City infringes on peoples' First Amendment rights. Their argument is everyone has a right to talk for a living and the City is unreasonably burdening people's speech by requiring people who want to give tours for money in the city to have a tour guide license.

The First Amendment is a sacred part of the constitution and a complicated part of the law and this is not an easy lawsuit. The City's argument is we are interested keeping unqualified people from charging a fee and holding themselves out to provide reputable historic tours. It is about the quality of the tour and making sure the consumer is not swindled. We have a right as a city, given our governmental interest, to protect the citizens and tourists from false or misleading services. To prevent this, the City requires tour guides to have basic knowledge of the city's history. The City has been arguing that anyone holding himself/herself out to be a paid tour guide, a guide being paid for their services, has to be competent to provide those services. The City is not trying to prohibit anyone from being on the street and giving a tour that they feel they want to give as long as they are not charging. The City thinks when someone charges and holds themselves out to provide this service that the City does have a legitimate interest in making sure that the quality of the tour that they give is reputable. The City believes the ordinance is constitutional, is reasonable and is defending it.

Mrs. Herdina noted some changes have been made to the ordinance several months ago. The ordinance was reviewed after the litigation was passed and they determined there were a few provisions that had not been enforced for a long time that could be called into question by the court. The ordinance was amended by eliminating the temporary tour guide provision, lowered the tour guide passing test grade from 80 to 70 and eliminated the oral examination.

A hearing was held in June, 2016 in Federal Court with Judge Norton. The Plaintiffs had filed a motion to preliminary injunction in court asking the Judge to stop the City from enforcing the tour guide ordinance. The City opposed the motion and filed a motion to dismiss asking the Judge to throw out the case. The Judge found there was not a sufficient case to grant the preliminary injunction the Plaintiff requested so now it is at a status quo. The City is still enforcing those portions of the ordinance that are still in effect even

ELECTRONI(FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

though the lawsuit is still pending. The Judge did not throw out the case. He said the Plaintiff raised some interesting questions and he will let it proceed to the next part of the litigation. He wanted to see some things from the City. He wanted to hear and see more evidence on this issue of misleading, fraudulent, not quality tours that could arise as a result of a scheme or situation in the city where they don't have a regulation of the tour guides.

Mrs. Herdina said the Judge "hit the nail on the head" when he articulated the City's interest. He said the City's interest is what's promised and what's delivered. It's not the content of the information. It is an important line between complying with the First Amendment and violating the First Amendment. The focus of the City's case is what is promised and what's being given, and that is what the City will be regulating. What will happen next is the discovery phase of the case. Over the next few months they will be exchanging documents, producing documents for the Plaintiffs and they will be producing documents to the City. There are also depositions scheduled for the upcoming weeks. Ms. Turner Maybank will be deposed. Both former Mayor Riley and Mayor Tecklenburg are going to give depositions in support of the ordinance. That phase of the case will go on for several months. There will probably be another hearing in front of Judge Norton but she was unable to say when that would happen. The City views this ordinance as very important. They are defending it vigorously. She said any support the Commission and the tourism industry could give them would be appreciated. She said she would answer any questions.

Mr. Seidler asked Mrs. Herdina what the Commission could do for support.

Mrs. Herdina said support at the next hearing would be good. The judge probably won't formally recognize them but it would be important to know how important this case is to the city and the community. She will keep them updated on that.

Mrs. Herdina added they are fanning out and are talking to other cities that have similar ordinances. New Orleans has an ordinance similar to the City's. The same group of Plaintiffs challenged New Orleans' ordinance and failed. The same group also challenged the ordinance in the District of Columbia and they succeeded. They have what is called this conflict in the circuit over is this free speech being violated or is there a real public interest in protecting the quality and brand of the name of the city. They have fanned out and talked to representatives of those cities. They have also spoken to Savannah which was sued and decided to repeal its ordinance. They decided to not go forward. They are in touch with Chicago and San Antonio, and other cities throughout the country to understand what they are doing because they are being sued or are going to be sued by the same group.

Mrs. Herdina did not know where this would lead. They have turned over a lot of documents to the Plaintiffs. They have asked for the Tourism Commission minutes of the meetings. There may be some questions about that at some later point and they may come back for the Commission's help.

In response to a question by Chair Alston regarding what was legal precedence of the success and the failure, Mrs. Herdina said it is different judges looking at the same issue and reaching different conclusions.

Chair Alston said she supports the ordinance. She asked Mrs. Herdina if it will be about a year before this is settled.

Mrs. Herdina said the discovery phase will probably not be finished until the end of this year or early 2017. Then there will be some hearings and maybe some more hearings. She couldn't imagine that the case would be resolved until spring of 2017 at the earliest. The decision will be issued and the parties will decided where we go from there. The good news is, at least for now, the ordinance is in place. The judge says it needs to stay in place. They will continue following it and enforcing it.

Mr. Conley asked if there were appeals pending in the New Orleans and District of Columbia cases.

Mrs. Herdina said the Fifth Circuit already decided the case in support of the District Court for the New Orleans decision. The District of Columbia circuit affirmed the lower court. Someone asked the Supreme Court to take the case because of the conflict and they refused.

Mr. Domin noted the judge mentioned part of this is getting witnesses. If somebody kept their ears open and ran into someone else who had a terrible experience with an unlicensed tour guide that would be something they would want to pick up the phone and call them and give that person's name.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Mrs. Herdina concurred that would be helpful because that is what the judge is looking for. The judge wants to see that it's the end point they are concerned about protecting the consumer and not the attempt to control what the tour guide is saying on the street.

Mr. Conley said it sounds like the judge is looking for some evidence that has been a problem in the past.

Mrs. Herdina agreed saying that is difficult to show because the system has been in place for so long and has worked so well.

Councilmember White commented the only thing that comes to mind is the negative impact of the people who are unlicensed giving tours that they have seen are pedicabs' drivers and the vacation rental people. From all of those groups they get a lot of feedback but it's really about the end result. In order to do that he would have to buy a time share under the auspices of finding out information about an unlicensed tour guide.

Steven Herchak, a licensed tour guide, asked prior to the enactment of the Tourism Ordinance what the inspiration for enacting the ordinance was. He questioned if there were problems that led to the passing of the ordinance.

Ms. Turner Maybank said the portion of the Tourism Ordinance the Commission is discussing regarding the licensing of tour guide occurred before she was born. They began licensing tour guides in 1952. Jane Thornhill received her tour guide license in 1952. Ms. Turner Maybank said Mrs. Thornhill would be an excellent witness as to why they felt the need to license guides at that time.

Walter Boggs, a licensed tour guide, said as they begin to erode this part of the tour guide licensing, then they can rollback the other rules like taking tours down Meeting Street past south of Broad Street anytime day or night. He concluded there won't be those protections in place anymore.

Ms. Turner Maybank said there were many guides that were licensed many years ago who would have more of that history as to why it happened in the 1950s. She knew they took pride at that time in being ambassadors to the City ensuring that when visitors came and they were told different things about the history of the city it was correct and factual.

Committee Reports

Chair Alston said they will hear Quality of Life, Enforcement and City Image Committee report by Mr. Riccio first before the Tour Guide Committee report.

Quality of Life, Enforcement and City Image Committee – Dan Riccio

Post Hurricane Clean Up – The Tourism Offices coordinated with the Charleston County contractor who will be in the area beginning tomorrow at 7:00. The debris south of Broad Street heavily impacted the bus and carriage traffic. They are in meetings with the City and the contractor for Charleston County to best manage the debris removal to allow the bus and carriage traffic to continue. There will be some spontaneous delays within the routes and zones of the carriages. They can block access to the buses in certain areas. It is Thursday, Friday, Saturday and Sunday from 9 a.m. to 3 p.m.

Temperature and Heat Index Committee – The Committee was formed in response to complaints and information regarding the care of the animals being brought to the attention of the City, news media and the animal society. The Committee is made up of a meteorologist, two equine veterinarians, neighborhood representatives from Charlestowne and Ansonborough, a carriage industry representative for all of the carriage industries, and the animal society. Mr. Riccio is the chair of the Committee.

The Committee is reviewing the current ordinance as it relates to the heat index and temperatures. The current temperature to legally halt carriage traffic is at 98°or when the heat index reaches 125°, whichever comes first. They monitor two official thermometers, one located at the Doubletree Hotel in the Market and the other at the Dock Street Theater.

Weather Bug manages these thermometers, which is accessible online. These thermometers are regulated, calibrated, official and if they were to go to court with any case of regarding the heat index, they would have an entity that is certified and they could rely upon as an expert witness.

In response to a question by Mrs. Bass regarding whether the thermometers were either in or out of the shade, Mr. Riccio said both thermometers were located on the rooftops of the buildings and

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

sunlight and shade is not a factor. They are at the same height as other thermometers throughout the country so they can triangulate throughout the world.

Mr. Riccio said at this point they don't know if they are going to raise or lower anything until they have more information. They retrieved all of the temperature data from the last four years when it reached 90°and above. They then gathered the internal temperature of the carriage animal from the carriage industry, which is taken at the end of each tour as a precaution to prevent them overheating. They are trying to come up with a medium to compare where at what point does the ambient temperatures and the internal temperatures of the carriage animals begin to rise so they can correlate the two.

Ms. Turner Maybank informed Chair Alston that she skipped over the Citizen Input portion of the meeting and asked when she will take it up.

Chair Alston said she will take it up after Mrs. Southerland's report.

Policy Statement: Large Buses at the Battery – Amy Southerland

Mrs. Southerland said this is about a question that comes up frequently from the tour operators and bus drivers regarding parking at the Battery. The statement clarifies how the rules are enforced and is not an ordinance change. It is letting them know that if it is taking passengers longer than five minutes to unload or load, staff will understand, and how long they can park if they are not idling. They were asked by the Tour Guide Association to put something in writing. Mrs. Southerland said staff wanted to bring it before the Commission prior to releasing it.

Mrs. Bass asked if the policies for idling and non-idling are the same in other parts of the City like where buses park along Concord Street.

Mrs. Southerland said yes. There are signs posted on Concord Street as to the amount of time. She asked Mrs. Bass if she would rather than specifically at the Battery to extend it to other parts of the city.

Mrs. Bass said that was what she was wondering because she often rides her bike down that way and she notices that the buses idle more than five minutes.

In response to a question by Chair Alston, Mrs. Southerland said Mrs. Bass was asking if they could include other locations where they have signage about idling. She noted in the ordinance it specifically says for the Battery.

Ms. Turner Maybank said it can say idling citywide.

Mrs. Southerland asked since the ordinance does address the Battery specifically, could they leave the policy statement as is.

Mr. Domin suggested that the residential areas be included.

Chair Alston asked if that was the only location on the policy.

Mrs. Southerland said there is signage on Concord Street on the water side that says no idling. It's not written in the ordinance the way the signage on the Battery is written.

Mrs. Bass added that the signage on the east side of the Battery has idling time limit on it.

Mrs. Southerland suggested writing a separate policy to address those since they are not written that way in the ordinance.

Ms. Turner Maybank said ordinance can be amended so that it specifies the area, maybe identify it so it will be in one place and she won't have to do it for every instance.

Mrs. Southerland asked if the Commission would like them to bring this back when it is corrected. The Commission members said no.

Citizen's Input

Mr. Herchak said he understood from looking over documents in the past that there was a distinction being made about parking at the Battery as being residential area as opposed to other places in the City like Concord Street that this was therefore different treatment for parking there from other parts of the City.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Ms. Turner Maybank said initially when the ordinance was written it was specified for the Battery area because they wanted to afford people an opportunity to get off the bus, take a picture and get back on. The other part as related to Concord Street is for the large buses or a large number of those buses, as they tend to park on Concord Street because sometimes they need to idle more than the 5 minutes. She noted what they were talking about now is that new residential piece that wasn't there at the time that portion of the ordinance was written. She thought this was the reason why Mr. Domin suggested that the residential areas be included. She said they could address it so that the buses still had their opportunity to idle in the bus parking area, which is further up in the Market.

Mrs. Southerland said the policy does refer to Section 29-239, which specifically mentions the residential areas.

Routes, Parking and Tourism Rules Committee - Jane Jilich

Mrs. Jilich said the Committee has met in April. They have put several things on the back burner and let Mr. Riccio's group come up with some new guidelines.

Neighborhood and Carriage Pilot Program update - Dan Riccio

Mr. Riccio said in the 2015 Tourism Management Plan, one of the recommendations was to look at the two unregulated zones 4 and 5 to spread carriage traffic equally in those zones. Mrs. Jilich began an initiative last year trying to devise an ordinance to regulate these two zones but the idea was deferred. It was agreed that they would gather representatives from those neighborhoods directly affected by the carriage industry, as well as representatives from the carriage industry and city representatives to look at the unregulated zones.

When they were going through the process, not only did they focus on Zones 4 and 5, they also looked at expanding the zones with ingress and egress. On the current carriage route maps, carriage traffic in Zones 4 and 5 are forced on certain streets before 6 p.m. creating congestion. As a part of regulating Zones 4 and 5, they implemented ingress/egress into the zones to further spread the traffic out. Where there would be 14 carriages an hour coming out of a neighborhood coming into South of Broad, it will be reduced to four per hour.

Zone 5 will have 30 numbered medallions (6 per carriage company) issued. These medallions will be given to the carriage companies. Each carriage company will be responsible for the possession of their medallions. The carriages will be able to depart from their own barn and they will go directly to Zone 5. They will have five minutes to bring a slip to the gatekeeper to record all of their information. It will reduce traffic in the gate line. The penalty for a lost medallion will be a $300 fine and a possible 30-day suspension.

Zone 4 will be a relief area. There will be eight medallions for the busiest days of the year. It will be an effort to reduce the backup congestion in the Market. The eight medallions will go into play into the Bingo machine. There will be a cap on the amount of carriages in Zone 4. Currently there is no cap. It will decrease the traffic.

These recommendations went from the Routes, Parking and Touring Rules Subcommittee to the Standing Committee on Traffic and Transportation because it affects the routes and the times of the prohibition of carriages on Meeting Street. The recommendations were approved for a 60 day trial basis. The trial period will not begin until March 1, 2017 due to the Slater and Roof trials, which begin next week. It will occur after the trial and during the peak in the carriage tour season.

Mrs. Bass asked if there was a date for the starting the issue regarding the transportation tag.

Mr. Riccio said he wanted to complete the temperature and heat index committee first. He wanted to give of the issues his full attention one at a time. He hoped to have a decision for City Council regarding the temperature and heat index within two months or by the first of the year.

Mrs. Bass asked if he needed any more committee members from the neighborhood for the temperature and heat index committee.

Mr. Riccio said it is locked in because it is to be a fair number of representatives and they are voting members. They will come up with some recommendations and if the committee can't come to a consensus about the recommendations, they will bring the matter before the Commission for a decision.

Tour Guide Committee – Davida Allen

Ms. Allen noted that as Mrs. Herdina mentioned earlier in her report, the temporary tour guide test is out and the passing grade has been lowered to 70%. As of May, 2016, the tour guide exam is offered twice a month. It is given every two weeks. It has caused the number of individuals to decrease in taking the exam. The number of individuals passing with a grade of 70% has increased.

In reference to the statistics for the carriage tours and bus tours, the carriage numbers are close throughout the year for 2015 and 2016. There was only a large increase in the month of March. The number of tours that come through Charleston increase every year. The numbers for the buses has remained consistent for touring and parking. Transportation has increased in the months of March and April. The numbers usually increase in the month of September every year. She felt that was due to a lot of family reunions and other parties coming in on large motor coach buses. These are statistics for motor coaches that have to get permits and not small buses.

Mrs. Bass left the meeting at 5:51 p.m.

Mrs. Jilich noted that is a tremendous increase in transportation. She said it could be people are recording it more.

Ms. Allen concurred. The Tourism Enforcement Officers are concentrating more on that and they are doing a lot more in office. With the enforcement of permits, you have to have a permit.

In reference to a question by Mrs. Jilich regarding when the Mayor will appoint the new boards and commissions, Ms. Turner Maybank said Robin Griffin is working specifically with that. She has met with the Mayor to look at the number of applications. The department heads receive applications for the various boards and commissions they work with and they are still accepting applications from individuals to serve on the boards and commissions. The Mayor hopes to have some of the recommendations made prior to the first of the year.

Mr. Jerue added many of the appointments have to go before City Council for approval at the end of year.

Ms. Turner Maybank said while there are many boards and commissions throughout the city, not every board and commission will have new appointees in January, but a large number of them and the more active boards and commissions will. She noted the new West Ashley Revitalization Commission that will start tomorrow.

Mr. Jerue said the one thing the Mayor would like to emphasize is even though you may have gotten some notification that the end of your term may be up, if you wanted remain on the Commission to let him know because he wants to honor their wishes if possible.

Ms. Turner Maybank said certain boards have term limits and the Tourism Commission has term limits that they will have to adhere to.

The next Commission meeting will held Wednesday, December 14.

There being no further business to discuss, the meeting was adjourned at 6:00 p.m.

Marcia L. Grant
Council Secretary

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

COUNCIL CHAMBER

Regular Meeting

March 14, 2017

The twenty-ninth meeting of the City Council of Charleston was held this date convening at 5:02 p.m. at City Hall.

A notice of this meeting and an agenda were mailed to the news media March 8, 2017 and appeared in The Post and Courier March 12, 2017 and are made available on the City's website.

PRESENT (12)

The Honorable John J. Tecklenburg, Mayor

Councilmember White	District 1	Councilmember Waring	District 7
Councilmember Williams	District 2	Councilmember Seekings	District 8
Councilmember Lewis	District 3	Councilmember Shahid	District 9
Councilmember Mitchell *(absent)*	District 4	Councilmember Riegel	District 10
Councilmember Wagner	District 5	Councilmember Moody	District 11
Councilmember Gregorie	District 6	Councilmember Wilson	District 12

Mayor Tecklenburg called the meeting to order at 5:02 p.m.

The Clerk called the roll.

Mayor Tecklenburg said, "Now, if you would like to join us, I'm going to call on Councilmember Riegel to say an invocation and then lead us in the Pledge of Allegiance."

Councilmember Riegel said, "Thank you, Mr. Mayor. Please stand for the invocation and, of course, remain standing for the Pledge of Allegiance to the flag of this great Nation. Please bow your heads."

Councilmember Riegel opened the meeting with an invocation.

Councilmember Riegel then led City Council in the Pledge of Allegiance.

Mayor Tecklenburg said, "Thank you very much, just a couple quick announcements. First, in the most unlikely event that there were some kind of an emergency while we're having the meeting, these are our two exits from the main Chamber, and there is one exit door over on the room to the right. If that were to occur, please do not use the elevator. Simply use the two stairways going down and then the singular stairway out to the front, and then I would ask that everyone meet in Washington Park in the event of an unlikely event. We've begun signing in for folks that would like to comment during Citizens Participation Period so, if you want to be heard during our Citizens Participation Period, please sign in at the sheet out at the desk. Now, this does not include public hearings. Anybody can speak at a public hearing. We do have one

public hearing tonight because it was advertised, and we wanted to proceed and have it conducted. I do want to share with anyone who is here tonight regarding the matter of the abandonment of Hayne Street, that we will be deferring that action. We will not be taking any action on that matter tonight but, since the public hearing had been advertised and scheduled, if you want to speak on that matter you can this evening. So, first, I want to, I bet they're out in the hallway. I don't see a basketball team here so, if you want to call the Burke High School Bulldog Champion Basketball Team, please come in and join us."

There was a standing ovation in the Chamber.

Mayor Tecklenburg continued, "Congratulations! We're going to just line up here. Congratulations! Way to go! We're so glad to have you. Congratulations, man! Way to go! You all may have to double up a little bit down there. I have a proclamation to share with you this evening, and I'll just get right to the matter."

---INSERT PROCLAMATION---

Mayor Tecklenburg recognized the basketball players, coaches, athletic director, manager, and statistician.

There was a standing ovation in the Chamber.

Mayor Tecklenburg said, "Way to go, guys. I would like to call forward any Councilmembers who also attended Burke High School. I know Councilmember Gregorie did. Are there any other Burke High School graduates?"

Councilmember Lewis said, "Councilmember Mitchell attended Burke High School, but he got stuck in the weather in Washington, D.C. He told me to congratulate them for him. He wanted to be here, but he just couldn't be as he is coming back from Washington, D.C."

Mayor Tecklenburg said, "Absolutely. So there's a lot of excitement in the community. I didn't make the game, but numerous people called me, including Coach Lewis, on his way back from Columbia. They were so excited about the win and how well represented Charleston was by this fine team. Okay, I need everybody to tighten up here for a photo. Thank you very much."

There was applause in the Chamber.

Mayor Tecklenburg continued, "Thank you very much. God Bless you. Alright, guys, thank you very much, but stick around because you may want to cheer for another basketball team. In addition to a boys' team winning a State Championship, so did the Bishop England Lady Bishops Basketball Team with Coach Runey. You all please come forward. Alright."

There was a standing ovation in the Chamber.

Mayor Tecklenburg said, "Congratulations! It's so good to see you. I had two daughters playing on Bishop England basketball ladies' team, Lady Bishops, but unfortunately they weren't State Champions at that time. You all come on forward. We were also, the City of Charleston, so well represented by the Lady Bishops. I have a proclamation to present to you this evening."

---INSERT PROCLAMATION---

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P 3 - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Mayor Tecklenburg recognized the basketball players and coaches.

There was a standing ovation in the Chamber.

Mayor Tecklenburg said, "Congratulations! Alright. Way to go! So, I've got one BE graduate. I've got one Councilmember, Mr. Shahid, who is a BE graduate."

Councilmember Shahid said, "No, I'm a Porter-Gaud graduate, but I'll stand with them."

Mayor Tecklenburg said, "Oh, his three children went to Bishop England, my five children did. So, I filled out that form 20 times."

There was laughter in the Chamber.

Mayor Tecklenburg said, "Alright."

There was applause in the Chamber.

Mayor Tecklenburg said, "Terrific. You all keep it up. Are there a few seniors graduating this year? Are you going to play basketball? Maybe?"

A basketball player said, "No."

Mayor Tecklenburg said, "No, you're done. Alright. Congratulations!"

The basketball team said, "Thank you."

Mayor Tecklenburg said, "Alright. So, finally we have one more proclamation, and this is to honor a really incredible public servant in our community. We'll wait just another minute. Wow, we have quite an esteemed gathering here."

The Honorable Julie Armstrong said, "That's what it takes to work the Courthouse."

Mayor Tecklenburg said, "That's what it takes to work the Courthouse. So, folks, we're also honoring tonight a great public servant who has given over 25 years of exceptional public service, and that is Julie Armstrong, the Charleston County Clerk of Court. Given that she is a constituent of Councilmember Shahid, he is honored to read the proclamation from the City of Charleston this evening."

Councilmember Shahid said, "Thank you, Mr. Mayor, and members of Council and Madam Clerk, we have with us Mrs. Armstrong and her husband and children, the President of the Charleston County Bar Association, several Judges, Family Court, Circuit Court Judges, and members of her staff. Even some retired Judges are with us tonight, and we appreciate them all being in attendance, and her children."

Councilmember Shahid read the Proclamation.

—INSERT PROCLAMATION—

There was a standing ovation in the Chamber.

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

Mrs. Armstrong said, "Thank you, ladies and gentlemen. It is indeed an honor, and I took the privilege as Madam to get to kiss all of these fine gentlemen up here for this recognition."

There was laughter in the Chamber.

Mrs. Armstrong continued, "But, I'm a 10th generation Charlestonian, and I can tell you we love this City. It is my honor to be your neighbor and to work shoulder to shoulder with you. You have touched my heart with this and, as you see, my Courthouse family makes this all happen every day. So, I would really like to clap for them, because they make it happen. Thank you."

There was applause in the Chamber.

Mayor Tecklenburg said, "Thank you very much. God Bless you for your service."

Mrs. Armstrong said, "Well, thank you, Mayor."

Mayor Tecklenburg said, "Thank you for all being with us. Oh, photo time."

Mrs. Armstrong said, "You want to get the Mayor? Thank you."

Mayor Tecklenburg said, "Thank you. I think I would be remiss not to thank the spouse of Julie Armstrong, Jim Armstrong, who is lead Administrator with the County of Charleston and particularly on our highway projects and road improvements, who works so tirelessly with the City of Charleston, and we thank you for your efforts, Jim."

There was applause in the Chamber.

Mayor Tecklenburg said, "So, a number of proclamations tonight, obviously, but it's nice to celebrate the achievements of our youth and recognize the service of someone such as Mrs. Armstrong. Next we're going to have our public hearing. As I mentioned before, it was advertised, and we wanted to proceed and let the public share any thoughts or comments they have on the abandonment of Hayne Street, which really arose from the arrangements that the City intends to have regarding the streetscape improvements of Market Street, to be able to put the utilities there underground, which involve some property swap, if you will, or the use of each other's property. But again, we don't plan on taking any action. We defer action on this matter tonight. Would anyone like to be heard on this matter? Yes, sir, please come forward. If you all would just kind of queue up."

1. Fred Turco said he is a resident of Charleston and he lives at 6 Wentworth Street. He is vehemently opposed to another boutique hotel going up in downtown Charleston. He said the City is turning into a Disney World. He stated that if the City continues to allow this unabashed growth of hotels and apartment buildings that he's seen over the last five or six years, it's going to destroy the historic charm. When the ordinance was made that was put into place by Council, it was to limit the boutique hotels to 50 rooms, to allow a developer to come in and put a 50-room hotel next to another 50-room hotel. He stated he realizes development has to occur but there has to be constraints.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

2. Gerry Schauer said he lives in Ansonborough, and he is the President of the Historic Ansonborough Neighborhood Association. He mentioned that he is speaking on their behalf and thanked Council for deferring this matter. He said that the residents have significant concerns, they have had inadequate notice, and are only learning now about what it is, what it means, what it opens the door for, and what opportunities there are with it, as well. He said that the developers and City leaders will be speaking at their next Neighborhood Association meeting in April, and there will be more discussion. He said they will come back to City Council when this does come up for a vote and will be better educated.

3. William Thompson thanked Council for allowing him to speak. He and his wife live in Ansonborough, and they are opposed to the Hayne Street abandonment and the zoning change for the benefit of the Hayne Street Hotel Project due to the size and scale of the proposed hotel. He said the cumulative impact of hotels under construction or approved, along with traffic and congestion compounded by the additional impacts caused by the Hayne Street Project have not been studied.

4. Capers Barr said he is a lawyer at 11 Broad Street, and he represents SCM Management, the owner of the property at issue. He thanked the Mayor and Council for agreeing to defer this matter. Mr. Barr and his clients had a meeting with the leadership of the Historic Ansonborough Neighborhood Association, the French Quarter Association, the Preservation Society, and the Historical Society as well as others. It was unanimously agreed upon that they needed to meet with the greater constituency of those memberships and that meeting is scheduled for April 5, 2017 at St. Johannes Church.

5. Susan Bass said she lives at 18 State Street, and she is also the President of the French Quarter Neighborhood Association. She thanked Council and the Mayor for deferring this matter. She stated that they already have many hotels that have been approved particularly in the French Quarter and Historic Ansonborough. She said there is a need to consider a holistic view of this, and the traffic impact on all of the neighborhoods.

6. Mohammed Idris said he is happy that people are fighting against having the hotels built. He stated that poor people are being pushed off the Peninsula. He stated that there is too much greed.

7. Maria Parker stated that she lives at 61 Laurens at the corner of Anson Street. She said that with regard to giving Hayne Street to a developer and increasing the density of the parking lot from 100 to 150 that Council should first ensure transportation and public safety are in place and then approve additional hotels.

8. Robert Gurley said he is with the Preservation Society of Charleston, and they agree with the comments already presented and the concerns. They think it's a poor urbanism, and it will have a negative impact. He stated that there is no public benefit, and they are asking that this amendment not be passed.

9. Glenda Nemes stated that she lives at 11 George Street in Ansonborough. She said she doesn't understand why this property would be gifted to the developer when the land has value. She stated that it is illogical to trade the property to the owners' developers in order to put transformers and underground wiring when space is being

donated for transformers all over the neighborhood. She stated they are also concerned about the traffic impact.

10. Ed Holscher said he has lived at 65 Anson Street for more than ten years. He stated that this deal about Hayne Street is not good for Ansonborough and the City. He mentioned the noise, trash, and people out in the street walking at all hours of the night. He also is concerned about traffic. He said it is a recipe for disaster. Mr. Holscher stated that we have a unique city, and a closer look should be taken at the architecture.

Mayor Tecklenburg said, "Thank you very much. Is there anyone else?"

No one else asked to speak.

Mayor Tecklenburg said, "Could I entertain a motion to defer this matter?"

Councilmember Seekings said, "So moved."

Councilmember Gregorie said, "Second."

Mayor Tecklenburg said, "Is there any discussion?"

No one asked to speak.

On a motion of Councilmember Seekings, seconded by Councilmember Gregorie, City Council voted unanimously to defer the following bill:

An ordinance authorizing the Mayor to execute on behalf of the City Quit-Claim Deeds, approved as to form by the Office of Corporation Counsel, to the owners of those properties abutting each side of Hayne Street, running from Church Street to Anson Street, conveying to such owners one-half of the width of Hayne Street as said street abuts the respective owner's property, subject to any and all easements or other matters of record. ***(DEFERRED)***

Mayor Tecklenburg said, "Next, we'll move along to approval of City Council minutes from February 28, 2017."

Councilmember Riegel said, "Move for approval, Mr. Mayor."

Councilmember Waring said, "Second."

Mayor Tecklenburg said, "Yes, sir. Are there any additions, corrections or deletions?"

On a motion of Councilmember Riegel, seconded by Councilmember Waring, City Council voted unanimously to approve the minutes of the February 28, 2017 City Council meeting.

Mayor Tecklenburg said, "So, next is our Citizens Participation Period. We've got a sign-in sheet here with about 20 folks on it."

The Clerk said, "Twenty-one."

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Mayor Tecklenburg said, "Twenty-one folks on it, but some of these have already spoken, right? So, there are probably about 15. I'm going to ask if everyone could please keep their remarks to two minutes each, and that will get us to our 30-minute Citizens Participation Period total. Thank you very much for being with us this evening, folks. Okay, you want to call out?"

1. Mohammed Idris stated that he sees what's going on with the hotels now and that it started by telling people that the land was contaminated and the poor people were moved out of the area in order to build hotels. He said there are good and bad people in every ethnicity and that they should have stood up for the people who were moved out of the projects. He stated that a lot of hotels are being built due to greed.

2. Michael Ockovic stated that he lives at 30 Hasell Street. With regard to the horse issue, he stated that it is ludicrous to take the temperature on top of a four-story building. He said that the temperature should be taken on the ground where the horses are. He would like the Mayor and Council to consider the use of the horses and the loads they are carrying. He also stated that it should be taken into consideration the pile driving scaring the horses when constructing the hotels.

3. Dr. Janet McKim said she is the Medical Director of the VCA Charles Towne Animal Hospital in West Ashley, and she is also the President of the local Trident Veterinary Association. She stated she was there on their behalf. She read a letter to the Charleston Animal Society stating that they support their proposal to fund a prospective science-driven peer reviewed study to provide to the City of Charleston. She felt those facts that are needed to guide the revision of the Carriage Business Regulations and to ensure that the working animals in the City of Charleston have humane and working conditions.

4. Joe Elmore stated he is the CEO at Charleston Animal Society. He stated that today (March 14, 2017) is the 143rd birthday of the Charleston Animal Society. He said that the Charleston Animal Society was founded to address the plight of working animals, livestock and agricultural, particularly working horses at that time. He mentioned that a number of constituent groups were here tonight all calling for settling this controversy once and for all, with a true peer reviewed perspective looking forward to a scientific study. They believe the ordinance is broken and are asking Council to fix it. He stated that other cities lowered temperatures and loads except for Charleston, and asked that reading above the Doubletree Hotel be brought down to street level and the working condition of the horses. He also asked for one reading as four readings is unacceptable.

5. Tom Doyle said he lives at 553 Godfrey Park Place and operates Palmetto Carriage Works. He stated that he has been a carriage tour guide for 40 years and along with his children they operate Palmetto Carriage. He stated they have held many positions to include the area of equine safety and care, and said that he was a member of the committee that created the limitations they work under now. He said they have not incurred a single heat-related incident working under these guidelines. He mentioned they are the only city that does rectal temping of each animal after every tour that identifies overheating before it becomes a problem regardless of the ambient temperature. He stated that the Clinic for Equine Surgery Veterinary Medical University of Vienna in Vienna, Austria conducted an independent study of the five

companies showed that his carriage company clearly provides acceptable welfare for their animals.

6. Broderick Christoff said he owns Charleston Carriage at 20 Anson Street. He stated he feels the same as Mr. Doyle. He mentioned that you don't hear from Charleston's equine veterinarians about a problem that exists but you hear from the same handful of anti-carriage people that you've been hearing from for ten years. He said he thinks the City of Charleston should change the way it handles its animal services instead of just designating who does it they should work with County Council to create a biddable contract that will last for two to three years and have the animal services held that way. He stated this would create a level of oversight.

7. Louise Palmer said she lives at 1493 Palm Crest Drive. She stated that the problem with the horses can be fixed by reducing the number of readings for the horses from four to one and by measuring the temperature at street level. She also mentioned that the veterinarian that Mr. Doyle referred to as conducting the review has endorsed the Charleston Animal Society's call for a study.

8. Carol Linville said she has been the President and Founder of Pet Helpers, an animal welfare organization, for 40 years. She stated that Humane.net is a local animal welfare coalition of about four or five local animal rescue groups in the tri-county area. She stated that bringing the thermometer down to ground level where it's the true temperature is a critical thing that can be done with this ordinance and getting the readings down to two readings, preferably one. She stated that Charleston leads internationally as a city and Charleston should have the epitome of best animal carriage welfare laws in place to protect the horses. She also mentioned she is concerned about the weight loads the horses are pulling when you have carriages that are 12 to 13 people.

9. Augustus Holt said he is an advocate for International Little League Baseball and the children of Charleston that don't have a voice. He mentioned the prior coach of the Cannon Street All-Stars, Lee James Bennett, Sr., and said he left a legacy rich and full of achievement. He stated the City of Charleston is struggling by not having an International Little League Program and that the City needs to quit kicking the can down the street and deal with the issue.

10. Glenda Nemes said she lives at 11 George Street. She stated she is asking City Council to make the temperature change temporary, amend it to one reading and to also make a commitment to come up with continual improvement and ordinances in the horse care.

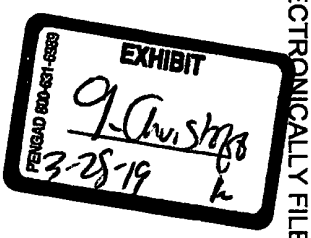
The Clerk mentioned for the record that a letter was received regarding the horses and the heat which was placed on the Councilmembers desks.

Mayor Tecklenburg said, "Alright. Did anyone else that signed up to be heard not be heard? Alright. Thank you very much. That will be the end of our Citizens Participation Period this evening."

The Clerk said, "Mayor, before we leave that, since I've talked about what was sent via e-mail, we also received all of these cards (3 stacks) in the Clerk's Office to share with City

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

EXHIBIT 3



ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

SPECIAL COVERAGE

SC sheriffs fly first class, bully employees and line their pockets with taxpayer money

https://www.postandcourier.com/archives/charleston-considering-lowering-the-temperature-for-pulling-carriage-horses-from/article_e034cf4e-6036-52fc-8fd0-3f778dbebaff.html

Charleston considering lowering the temperature for pulling carriage horses from streets

DIANE KNICH
AUG 23, 2016

SUBSCRIBE FOR $2.98 / WEEK

Members of a new committee examining the rules for Charleston's carriage horses disagreed how hot is too hot for the animals to remain on the street.

Dan Riccio, the city's director of livability and tourism and chairman of the committee, said Wednesday the group first will discuss heat-related issues, then it could review the weight of loads the animals are allowed to pull.

The city currently requires the five carriage companies that work downtown to shut down their tours when the temperature reaches 98 degrees, or when the heat index reaches 125 degrees.

Savannah also requires horses to stop working when the thermometer hits 98 degrees — the highest acceptable level in the country — but it shuts down its carriages when the heat index hits 110. The index factors in relative humidity.

Ron Morales, a meteorologist with the National Weather Service, said a heat index of 125 is extremely hot for humans, adding, "You wouldn't be comfortable standing outside for one minute." Excessive heat warnings are issued when the index reaches 115 degrees.

Kurt Taylor, director of government relations for the Charleston Animal Society, said his group would like a year-long study conducted on carriage horses and heat in Charleston. He said any change in the city's temperature or heat index limit should be based on science.

Taylor also said the study "shouldn't be about what the horses and mules can do at the upper limits of heat and humidity. It should be about what the animals should be asked to do in a humane environment in which they can thrive."

Chris Ernst, a veterinarian with Edisto Equine Clinic, said that while temperature and the heat index are important in considering the animals' welfare, the horses' internal temperatures are the most important factor. A horse can suffer organ damage when its internal temperature reaches 103 degrees.

Broderick Christoff, owner of Charleston Carriage Works, said carriage companies take horses' temperatures after every tour. If they are too high, the animals are allowed to rest.

He also said he thinks the media and the Charleston Animal Society have mislead the public about the treatment of carriage horses. The tour companies take good care of them, he said.

Committee members will meet next on Sept. 14. Before then, veterinarians will review carriage company's records on horses' internal temperatures and compare those to temperature and heat indices. City staffers also will ask local county and municipal governments to see when they stop their employees from working outdoors.

Reach Diane Knich at 843-937-5491 or on Twitter @dianeknich.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

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

VIDEO DEPOSITION OF BRODERICK CHRISTOFF
VOLUME II

CHARLESTON CARRIAGE WORKS, LLC,

Plaintiff,

vs. CASE NO. 2018-CP-10-4083

CHARLESTON ANIMAL SOCIETY, ELLEN HARLEY and CHARLESTON CARRIAGE HORSE ADVOCATES, INC.,

Defendants.

DEPONENT: BRODERICK CHRISTOFF

DATE: MARCH 28, 2019

TIME: 10:05 A.M.

LOCATION: ROSEN HAGOOD
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

an understanding of the basis of the complaint, which is what started this lawsuit. I'm looking at paragraph 6.

All right. In that second paragraph, it says, from time to time persons acting on or at the direction of the defendants would approach the plaintiff's carriages to interfere in the operation of plaintiff's business.

I'm going to stop there. When did that happen? When did people acting on the direction of Animal Society approach your carriages?

A. People throughout 2016 and 2017, numerous people would approach carriages and shout various things, make accusations. We -- and we still deal with it. It still happens. So it -- it started in the -- it started really -- you know, it always has happened to a small degree from time to time, but probably industrywide it happens almost every single day now, and that really -- that frequency started in 2016.

Q. Okay. And to -- I need to be specific here --

A. Sure.

Q. -- because obviously I represent the Animal Society (indicating) and I need to understand the

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

basis of your claims against the Animal Society.

A. Sure.

Q. So what -- what was it or what is it that makes you believe that these people were acting on or at the direction of the Animal Society?

A. Because most of their -- most of the people's complaints is that what -- that what we do is cruel and inhumane and that's the Animal Society's position on the industry, that it's cruel and inhumane.

Q. If is there anything else that you believe links the Animal Society to the people shouting at your carriages?

A. Their statements about the -- their statements about the industry and that the industry doesn't follow regulations, you know, all of that leads people to believe that something is going on that shouldn't be.

Q. And do you contend that the Animal Society is the only entity or individual out there that has expressed these concerns about the industry?

A. No.

Q. Okay. So the people shouting at your carriages could have come up with these ideas on their own or heard it from somebody other than the

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Animal Society, correct?

A. Sure.

Q. Okay. The paragraph 6, subsection F, A through G are the, I guess, particulars of the categories of things shouted at your -- and by yours I mean Charleston Carriage Works -- carriages.

F is the alleged pattern of allegedly working animals to death. Do you contend that the Animal Society has ever represented that the carriage animals are worked to death?

A. Well, they've represented that they've died working and they published a video of -- the video of Big John and led people to believe that he had died working and we sent them --

Q. Well --

A. Can I finish?

Q. Yes, absolutely.

A. We sent them a letter very shortly after they published their video and let them know that people believed that the horse died based on their video and they didn't even respond. In fact, they further escalated their advertising of that video.

And I received many comments from people that thought the horse was worked to death as a

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. Yes, sir.

A. Yes. No, it doesn't. It does not.

Q. Would you say that Big John fell abruptly and completely?

A. No.

Q. Why not?

A. What do you mean by abruptly and completely? What do you mean by completely?

Q. Fell completely down.

A. Fell -- would I agree that he fell to the ground?

Q. Mm-hmm.

A. I would agree that he fell to the ground.

Q. And would you disagree that he fell abruptly and completely?

A. Yes, because I don't know your definitions of those two words.

Q. Well, it was all of a sudden, wasn't it?

A. It was all of a sudden.

Q. And he completely fell?

A. He completely fell to the ground.

Q. Okay. This report, the first page says the entire event lasted 11 minutes. Is that your understanding of the length of the time from the time of the fall to the time that he was back on

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. Did you ask her anything about it, the incident?

A. I know that we talked about it, but I don't remember specifics.

Q. Why did she leave Charleston Carriage Works?

A. I don't know the answer to that. She -- I believe that was her last day that she worked for us. She was working out a two-week schedule. I think her father works for one of the other carriage companies. She was going to work with him.

Q. Okay.

A. I think that was -- if that wasn't the last day she worked with us, it was the second to the last day.

Q. Did you talk to any of the passengers following the incident?

A. I did not.

Q. Did you try to get any information from them?

A. I did not.

Q. All right. So going back to the complaint, okay. It says, falsely implying -- I'm back at subparagraph D of paragraph A, talking about the Big John video and it says, the video posting

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

falsely implied that the video depicted a dead horse.

How did it imply that the horse died?

A. By the narrative that accompanied the video.

Q. Let's watch the video. For the Animal Society, you're speaking of the video that has subtitles and that we -- they posted on YouTube and on their website?

A. Correct.

Q. All right. I don't know if we're going to have sound or not. And just for the purposes of the record, this is the video that Animal Society posted on YouTube that is 3 minutes and 10 seconds long.

(Video played.)

Q. All right. So in your opinion, what about that video implies that the horse died?

A. It led people to believe that he died.

Q. He got up at the end. It -- it ends showing him up and alive, so what part would a reasonable person be able to conclude that that horse died?

A. Probably, you know, maybe people didn't watch the video all the way through. I can't really answer that question. All I know is that I got lots of messages from people who thought the

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

horse died as a result of that video and the Carriage Horse Advocates' video. So, I mean, thousands of people think the horse died, so...

Q. And you think that's the Animal Society's fault?

A. Sure, partly.

Q. Even though their video shows the horse fine?

A. Right.

Q. Okay. So the Animal Society should be held responsible for people who unreasonably think that that horse died even though it is shown as being alive at the end?

A. Yes.

Q. Okay. Let's see, back to the complaint, paragraph 9 --

A. Before we leave the video --

Q. Sure.

A. -- I'd like to also amend my answer. You noticed the narrative, correct?

Q. Mm-hmm.

A. So you noticed this about -- at the end about whether the environment is truly safe or humane. Does that -- does that lead people to believe that the horse slipped and fell and that

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

the Animal Society simply believes that collapse is just an acceptable word for slip and fell, or does that lead people to believe the horse had a medical problem.

And how about if we go back in the video, let's go back to the -- can we go back to the --

Q. Sure.

A. -- let's just look at the text. I'll explain it to you. Just stop on each text part.

Okay. So were eyewitnesses intimidated to stop taking a video when a horse collapsed. Okay. So that leads people to think there's something going on, right? Something's happening that's not supposed to be happening.

Okay. Now we go to the next text. Now, those are people's comments, comments, still comments.

Q. Oh, sorry.

A. Before that. Right there, how about that? Was Big John exhausted or did he just trip? Okay. So does the Animal Society believe tripping is the same as collapse or exhausted? Because here they're making a distinction. He's either -- was he exhausted or did he, quote/unquote, trip. So people are going to believe the horse is exhausted.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. It's a question for people's consideration.

A. It's a pretty leading question. So let -- how about let's look at the next text. So if you stopped watching the video there, would you believe the horse died? I think you would.

Q. Well, that would be the responsibility of person watching the video, wouldn't it?

A. Is it?

Q. I mean --

A. I mean, I think that's your opinion, but, I mean, that's certainly not my opinion.

Now how about this one: By law the horses are supposed to pull more than -- not supposed to pull more than three times their weight; however, loaded carriages are never weighed and Charleston does not enforce this provision.

That's entirely false. The first part's correct. The horses are not supposed to pull more than three times their weight, but carriages being weighed and the City not enforcing it is totally false. The City has the weight of the carriages. That -- that provision has always been enforced. There is no duty on the City to physically weigh carriages and passengers. That's completely false.

Q. The statement is, loaded carriages are never

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

weighed. Have you ever had one of your loaded carriages weighed?

A. There's no requirement for a loaded carriage to be weighed. It's not in violation of an ordinance.

Q. Well, we can disagree about that, but my question is, has one of your loaded carriages ever been weighed?

A. No.

Q. Okay.

A. But -- but -- but Charleston does enforce the provision. That's false that they do not enforce the provision. That's -- and furthermore, that leads people to believe that what happened to Big John was because his carriage was too heavy.

Q. Do you believe that's false that Big John could not get up on his own; a team of people had to try and pull him up?

A. Yes.

Q. You believe that's false?

A. He could have gotten up on his own. We didn't want him to get up on his own. If you watch that video and Big John gets up, watch the two people that are holding the strap, do you really think they lifted a 2000-pound horse off the ground

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

or do you think he did it on his own?

Q. Well, isn't that speculation whether or not he could have gotten up on his own?

A. It might be speculation for you; it's not speculation for me.

Q. Okay.

A. I've been working with draft horses my whole life. That horse could have easily gotten up on his own. The problem is is he's on asphalt, and when horses rise, they can hit asphalt. We did -- and that's the reason that they're holding his head up in the air. They don't want him to hit his head on the asphalt when he gets up.

Horses need their head to throw their weight in order to rise, so we put him in a weird position and made it difficult for him to get up so that he wouldn't have any more injury. Watch the video from there and watch when he actually gets up and watch who's pulling on the strap.

(Video played.)

Q. After several minutes of trying, finally some good news for Big John.

Do you find anything problematic about that statement?

A. No.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. And does that not convey that -- good things for Big John, that he's okay?

A. It does by this point, for any viewer that's still with us.

Okay. Stop right there. Now go back a little bit and see who -- who's on the strap. Because what you think is you think the firefighter on the left is on the strap. He's not.

So you have Grace -- that was pretty close -- Grace and Gabbey, the driver, on one side of a strap that's underneath Big John, okay. Watch. No one else, right? Two girls with one 2-inch strap that's under that horse and you think they pulled him up.

Q. I don't think they pulled him up. I think they assisted him.

A. I don't think they pulled him up either. That's my whole point. So no team of people -- did a team of people help Big John get up? Are two people a team?

Q. A picture speaks a thousand words and I think that we just saw a team of people helping that horse get up.

A. Right. Well, and that's more to the point. A picture does speak a thousand words and most

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

people on social media do not watch videos through to their entirety.

Q. So is that your --

A. They watch the beginning, they get angry and they lash out and that's what happened. That's what happened to me.

Q. Okay. So you believe that -- you're suing Charleston Animal Society for posting a video that people didn't watch all the way through and drew a false conclusion from?

A. No, they posted a video with a false narrative and people believed the narrative and I suffered as a result.

Q. But they just didn't watch the whole video?

A. They didn't watch -- who's they?

Q. The people that have --

A. I don't know why the people reacted the way they reacted, but I know what started it. That's the video's what started it.

Q. Paragraph 9 of the complaint, as a result of -- I'm paraphrasing this first part: As a result of the -- Defendants' false communications, etc., making it difficult for the plaintiff to conduct business, retain valued employees...who were you unable to retain?

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

A. No, not any direct evidence, no.

Q. Okay. 24, paragraph 24 is, that last sentence, talking about the franchise contract: Defendants have frequently and intentionally attempted to procure breach of that franchise contract by publishing false and defamatory information about the plaintiff.

How has -- specifically what has Charleston Animal Society done that you believe was an attempt to procure a breach of your franchise contract?

A. They claim that we worked Big John to the point of his collapse.

Q. Are you referring to the video again?

A. Yes.

Q. Anything else?

A. They made statements that we don't close when the temperature threshold is exceeded, which -- which are false. They make statements about how the industry operates when the temperature threshold is met that are false. They made statements about the City not enforcing various parts of its ordinance, which are false.

Q. Has any -- have you ever received any type of notice from anyone acting on behalf of the City of Charleston that your franchise contract was in

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

jeopardy or anything related to your franchise contract?

A. No.

Q. Okay. So this is all hypothetical or potential that my franchise contract might someday in the future might be --

A. Correct.

Q. Okay. So just to clarify, no threats to your franchise contract currently by the City?

A. Not that I'm aware of.

Q. All right. Can you quantify specifically how Charleston Carriage Works has been damaged by what Charleston Animal Society has done or said?

A. Sure. We had, you know, a loss of revenue. I already mentioned that the -- the girl that called and canceled one of her tours because she thought one of our horses had died. The folks that were on that carriage all were -- all were refunded, you know, also the video.

I've had -- I had to spend a lot more money advertising to try to keep my business up. I still had a loss, a pretty -- pretty significant loss that year as a result of this. It took me out of my business. I was unable to go downtown probably for a month or a month and a half.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

an accusation that -- that Charleston Animal Society did something terrible to an animal, the back lash is magnified. People care a lot about animals.

Q. Well, people care a lot about their own safety and wouldn't you agree that the Luke incident, especially the one where he's running and the person up in the hotel caught that --

A. Sure.

Q. -- that video, is that not extremely more dangerous to humans than anything related to the Big John incident?

A. I'm not sure I understand the question. Are you saying is an accident -- do people concern themselves more with accidents than they do with animal abuse; is that the question?

Q. Oh, no, I have -- I would have no idea about that. What I'm asking is, someone watching that Luke video of him going -- running through the parking lot --

A. Sure.

Q. -- carriage bumping, do you not think that that would cause people to be concerned about their safety on a carriage?

A. I mean, it may, but no -- no people were

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

details.

Q. Have you encouraged Ben or anybody to take that page down?

A. No, I haven't, no.

Q. Have you been part of a conversation where that page was discussed?

A. Possibly because they post things that people talk about, but not anything about that page's direction or management of that page or anything in that regard.

Q. Would you agree that the carriage issue has been a matter of debate in the public for quite a while now?

A. Yes.

Q. You've mentioned threats, and I believe arson and death threats; is that correct?

A. Yes.

Q. Did you report any of this to the police?

A. Sure.

Q. Which police?

A. I reported it to Charleston County right as -- you know, when it first started, you have to understand, this is what I tried to relay to Mr. Mann, that when this incident happened with Big John, we've had horses trip and fall in the

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

as their spokesperson.

Q. Okay.

A. But I was the -- there was one seat on that committee for an industry representative and that was me.

Q. All right. The next is going to be Exhibit 9, which I think you already --

THE WITNESS: Oh, I'm sorry. I was lost. Did I answer your last question correctly?

Q. Yes.

A. If we weren't on Exhibit 9, that's what I was talking about.

Q. We weren't yet, but that's fine.

A. All right. Well...

Q. But the previous article also dealt with that committee and so no worries.

A. Well, the previous one is from 2011.

Q. Oh, yes, but it's -- we're going into this one. We're good.

A. Okay.

Q. So this article is the August 23rd, 2016 concerning the heat index committee.

A. Okay.

Q. The quotes, it's not really quotes, but the -- the language attributed to you on that

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON P - CASE#2018CP1004083

second page, do you believe all of that is -- that's accurately stated? Are these statements that you made? The paragraph starting Broderick Christoff and then the next paragraph starting he also said?

A. Right. Yup.

Q. Okay. Did you say -- did you make these comments to a reporter or do you think these were taken from comments you made at a meeting?

A. My guess, I don't really talk to reporters. I don't like talking to reporters. If I do, I usually issue written statements and they're usually long. I don't -- this is probably comments taken from a meeting.

Q. Okay.

A. That would be my guess.

Q. The next one, which will be Exhibit 10.

(Exhibit No. 10 marked for identification.)

Q. Is the December 14th, 2016 article, Charleston panel backs lower temperature limits for carriage tours. The very last page there is just one sentence attributed to you.

A. Right.

Q. But Broderick Christoff of Charleston

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Society doesn't want a ban, but to people who read between the lines are like, well, that's not saying anything.

So maybe they're getting donations from people or organizations or other nonprofits whose sole goal is banning the use of animals in any kind of entertainment whatsoever and maybe they are and maybe they aren't, but I don't know.

Q. Well, you filed the lawsuit without knowing, correct?

A. Correct.

Q. Okay. So I don't understand why it would matter. How would it help you advance your claims?

A. What do you mean? I mean, everybody -- you -- nobody files lawsuits with all the information in their hands at the exact same time. That's why you have discovery. I mean, that information comes -- it comes down the line as you -- as you now have the right to have access to it.

Q. Sure. Let's move on.

Are you in agreement that carriage drivers are required to abide by traffic laws?

A. Yes.

Q. And you're aware that we have videos of your

ELECTRONIC FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

carriages running stop signs, correct?

A. I haven't seen them, but I believe you.

Q. Okay. Well, let's watch them.

(Videos played.)

Q. You'll agree with me that was just absolutely blatant.

A. Right.

Q. Running stop signs.

A. He ran A stop sign.

Q. I mean, he wasn't even facing in the direction of the stop sign.

A. Right.

Q. Who is that driver?

A. That was Blake.

Q. All right. And is he still with you?

A. Yes.

Q. And what are you going to -- are you going to do anything? Are you going to reprimand him or advise him at this point?

A. Sure, I'll tell him that he's required to stop for stop signs.

Q. All right. Let's go to the next one. And for the record, let's see. Let me try to figure out a way that we can -- I will email these to you to be made exhibits.

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

That one is named Charleston Carriage Works 2 and that will be Exhibit 23.

(Exhibit No. 23 marked for identification.)

This one is just Charleston Carriage Works and it will be 24.

(Exhibit No. 24 marked for identification.)

Q. So, again, that's one of your carriages, correct?

A. That is.

Q. And who is that, the driver?

A. That is Kristin.

Q. Is she still with you?

A. You know, she teaches at the college. She hasn't driven for us in a long time.

Q. Okay.

A. She picks up days here or there, but...

Q. Have you ever told your employees not to stop so that it lessens the load on the horse and you can do more tours without the horse getting tired?

A. No. They know they're supposed to stop at stop signs. They -- they'll be ticketed if they don't stop at stop signs --

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

Q. And this is --

A. -- and the City catches them.

Q. -- on July 12, Carriage Works, which will be Exhibit 25.

(Exhibit No. 25 marked for identification.)

Q. And can you identify that driver?

A. That's Al.

Q. And is he still with you?

A. Yes.

Q. And you'd agree that he just ran that same stop sign?

A. I agree.

Q. So we've got three of your employees on film running stop signs.

A. Right.

Q. Okay. So if the Charleston Animal Society was ever to say that Charleston Carriage Works doesn't abide by the law, isn't that proof that that statement is correct?

A. We don't encourage that behavior or condone that behavior.

Q. Sure.

A. In fact, now that I'm aware of those incidents, I will remind all of those people that

Search Site

EXHIBIT 5

ADVERTISEMENT

Carriage company owner responds after minor incident over the weekend

by ALEX HEATON
Monday, February 20th 2017

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

EXHIBIT
PENGAD 800-631-6989
12 Charles
3-8-19





ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Search Site

Horse-drawn carriages are familiar sights on the streets of Charleston, but occasionally the gentle giants get spooked.

Ads by ZEDO



Gray Morris was there to watch one of those incidents unfold yesterday, but she said it was far from a terrible situation.

"I heard bag pipes coming down the street from a parade," she recalled. "There was a carriage full of people and the horse spooked. Horses are flight animals, and he was attached to the harness and couldn't get away."

She said she watched the horse back the carriage into a minivan but luckily the van blocked the horse's path to flee.

We spoke with the owner of Charleston Carriage Works, Broderick Christoff, about the incident. He said a failure to follow city policy is what caused the minor incident with his carriage at the corner of King and Queen Streets.

He said once a permit is issued for a parade or event, the city's livability department is notified so it can inform carriage owners on the need to reroute tours for the day due to excess noise.

However, he said the permit for the parade that spooked his horse on Sunday was issued by the police department and police never informed the livability department.

on a tour unaware of the parade. When he saw it in th
e route but was eventually blocked by police at the c

Search Site

get around to avoid scaring the horse, but he said the officer ignored the repeated requests.

The carriage never flipped over, but the driver was taken to the hospital after being knocked off. Christoff said it was just a precaution because they take these incidents very seriously.

None of the passengers were injured, and Morris said the quick action of strangers helped calm the horse down and avoid a worse situation.

"It was all pretty contained," Morris said. "This amazing woman who came out nowhere from the sidewalk, she grabbed him by the reigns and calmed him down. We gave him some mints and stuff and moved the horse immediately from the situation as fast as we could."

We reached out to the City of Charleston Police Department and the livability department for more information. Because it's a city holiday, we were told more information would be released later this week.

MORE TO EXPLORE

Police: Woman raped child as man held him down

SLED agent fired following an arrest in Marion County

Mother of maggot-infested baby sentenced to life in prison

SPONSORED CONTENT

Charleston, South Carolina Drivers Are Stunned By This New Rule
EverQuote Insurance Quotes

'Americas Favorite Veterinarian' Reveals The One Thing Every Dog Owner Should Do
Ultimate Pet Nutrition Nutra Thrive Supplement

New Rule in Charleston, South Carolina Leaves Drivers Fuming
Insured Nation - Auto Insurance Quotes

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

EXHIBIT 6

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

SPECIAL COVERAGE

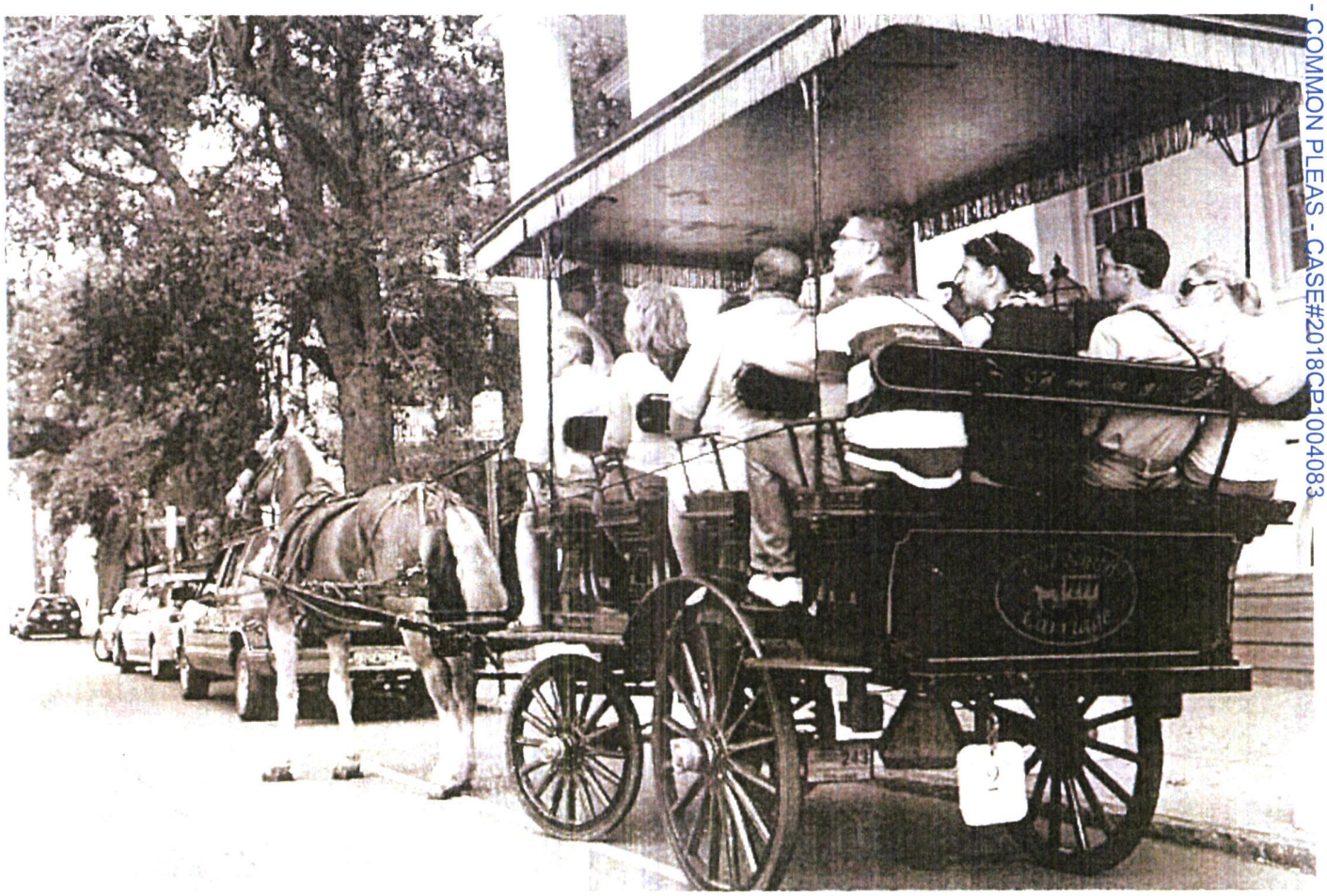
SC sheriffs fly first class, bully employees and line their pockets with taxpayer money

https://www.postandcourier.com/news/charleston-panel-backs-lower-temperature-limits-for-carriage-tours/article_16b028f6-c215-11e6-a1e7-db849138fbb5.html

Charleston panel backs lower temperature limits for carriage tours

BY ROBERT BEHRE RBEHRE@POSTANDCOURIER.COM

DEC 14, 2016



A horse carriage tour travels down Meeting Street. Leroy Burnell/file

EXHIBIT
PENGAD 800-631-6989
10 Chris Stoffs
7-28-19

SUBSCRIBE FOR $2.98 / WEEK

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PL - CASE#2018CP1004083

Most motion pictures with animals in them make it clear that none were harmed during filming, but what rules would let Charleston claim its carriage horses aren't harmed pulling tourists?

That question is complicated enough that the city, carriage industry and animal welfare advocates formed a special committee to try to find an answer.

That committee met Wednesday and voted 5-1 to recommend lowering the current temperature limit from 98 degrees to 95 degrees — and to lower the heat index from 125 degrees to 110 degrees, said Dan Riccio, the city's director of Livability and Tourism.

Once a weather station measures that level of heat in downtown Charleston on four consecutive readings — readings taken 15 minutes apart — then no new carriage tours will be allowed to start until the temperatures come back down. Ongoing tours may be finished before their animals are required to rest.

The committee's recommendation will be drafted into a proposed ordinance for the city's Tourism Commission, and ultimately for City Council, to consider.

Riccio said the special committee may not need to meet again.

But its session Wednesday showed the complexity of the issue. The meeting lasted three hours, and while many agreed a horse's humane working conditions depends on heat, humidity, the weight of their carriage and the animal's own health and strength, there are few industry guidelines.

Instead, the committee reviewed a veterinarian's report that analyzed 20,625 total readings over the past four years.

The carriage animals' average temperature was 101.2 degrees, and veterinarian Chris Ernst said about 2.7 percent of the readings had a temperature of 103, while 0.23 percent found a temperature of 104 degrees. He said when the heat index rises above 110, then the percentage of temperature readings above 103 reaches 4 percent.

But he stressed that continuing to measure animals' internal temperatures is more important than lowering the city's heat limit above which they're taken off the streets.

"It's a huge range, and there's a lot of variation from horse to horse," he said.

Kurt Taylor of the Charleston Animal Society said it asked an expert with North Carolina State University to review studies of draft animals. He suggested a study that would track animals' body temperatures, respiration, heart rate and other signs of heat-related stress and offered to help pay for that.

But Broderick Christoff of Charleston Carriage Works said the industry would be wary of participating in any study backed by an animal rights group.

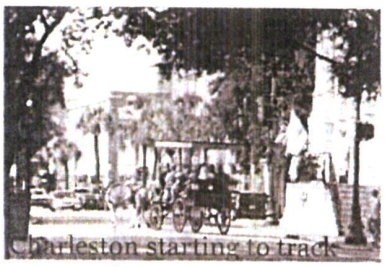
Reach Robert Behre at 843-937-5771 or via Twitter @RobertFBehre.

ROBERT BEHRE

Similar stories from The Post and Courier



About 4 years after rewriting tourism plan, Charleston to



Charleston starting to track carriage horse pee with GPS



For first time, Charleston's historic Magnolia Cemetery

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

EXHIBIT 7

ELECTRONICALLY FILED - 2021 Aug 20 8:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083



Our Mission

The Charleston Carriage Association for Responsible Equine Safety (Charleston C.A.R.E.S.) continually advocates for the highest level of equine care among Charleston's horse carriage community.

Charleston C.A.R.E.S. was founded by three of the Charleston area's top carriage companies: **Charleston Carriage Works**, **Old South Carriage Company**, and



Charleston CARES

We've made some changes to our hitching and unhitching

ELECTRONICALLY FILED - 2021 Aug 20 3:42 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

and beyond government requirements and regulations. As members of Charleston C.A.R.E.S., we are also committed to being advocates and educators for the often misunderstood and misrepresented horse carriage industry.

OUR STANDARDS

safe. Learn more: https://t.co/TSkz5Igqbi

Aug 4, 2020, 9:15 AM

Charleston CARES

Thanks to @ABCNews4 for coming out to Johns Island and talking with us about our horses and our community! https://t.co/8DVwKyYHAz

May 4, 2020, 3:27 PM

ELECTRONICALLY FILED - 2021 Aug 20 4:05 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-04083
	)	
Charleston Carriage Works, LLC,	)	
	)	
Plaintiff,	)	**DEFENDANT CHARLESTON ANIMAL SOCIETY'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR AMENDED SCHEDULING ORDER**
	)	
vs.	)	
	)	
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Plaintiff's Motion for Amended Scheduling Order, filed on October 20, 2020. Because Plaintiff has had ample time to conduct discovery and cannot show good cause why additional discovery should be permitted, or why it waited over 8 months after the expiration of the discovery deadline to file its Motion, the Motion should be denied.

This lawsuit arises out of an incident in which one of Plaintiff's horses, Big John, fell to the ground during a carriage tour on April 19, 2017, and remained on the pavement for over 10 minutes until, with assistance, he was able to stand up. Defendants Charleston Animal Society (CAS) and Charleston Carriage Horse Advocates (CCHA) each, on April 20, 2017, posted eyewitness videos of the incident online and the videos became "viral." As to CAS, Plaintiff alleges that CAS's use of the word "collapse" to describe the horse, as well as the subtitles superimposed on the video, such as: "Was Big John exhausted or did he just 'trip'?" renders the video defamatory.

PROCEDURAL HISTORY

Plaintiff's first lawsuit against Defendants arising out of the "Big John incident" was initiated when it filed a complaint in this Court on May 29, 2018 (C/A No. 2018-CP-10-2704). Because that complaint alleged the violation of Plaintiff's rights under the United States Constitution, Defendants removed it to federal court (C/A No. 2:18-cv-1980-RMG). Rather than proceed in federal court,

ELECTRONICALLY FILED - 2021 Aug 20 4:05 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Plaintiff filed a Notice of Dismissal on August 15, 2018. Plaintiff then initiated the current action by filing the same complaint (the "Complaint"), albeit without the references to federal law, in this Court on August 17, 2018.

The parties began engaging in discovery almost immediately. By Consent Scheduling Order filed July 16, 2019, the parties agreed on a discovery deadline of February 7, 2020, a mediation deadline of March 9, 2020, and a trial not before date of May 11, 2020.

Plaintiff's Motion is based on three grounds: (1) that Plaintiff's counsel suffered a heart attack in April 2019, followed by open heart surgery in August 2019 which Plaintiff asserts caused its counsel to "miss[] about half the year"; (2) that COVID has made "the efficient practice of law more difficult than usual"; and (3) that Defendants CCHA and Ellen Harley have engaged in dilatory tactics that have delayed discovery. None of these grounds constitute good cause to allow Plaintiff to conduct additional discovery as to CAS.

While sympathetic to Plaintiff's counsel's very serious health issues, those issues did not prevent Plaintiff from participating in discovery or from moving this case forward. Rather, on May 3, 2019, a month after his heart attack, Plaintiff's counsel noticed and took the deposition of Elizabeth Fort, a fact witness. In fact, apart from the deposition of Plaintiff's sole member/owner (Broderick Christoff) which was taken on December 7, 2018, and March 28, 2019, the remaining (eight) depositions in this case were taken in the year following counsel's heart attack.[1] A review of the record shows that Plaintiff also made a number of filings in this case during that period of time. Notably, the discovery deadline of February 7, 2020, was agreed to by Plaintiff with knowledge that its counsel would be undergoing a surgical procedure.

[1] Amber Christoff (Mr. Christoff's wife) was taken 12/11/19; Katie Clarey (Pltf's accountant) was taken 1/9/20; Elizabeth Fort (fact witness) was taken 5/3/20; CCHA's 30(b)(6) deposition was taken 1/31/20; Tyler Jones (Pltf's consultant) was taken 5/17/19; Tara Little, DVM (Pltf's former veterinarian) was taken 10/30/19; Justin Miller, DVM (Pltf's current veterinarian) was taken 2/11/20; and Dan Riccio (Director of the City of Charleston's Department of Livability and Tourism) was taken 12/18/19 and completed on 3/11/20.

ELECTRONICALLY FILED - 2021 Aug 20 4:05 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

As for COVID, the pandemic has certainly forced litigants and their attorneys to adjust. However, it is disingenuous to claim that it has prevented Plaintiff from conducting any discovery. In fact, mediation was completed in this matter via Zoom in September 2020, and hearings on discovery motions were held remotely in this matter in both May and June 2020. Most importantly, the discovery deadline passed in February 2020, before COVID began shutting the world down.

As for Plaintiff's allegations that Defendants CCHA and Harley have engaged in dilatory tactics, that does not constitute good cause to allow Plaintiff additional time to engage in discovery with CAS. Furthermore, Plaintiff has not articulated why any such alleged tactics on the part of CAS's co-defendants prevented it from conducting discovery as to CAS.

Finally, although the discovery deadline was February 7, 2020, Plaintiff inexplicably waited until October 20, 2020, to file its Motion for Amended Scheduling Order, months after Defendants filed Motions for Summary Judgment. Defendants' Motions for Summary Judgment are now set for a hearing on August 25, 2021. Given that this case has been pending for over three years, that Plaintiff has not shown good cause justifying the extension of the scheduling order, and that permitting additional discovery would prejudice CAS, Plaintiff's Motion for Amended Scheduling Order must be denied.

CONCLUSION

Defendant Charleston Animal Society respectfully requests that Plaintiff's Motion for Amended Scheduling Order be denied. Alternatively, if the Motion is granted in whole or in part, Defendant asks that Plaintiff be prohibited from seeking any further discovery from CAS or noticing the depositions of CAS or its employees/agents.

ELECTRONICALLY FILED - 2021 Aug 20 4:05 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ROSEN HAGOOD, LLC

By: /s/ Elizabeth J. Palmer
Elizabeth J. Palmer
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

ATTORNEYS FOR DEFENDANT
CHARLESTON ANIMAL SOCIETY

Charleston, South Carolina
August 20, 2021

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Charleston Carriage Works, LLC, Plaintiff, v. Charleston Animal Society, Ellen Harley, and Charleston Carriage Horse Advocates, Inc. Defendants.	IN THE COURT OF COMMON PLEAS C/A NO: 2018-CP-10-04083 **MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SANCTIONS**

Defendants Ellen Harley ("Harley") and Charleston Carriage Horse Advocates, Inc. ("CCHA") file this memorandum in opposition to Plaintiff's previously filed motion for sanctions. Harley and CCHA provided the bank statements that Plaintiff agreed to accept and complied with the Court's June 17 order regarding discovery.

I. Case background

After years of engaging in a bitter public debate[1] about the sufficiency of equine ordinances in the City of Charleston, Charleston Carriage Works LLC ("Plaintiff") filed a lawsuit against members of the other side of the dispute—CCHA, Harley, and Charleston Animal Society ("CAS"). Plaintiff filed its initial action in Charleston County Court of Common Pleas on May 29, 2018. Because Plaintiff's complaint included claims under the Animal Enterprise Terrorism Act and 42 U.S.C. §1983, for violations of its substantive due process rights under the U.S.

[1] Depo. of Broderick Christoff, p. 302, lines 14-17; p. 303, lines 6-7; Exhibit A, Examples of social media posts.

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Constitution, Defendants removed the case to South Carolina District Court. Plaintiff quickly decided against pursuing its claims in federal court, voluntarily dismissing its causes of action based on federal law.

Plaintiff then filed the current action in Charleston County Court of Common Pleas, alleging only causes of action under South Carolina law. In this most recent complaint, Plaintiff alleges causes of action for (1) defamation (slander and libel per se), (2) conspiracy, (3) tortious interference with contractual relations, and (4) gross negligence/recklessness based on a violation of Plaintiff's civil rights under Article I, §3 of South Carolina's constitution. All these causes of action are based upon Defendants' statements about the carriage horse industry in Charleston, statements which Plaintiff understands as part of a larger effort or scheme to damage and ultimately ban his carriage horse business.

But Plaintiff cannot provide a single example of Ellen Harley defaming it. Exhibit A, Depo. of Broderick Christoff, p. 245, lines 21-25 cont. p. 246, lines 1-25 cont. p. 247, lines 1-3. Plaintiff mainly points to one example (involving a video of a horse that fell) of CCHA allegedly defaming it. Exhibit A, Depo. of Broderick Christoff, p. 249, lines 20-25 cont. p. 250, lines 1-13. Plaintiff does not know what civil rights were violated. Exhibit A. Depo. of Broderick Christoff, p. 348, lines 4-9. And Plaintiff's own complaint admits that no contract has been breached. Plaintiff's Complaint, ¶¶20-27.

Based on the lack of substantive allegations, Defendants conclude that Plaintiff is seeking to stop its opponents from talking about equine ordinances as opposed to seeking legal remedies for legal wrongs. Plaintiff's lawsuit is nothing more than a SLAPP, a Strategic Lawsuit Against Public Participation. Equilon Enterprises v. Consumer Cause, Inc., 29 Cal. 4th 53, 57 n. 1, 52 P.3d 685, 687 n.1 (2002) (providing the origins of the acronym). A Plaintiff uses a SLAPP "to silence

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

and intimidate critics or opponents by overwhelming them with the cost of a legal defense until they abandon that criticism or opposition." Rogers v. Dupree, 340 Ga. App. 811, 814, 799 S.E.2d 1, 5 (2017), cert. granted, cause remanded (Apr. 16, 2018). Although South Carolina does not have anti-SLAPP legislation, "[a] number of states have passed statutes that provide defendants in civil cases a means of striking a cause of action that is aimed at chilling their exercise of privileged speech or other communication in a public process or issue of public concern." 64 A.L.R.6th 365 (Originally published in 2011) (collecting cases). The purpose of anti-SLAPP statutes is to end the lawsuit quickly, preventing the Defendants from incurring significant attorney's fees and costs. Rogers v. Dupree, 340 Ga. App. 811, 815, 799 S.E.2d 1, 5.

II. Background of Plaintiff's motion for sanctions

With this background in mind, Plaintiff's motion for sanctions can be properly understood. A few hours before a motion to compel hearing on June 16, the attorney for CCHA and Harley (Trey Thompson) sent the following email to Plaintiff: "I am confirming that we will provide the CCHA monthly bank statements (to the extent that either CCHA physically possess them or to the extent the bank can produce same) **to show cash in, cash out** of CCHA bank accounts." (emphasis added) Exhibit B, June 16, 2020 Email to Plaintiff. In the subsequent hearing that same day, Mr. Thompson made the following statement: "So in short, Your Honor…[Plaintiff] is seeking at this point in time…bank statements from CCHA, the monthly bank statements just as they would be delivered to the client from the bank. We are going to present those, Judge." Exhibit C, June 16, 2020 Motion to Compel Hearing, p. 17, lines 16-21. Judge Price then asks: "So -- so are y'all consenting to the bank statement?" Id., p. 18, lines 3-4. Mr. Thompson replied: "Yes, Your Honor." Id., p. 18, line 5. Mr. Thompson goes on to tell the court the following: "[O]bviously we can produce whatever we have. But to go to the bank [,] if we don't have those statements [,] we will

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

have to request them from the bank to get them...[but] we will make it an expedited effort." Exhibit C, June 16, 2020 Motion to Compel Hearing, p. 18, lines 16-20. Plaintiff never objected to receiving "cash in, cash out" bank statements during the hearing, despite knowing what Mr. Thompson was referring to when he said, "bank statements". Judge Price's subsequent order states: "The Plaintiff's motion to compel discovery against Defendants is granted. The Defendants will produce the bank statements." Exhibit D, June 17, 2020 Form Four Order.

Despite having received what it understood it would receive, Plaintiff submitted a motion for sanctions under Rule 37, which contains the provisions governing failure to comply with a court order. Rule 37(b)(1)-(2)(A)-(E), SCRCP. In its motion, Plaintiff asks the Court to strike both CCHA's Answer and Harley's Answer, because of the failure to cooperate, and to set the case for a damages hearing. Rule 37(b)(2)(C), SCRCP. Plaintiff also seeks to compel CCHA and Harley to produce their computers for forensic inspection. Rule 37(b)(2), SCRCP (a court may make orders "as are just"). Finally, Plaintiff asks for an award of reasonable attorney's fees. Rule 37(b)(2), SCRCP ("the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees.").

On December 2, 2020 the undersigned and counsel for the Plaintiff agreed by telephone to resolve the dispute regarding the bank statements by the production of these very same bank statements in their entirety, redacting only the portion of the deposit tickets which could indicate the pledge source of the deposit. On December 12, 2020, the undersigned counsel for the Defendants produced the redacted bank statements as agreed. Exhibit E, December 11, 2020 Letter to Plaintiff's counsel with bank statement Production.

After the July hearing, counsel for the Defendants retained Rosen Litigation Technology and Consulting, Inc to image CCHA's hard drive and to search it and the CCHA's email accounts

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

for terms provided by Plaintiff's counsel. Shortly thereafter, counsel for CCHA began requesting search terms from Plaintiff to run through CCHA's hard drive and any email accounts Plaintiff wanted searched. On October 6, 2020, the undersigned counsel for the Defendant CCHA followed up by email on previous discussions with counsel for the Plaintiff explaining "I just need search terms you want our expert to search on CCHA's computer". Exhibit F, October 6, 2020 Email from CCHA counsel to counsel for Plaintiff. Not receiving search terms, counsel for the Defendant CCHA followed up again with Plaintiff's counsel on October 26, 2020:

> Tommy,
> I'm following up again to see if you have a list of search that you want run through CCHA's computer. I cannot conduct a search unless and until have that. This is akin to a discovery request – it comes from the lawyer, not the expert. Certainly if you want to consult with your expert regarding the terms to be search [sic], I understand. If that's the case, please do so this week and get back to me.
>
> **I need to memorialize that I've been asking your for this list of search terms now for several months and repeatedly telling (as below) that I'm prepared to respond to your request for information off of CCHA's computer (and any other databases you tell me you us to search, if any) as soon as you tell me what it is to look for and where you want us to look.**
>
> I remain concerned that this is an issue you don't want to resolve because you want to argue that you don't have document or information to defeat summary judgment 2+ years into this case because of a failure by CCHA and Harley to respond to your discovery requests. ...

Exhibit F, October 26, 2020 Email from CCHA counsel to counsel for the Plaintiff.

Finally, after additional follow ups, by letter on November 4, 2020, Plaintiff provided Defendant CCHA with the terms it wanted searched. CCHA thereafter produced its computer to Rosen Litigation Technology Consulting, Inc. who conducted a search of those terms and de-duplication of the responses, a process that, with the holidays, took approximately four months.

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

CCHA has thereafter reviewed the massive data compilation for privilege and work product and has produced thus far in excess of 10,000 responsive, non-privileged documents to the Plaintiff.

III. Standard of Review

As the Court of Appeals has made clear, "[i]n determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 457, 814 S.E.2d 643, 656 (Ct. App. 2018) (citation omitted), reh'g denied (June 21, 2018), cert. denied (Nov. 9, 2018). Sanctions should punish the specific conduct of the party "and not go beyond the necessities of the situation to foreclose a decision on the merits of a case." Id., 423 S.C. 432, 457, 814 S.E.2d 643, 656-57 (citation omitted). When the sanctions essentially result in a judgment by default, "the moving party must show bad faith, willful disobedience [,] or gross indifference to its rights to justify the sanction." Id., 423 S.C. 432, 457, 814 S.E.2d 643, 657 (citation omitted). More fundamentally, "there must be an order of the Court before sanctions are imposed under subdivision (b) [of Rule 37] ...." Richardson on Behalf of 15th Circuit Drug Enft Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Currency & Various Jewelry, 430 S.C. 594, 599, 846 S.E.2d 14, 16 (Ct. App. 2020) (citation omitted).

IV. Argument

Based on the June 16 email confirmation, Plaintiff received what it understood it would receive from CCHA and Harley. If Plaintiff objected to receiving cash in, cash out bank statements, it should have done so during the motion to compel hearing. Plaintiff cannot allege, in the face of its previous understanding, the willful disobedience or bad faith necessary for the Court to strike

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

the Defendants' respective Answers and to set the case for a damages hearing. Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 457, 814 S.E.2d 643, 657.

Perhaps realizing this, Plaintiff also asks the Court, in the alternative, to order CCHA and Harley to turn over their computers for forensic inspection. Plaintiff has multiple problems here. First, "there must be an order of the Court before sanctions are imposed under subdivision (b)...." Richardson on Behalf of 15th Circuit Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Currency & Various Jewelry, 430 S.C. 594, 599, 846 S.E.2d 14, 16 (citation omitted). As demonstrated, neither CCHA nor Harley violated Judge Price's June 17 Form Four Order. Plaintiff received exactly what Defendants said they would provide and what Plaintiff knew they would provide. Second, nothing in the order requires production of computers or responsive documents to search terms. Third, physical access to the computers is unnecessary because CCHA and Harley have nonetheless run the proposed search and provided Plaintiff in excess of 10,000 responsive documents. The delay in running the search, moreover, is due to Plaintiff's refusal to send search terms. Exhibit F, October 26, 2020 email to Plaintiff. Finally, the court indicated that Plaintiff should return for another motion to compel hearing if physical access to the computers could not be worked out. Exhibit C, June 16, 2020 Motion to Compel Hearing, p. 19, lines 11-20. Rather than seek a court order via a motion to compel, Plaintiff is hoping the Court will bypass this step and award access as a sanction under Rule 37(b). Again, this cannot be done. See Richardson on Behalf of 15th Circuit Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Currency & Various Jewelry, 430 S.C. 594, 598–600, 846 S.E.2d 14, 16–17 (discussing when sanctions are appropriate under Rule 37).

Plaintiff's slippery use of Rule 37 is not the only illustration of Plaintiff's true motives here. This lawsuit revolves around allegedly defamatory statements, but Plaintiff does not want

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

communications: Plaintiff wants unfiltered bank statements and donor lists. Plaintiff's Memorandum in Support of Motion to Compel, pp. 3-4 (regarding bank statements); p. 10 (regarding donor lists).

Plaintiff does not even contend that CCHA's donor list is relevant. Instead, Plaintiff argues that the public is entitled to know who CCHA's donors are, citing section 33-56-75. Plaintiff's Memorandum in Support of Motion to Compel, p. 10. That is simply incorrect. Plaintiff is conflating section 33-56-75 with section 33-56-80. Section 33-56-80 states: "all documents and information required to be filed pursuant to this chapter or by the Secretary of State [of South Carolina] are public records in the office of the Secretary of State and are open to the public for inspection at a time and under conditions as the Secretary of State may prescribe." S.C. Code Ann. §33-56-80. Section 33-56-75 concerns donor lists and a "professional fundraising counsel" or a "professional fundraising solicitor", and there is no indication that a donor list must be filed with the Secretary of State's office. In fact, CCHA does not even utilize a "professional fundraising counsel" or a "professional fundraising solicitor", so section 33-56-75 is inapplicable and irrelevant. Exhibit G, Affidavit of Ellen Harley. If section 33-56-75 were relevant, however, its language makes clear that a donor list is the property of the charitable organization, not a public record:

> A list provided by the charitable organization of the names, postal addresses, telephone numbers, email addresses, and the dates and amounts of each donation, of each contributor…is the property of the charitable organization for which the solicitation campaign is conducted. The professional fundraising counsel or professional solicitor must maintain this list throughout the duration of the solicitation campaign until the list is transferred to the charitable organization pursuant to subsection (B).

S.C. Code Ann. § 33-56-75(A).

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Plaintiff also cites section 33-56-120. Why Plaintiff does this is ambiguous. Plaintiff is correct when it writes that section 33-56-120 prohibits misrepresentations while soliciting charitable donations. S.C. Code Ann. §33-56-120(A). But not one of Plaintiff's causes of action involves such allegations. Plaintiff's Complaint, ¶¶1-35. Consequently, Plaintiff has not explained how its fundraising communications are relevant to any claims or defenses. Rule 26(b)(1), SCRCP. This leads Defendants to conclude that Plaintiff is seeking the names of potential donors indirectly, through the recipients of fundraising material.

All of which helps explain CCHA and Harley's concern over misuse charitable documents and why they agreed to provide bank statements which reveal deposits and debits but nothing more. Because the public debate about Charleston's equine ordinances is bitterly contentious, many of CCHA's donors gave money under the express understanding that their donations would remain private. Plaintiff's SLAPP has already damaged Defendants' ability to fundraise and, thereby, advocate. If the donors' names were revealed through a publicly available court document, CCHA can expect donations to dwindle. Potential and past donors will flee if a donor learns that his or her donation is no longer private. The effect would be exacerbated if Plaintiff decided to depose a donor or, even worse, add a donor as a Defendant, something Plaintiff has shown a willingness to do to anyone associated with CCHA, even commercial vendors. Plaintiff's April 6, 2020 Motion to Amend Complaint (adding CCHA Board members and social media consulting companies).

Conclusion

A violation of a court order is a prerequisite for sanctions. Neither CCHA nor Ellen Harley violated Judge Price's order. Therefore, the court should deny Plaintiff's motion.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

s/ Jenkins M. Mann
Jenkins Mann, Esq. (SC Bar #74894)
Shaun Blake, Esq. (SC Bar #76349)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
P.O. Box 11803 (29211)
Tel: (803) 978-2832
Fax: (803 252-3653
Email: jmann@rogerlewis.com
sblake@rogerslewis.com

Attorneys for Defendants
Charleston Carriage Horse Advocates and Ellen Harley

August 16, 2021

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Garber
Reporting Service
& Videoconferencing

1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

BRODERICK CHRISTOFF

December 07, 2018

CHARLESTON CARRIAGE WORKS, LLC

VS

CHARLESTON ANIMAL SOCIETY, et al

2018-CP–10-04083

REPORTER: Kathryn Bostrom



ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. Okay. Well, I need to know what the statements are in the interview replies if you think they're defamatory.

A. I don't -- there's nothing that is in the front of my mind right now.

Q. Okay. And do you understand what defamation is?

A. I think so.

Q. Okay. And is your understanding of defamation that there has to be something factually false that she says about the plaintiff in order for the plaintiff to be able to bring a defamation lawsuit?

A. Yes.

Q. Okay. To your knowledge, has Ellen Harley, again, pointing to her off camera sitting behind me so we're clear as to who we're talking about, a defendant in a lawsuit that you have brought or your company has brought, are you aware of any false statement that Ellen Harley has made about Charleston Carriage Works, your company?

A. And you mean like specifically mentioning our company name? That's what you mean?

Q. It -- first, yes, and then we'll talk beyond that. First, yes. I mean a single time she's ever said Charleston Carriage Works, LLC and something false about the company that defamed it, that lowered its esteem in the community of its peers.

A. I don't recall a time that she mentioned us by name.

Q. Okay. All right. A single time that Ellen Harley individually said -- made a statement of any type. The statement can be any -- anything that you want to call a statement -- a statement of any type that implied something false and defamatory about the plaintiff. It doesn't have to call you by name. I just want to know what she said individually about Charleston Carriage Works that was both false and defamatory.

A. She's made statements about our industry in published statements, photographs of our carriages and -- and other people in the industry's carriages and about our industry in general that we do or don't do certain things that were false.

Q. But she's never made those statements about Charleston Carriage Works, correct?

A. Not mentioning us -- not that I'm aware of mentioning us specifically by name.

Q. And is it fair to say that the statements you're talking about -- and we'll get to them here in a second because I want to hear how they're false and defamatory -- but is it fair to say that the statements you're talking about were statements that she made about the industry, the carriage horse

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

industry, in general, and not about your company, Charleston Carriage Works, LLC individually?

A. Yes.

Q. Okay. So the universe of statements that you're aware of and the lawsuit that you've brought and that so many people are in this room to talk about today, the universe of statements that you're aware of by Ellen Harley solely consist of statements that you contend she's made about the carriage horse industry, correct?

A. I wouldn't say that.

Q. Okay.

A. I don't have the -- I don't have the evidence that I have memorized, so I can answer your questions to the best of my ability.

Q. Sure.

A. I can't tell you that I don't have -- you know, I've given you all of the documents and -- and whatever screen shots that I have, and I can't tell you for certain that there isn't something in there that doesn't meet or violates your qualifications on your question, so --

Q. Okay. But as we sit here today, after --

A. There -- right.

Q. -- you cannot come with this --

A. There is nothing right here on the front of my mind or

A. That's correct.
Q. All right. So what we're talking about here today are the statements made at the time of the inception of this lawsuit, correct?
A. Correct.
Q. Okay. Tell me the name of one person whose opinion, a conversation that you've had with them -- I'm looking for your evidence -- one person you've ever talked to who said their opinion of Charleston Carriage Works -- Charleston Carriage Works had been lessened because of a statement made by Ellen Harley. And I need to know their full name, and if you've got their contact information, I'll get that from you as well.
A. I don't think there is a person.
Q. Okay. So to your knowledge, you've never heard from anyone who said that their opinion of Charleston Carriage Works has been in any way affected by a statement made by Ellen Harley, correct?
A. Correct.
Q. Okay. Let's talk about Charleston Carriage Horse Advocates, Inc. Tell me every defamatory statement that's ever been made by Charleston Carriage Horse Advocates, Inc. regarding your LLC, Charleston Carriage Works, LLC.
A. Okay. So the primary one being the video.

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q. Okay. I'm going to write down video.
A. Okay.
Q. And that's going to be the Big John video. We're going to come back and talk about that in a minute.
A. Okay.
Q. I want to know what the other ones are.
A. Okay. That's the -- the primary one, and then -- let's see -- I think the video and the -- the video and the distribution of the video is the -- is the -- I think the only thing I can think of where she actually -- or they, I'm sorry -- actually mentioned us by name and/or in, you know, describing the video to other people.
Q. Okay. Tell me everything about the video that was defamatory by Charleston Carriage Horse Advocates, Inc. Tell me everything that Charleston -- Charleston Horse -- Carriage Horse Advocates, Inc. did in association with that video that defamed you.
A. They published with the -- with the subtitles that the horse had collapsed.
Q. Collapsed. What else?
A. The -- it was also published to -- to lead people to believe that the horse had a -- was exhausted.
Q. Okay.
A. Or had some heat problem.

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q Okay. What else you got?
A Okay. Here's a - this is - this is an example of the - the kind of posts that made that - we end up having to deal with. This would be Number 392.
Q 392? Okay. All right. First of all, is that your horse?
A No, that's not my horse.
Q Okay. And does anywhere on this page, does it reference Charleston Carriage Works, LLC?
A It does not.
Q Okay. What else you got? Let me ask you this while you're going through this?
A Sure.
Q This thing - you'll concede I think maybe even in your lawsuit, this thing has become a very public fight between you and the defendants, correct?
A Very public is an understatement.
Q Okay.
A Very public. That's an understatement. I mean, this - this has consumed a giant portion of my life.
Q Right.
A To say that's very public. Do you realize almost a hundred million people have watched this video?
Q Right.
A And you realize the backlash that has occurred as a

result? And not only that, that continues to occur. So this went to bed a little bit by the end of 2017? All of sudden this year, in what, August, July or August comes up again? Starts all over again.

Q No question, it's an issue that playing -

A It's a nightmare. To say that we have some sort of public whatever you said is a complete understatement.

Q Okay.

A This is an all consuming thing. I've been here all day.

Q Uh-huh.

A I don't think - I think when you look at the - at these files I don't want you to get the impression that, you know, I'm trying to be some kind of a smart guy and I've given you like all these thousand files because I'm trying to bury you in whatever. These are all things that I think are important and are connected. I'm not -

Q That's what we -

A -I'm not here to waste your time.

Q No.

A So you can imagine the manhours or person hours, if you want, that it takes and took for me to collect all this and to -

Q Uh-huh.

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

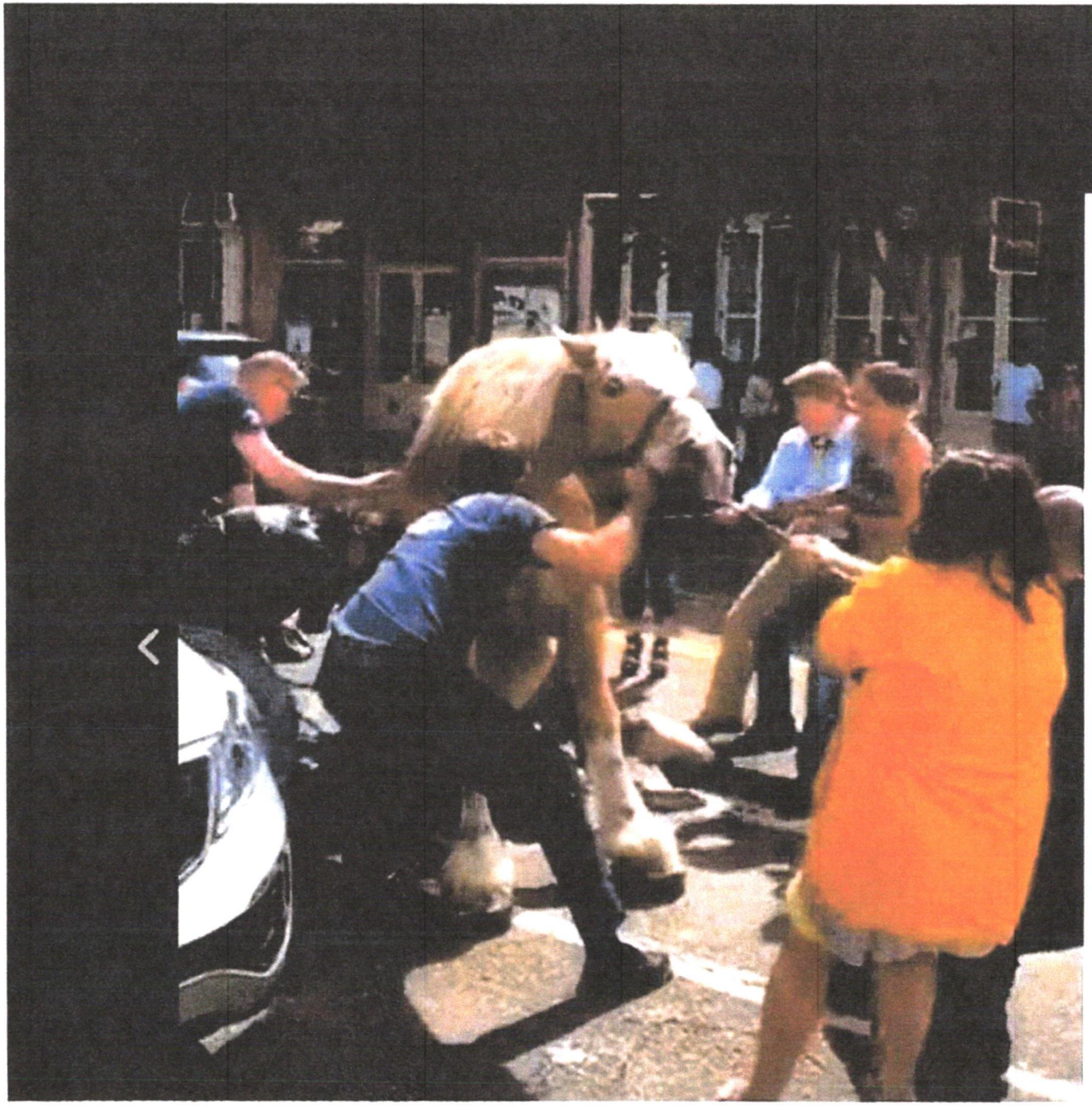
ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q Okay. So you -
A So I guess those are my reasons. What's listed under that.
Q Okay. As we sit here today, you're not aware of what civil rights of yours were violated? And by yours I mean, I'm sorry, I mean, Charleston Carriage Works, LLC.
A No, I would defer to what's written in that section of the complaint.
Q Okay. Tell me about - there is a pain and suffering damage by your managers and your employees. Were any of your managers or employees physically injured as a result of conduct you allege was perpetrated by the defendants in this lawsuit?
A Physically, no, I don't think so.
Q Okay.
A Not that I'm -- not that they shared with me.
Q All right. So this lawsuit, you're not making any claim for physical injury to any - to Charleston Carriage Works, LLC or any of its officers, directors, employees or agents, correct? Physical injury?
A Physical injury? I think that's correct.
Q Okay. Injury to body? You're not alleging that the defendants have of any -- in any way have caused injury to the body of any person -

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Secure https://www.instagram.com/p/BZkBBIQj2Ab/?taken-by=carriage_horse_advocates

etree ChasCW Dock St G BOA BoA MS HSA Peek iAccess Futurecast calimoto Tides Email Payroll M Forecast



carriage_horse_advocates • Follow
Charleston, South Carolina

carriage_horse_advocates Her employer was tasked by the city of Charleston to improve the treatment of carriage horses. What happened? It got worse. It's time to give up the ruse. #justsayneigh

mycuvee

irene_pblx

viridianalv

ericaarieloberbel

macaulaysaintpaul Wtf. I hate people.

katrinamonty So sad the worst people are the ones who are riding giving these jerks business!!

carrieahansen

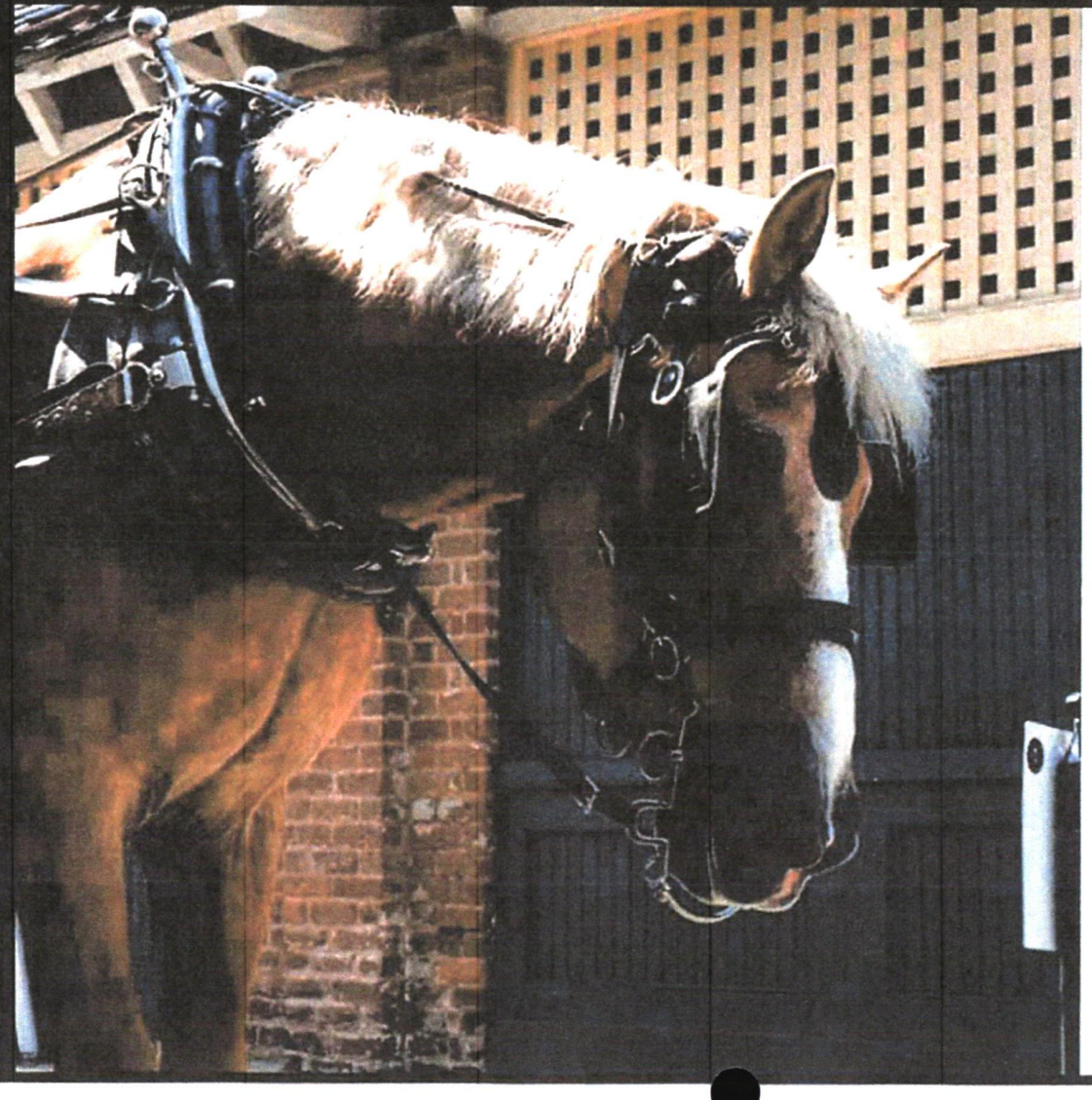
karaleefallert What the F?!?

ellaochs this is absolutely terrible

214 likes

Log in

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083



carriage_horse_advocates • [illegible]
Charleston, South Carolina

carriage_horse_advocates Today's humidity level - 87%. #justbanbgn

nathaliabramos Acabem com essa crueldade

mayvolpini Que dó!!!

miriamatos529 Isso tem que mudar!!

chelseaflowers33 THIS IS WRONG! STOP EXPLOITING THEM!

penraat Its so cruel for them 😭😱

finnof5.ef Stop it, stop it, just stop it!

__19lila92__ That look 😲😔😔❤️❤️❤️❤️

bslagsvol What kind of person can look at this and honestly think it's ok to ignore, condone, approve or support this greedy practice. Spread awareness to anyone who may be misinformed about wagon rides. It's a disgustingly cruel form of equine

214 likes

Log in [illegible]

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Secure https://www.facebook.com/cchaJoin

Doubletree ChasCW Dock St G BOA BoA MS HSA Peek iAccess Futures

Charleston Carriage Horse Advocates

Like Follow Share ...

CHARLESTON CARRIAGE HORSE ADVOCATES

Charleston Carriage Horse Advocates

@cchaJoin

- **Home**
- About
- Photos
- Events
- Likes
- Videos
- Posts
- Instagram feed

Create a Page

Charleston Carriage Horse Advocates

UPDATE: In the aftermath of multiple carriage accidents and Big collapse. the Charleston Animal Society recommended an acade peer reviewed prospective study be conducted to the Charleston Tourism Commission.

Instead of supporting an academic study. the Charleston Tourism Commission Chair called for a conversation between Charleston Animal Society and the Carriage Industry.

After 12 Million views of the Charleston carriage horse collapse. most recent incident is certainly a black eye on the image of Charleston.

We are hopeful that the Industry and the City will see the wisdom moving ahead with an academic study.

The World is watching what Charleston and the Industry will do. less than agreement on an academic study will only intensify the question. "What are you hiding"?

#justsayneigh

Like Comment Share

55 Chrono

3 shares

View 1 comment

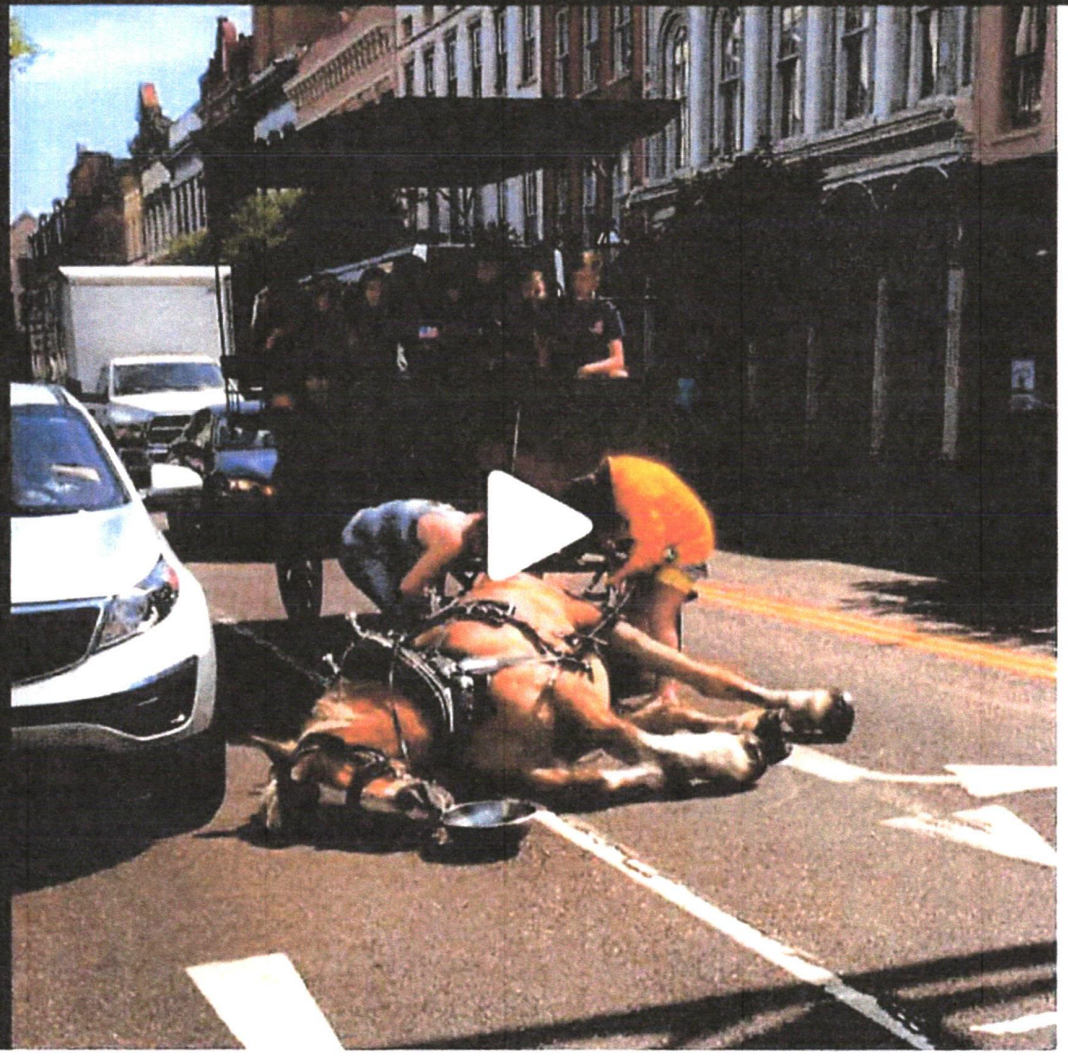
See All

Posts

ELECTRONICALLY FILED - 2021 Aug 20 8:30 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Secure | https://www.instagram.com/p/BTFkF83jYi4/?taken-by=carriage_horse_advocates

ibletree ChasCW Dock St G BOA BoA MS HSA Peek iAccess Futurecast calimoto Tides Email Payroll M Forecast



carriage_horse_advocates • Follow
Charleston, South Carolina

carriage_horse_advocates Horse collapsed at 3:30PM today on Meeting Street at Hassell Street (in front of Fig Restaurant). Watch the video. SHARE IT. It's time for the City and Industry to come clean. Over 55,000 visitors and residents are calling for the city to put a STOP to the abuse. Support a peer reviewed, science based study of the Industry like the Charleston Animal Society has repeatedly requested. #justsayneigh

Load more comments

hyathannemesquita Que bom saber que vcs ajudam os animais fico muito feliz em saber que existem pessoas que fazem o bem.

hyathannemesquita Parabéns!! Pela atitude espero que vcs continuem com esse trabalho.

41,898 views

Log in

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Like Follow Share ...

Like Reply 17w

Write a comment...

Charleston Carriage Horse Advocates

@ccha.join

Home

About

Photos

Events

Videos

Posts

Fundraisers

Community

Instagram feed

Charleston Carriage Horse Advocates ...

June 15 ·

Industry person caught on tape saying "I hope you get hit by a car."

https://www.youtube.com/watch?v=WLXdIMsxBZM



YOUTUBE.COM

Horse Collapse 4 19 17 Big John

On April 19, another working horse collapsed in the streets of Charleston. Was the load "Big John" carrying weighed, as it is suppose to be by law?...

12 3 Comments 6 Shares

Like Comment Share

Oldest

January Moon What's your Instagram page?

Like Reply 22w

ELECTRONICALLY FILED - 2021 Aug-20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Charleston Carriage Horse Advocates

Brodes

Like Follow Share ···

9 3 Shares

Like Comment Share

Write a comment...

rleston Carriage
se Advocates
a.join

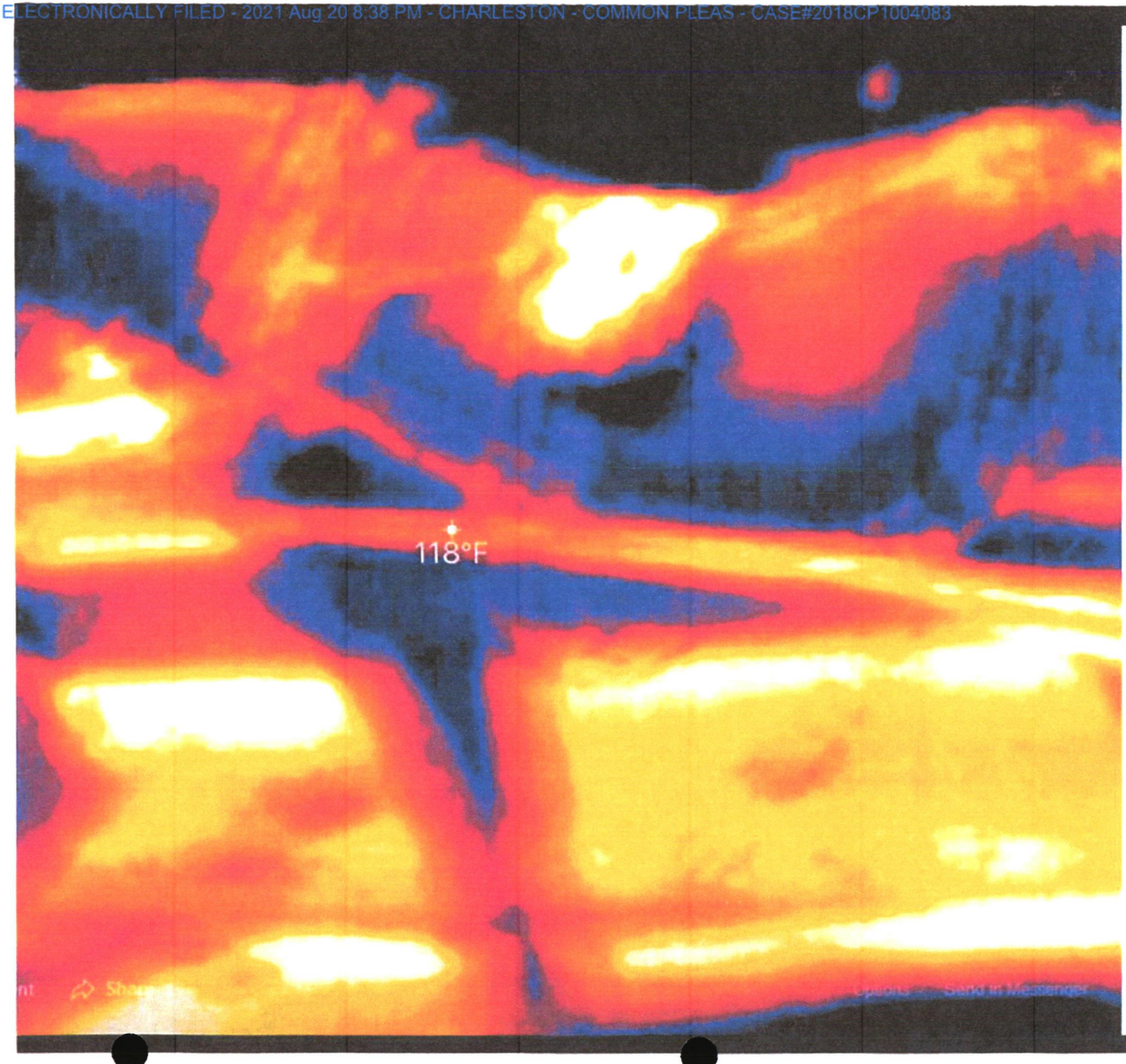
Charleston Carriage Horse Advocates
April 13 ·

Have you shared your story? It matters. Thousands of visitors turn to google yelp and trip advisor to make up their minds on what to do in Downtown Charleston. They need your guidance.
#justsayneigh

Like Comment Share

Charleston Carriage Horse Advocates
April 11 ·

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083



Charleston Carriag
Like This Page

If it feels uncomfortably hot
even more uncomfortably h
animals who are also pulling

Attached is a thermal image
horse in downtown Charlest

#justsayingin

38

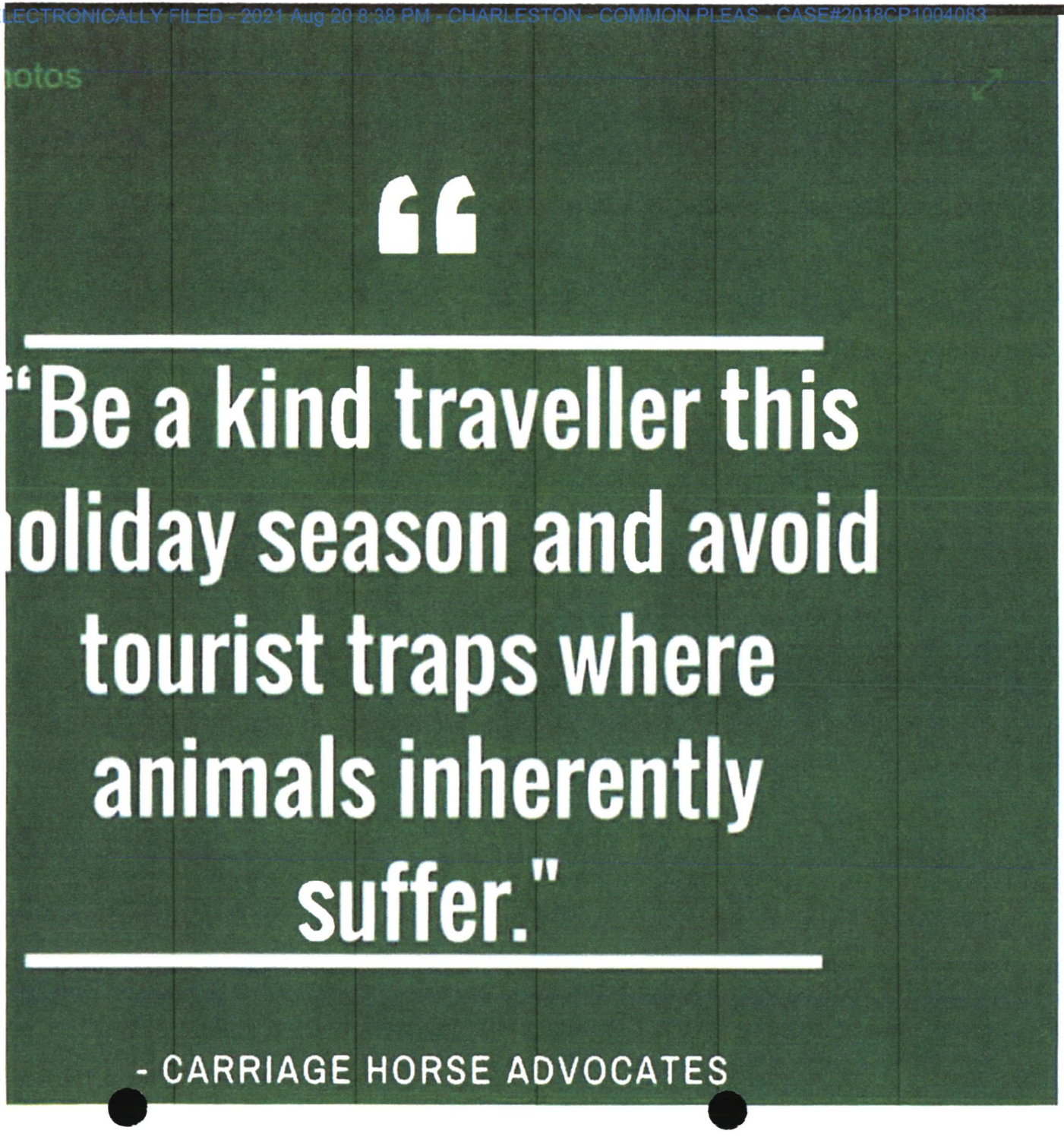
Like Commen

Oldest

Top Fan
Nicole Sabatini U.S.
Graham Lindsey Grah
Reply 20w

Top Fan
Nicole Sabatini Joe V
Congressman Mark S
Reply 19w

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083



Charleston Carriage Hor

Like This Page

Be a kind traveler this holiday seas

15

Like Comment

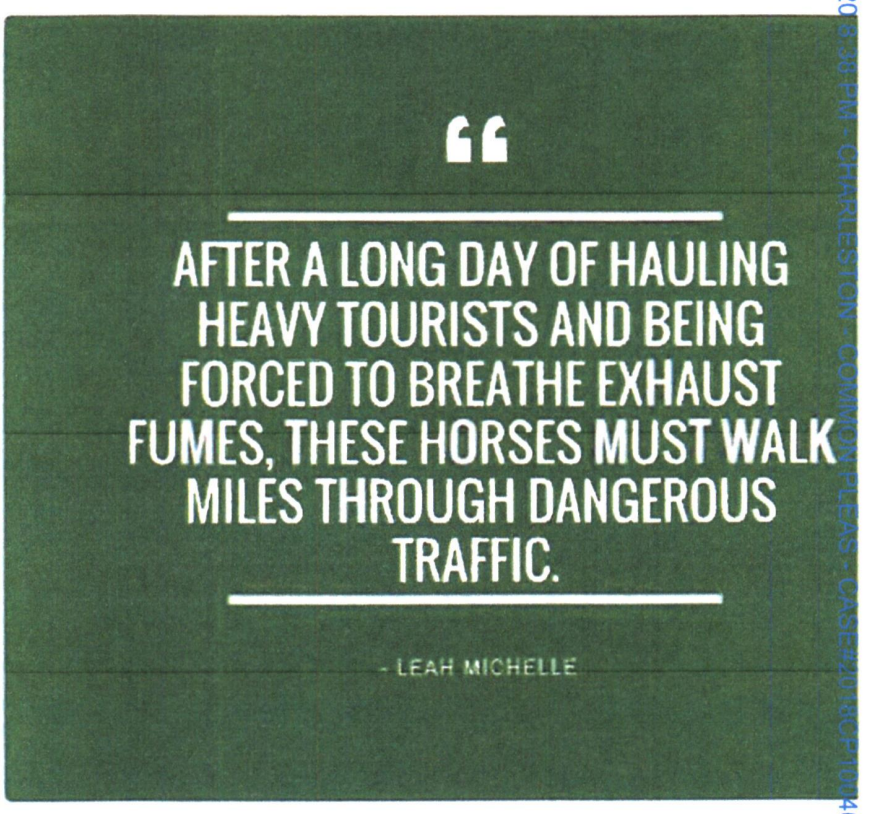
Write a comment

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

CCHA

Tweets 209 | Following 365 | Followers 260 | Likes 31

CCHA @CCHA_JOIN · 4 Oct 2016



1 2 2

CCHA @CCHA_JOIN · 28 Sep 2016
Horse-drawn carriage crashes with vehicle in Charleston

CCHA @CCHA_JOIN · 28 Sep 2016
ATTN : There is another accident downtown. wagon and vehicle. IF YC
DOWNTOWN, PLEASE TAKE PHOTOS OF THE INCIDENT.

CCHA Retweeted

Chas Animal Society @Adoptatcas · 28 Sep 201
ALERT we just got word that a carriage horse h t a vehicle on Meeting Stree
downtown Charleston! If you are a...

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Jenkins Mann

From: Joseph Thompson, III <JThompson@hallboothsmith.com>
Sent: Tuesday, June 16, 2020 12:33 PM
To: tgoldstein@cobblaw.net
Cc: Jenkins Mann; Spencer Craig Gill
Subject: RE: a few more [IWOV-chdms.FID50908]

Importance: High

[This email originated outside the organization. Do not click any links or attachments unless you know the sender]
Tommy:

As housekeeping matters:

1. I am confirming that we will provide the CCHA monthly bank statements (to the extent that either CCHA physically possess them or to the extent the bank can produce same) to show cash in, cash out of CCHA bank accounts.
2. As for the e-discovery stuff, that is technically not before Judge Price today. Your MTC and Amended MTC were filed in 2019, before the e-discovery stuff hit our radar screens. It was only when the CCHA 30(b)(6) deposition was taken that an issue arose. Technically, a MTC has not been filed with regard to the 30(b)(6) production. While I am not inviting a motion, I do believe we have tried to work out a resolution of that production including a TC with you on June 1 when we invited search terms for the e-discovery. Of course, only today, and literally hours before the motion hearing, do we get proposed search terms. At first blush, we are likely to have objections to one or more terms but, realistically, have not been given a reasonable opportunity to vet them with our client and with you.

Is there anything else?

Joseph D. (Trey) Thompson, III

Hall Booth Smith, P.C.
111 Coleman Boulevard
Suite 301
Mount Pleasant, SC 29464

D: 843.720.3469 C: 843.475.9508
O: 843.720.3460 F: 843.606.6536

jthompson@hallboothsmith.com www.hallboothsmith.com

From: tgoldstein@cobblaw.net <tgoldstein@cobblaw.net>
Sent: Tuesday, June 16, 2020 12:15 PM
To: Joseph Thompson, III <JThompson@hallboothsmith.com>
Cc: jmann@rogerslewis.com; Spencer Craig Gill <sgill@hallboothsmith.com>
Subject: a few more

Trey,

EXHIBIT
B

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	
Charleston Carriage Works,)	
LLC,)	CASE NO. 2018-CP-10-04083
)	
PLAINTIFF,)	TRANSCRIPT OF RECORD
)	
VS.)	ORIGINAL
)	
Charleston Animal Society,)	
Ellen Harley, and Charleston)	
Carriage Horse Advocates, Inc.)	
)	
DEFENDANTS.)	
)	

June 16, 2020

Charleston, South Carolina, via WebEx

B E F O R E:

The Honorable Bentley Price

A P P E A R A N C E S:

For the Plaintiff:
Thomas R. Goldstein, Esquire

For the Defendants:
Joseph DuRant "Trey" Thompson, Esquire
Elizabeth J. Palmer, Esquire

Certified Transcript Provided For: Trey Thompson

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carol
PNorton@sccourts.org

EXHIBIT C

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

providing a scope that would allow for the production and/or the investigation -- or the discovery of the e-mail traffic that would involve this case.

However, again, Mr. Goldstein in not one of those letters, not one of the things before this court, has anything to do with that. And so he is trying to bootstrap what happened and what we were trying to work through now into an order of the court that is not -- or into an issue that is not before this court at this time.

Now I suggested to Mr. Goldstein obviously again this morning that we have not had that opportunity and that I thought that we needed to deal with that first and then if we couldn't get it worked out we would get back in front of the court. However, I did not get an e-mail or a telephone call back from him after that e-mail.

So in short, Your Honor, when we talk about the two things that he has indicated that he is seeking at this point in time in seeking for an order of this Court, is bank statements from CCHA, the monthly bank statements just as they would be delivered to the client from the bank. We are going to present those, Judge.

The other piece is not before Your Honor, respectfully. It is something that the parties have not specifically worked through other than we tried to on June 1 and then didn't hear back from Mr. Goldstein until over two weeks later with

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

search terms. So we are still honestly trying to work through that piece. And --

THE COURT: So -- so are y'all consenting to the bank statement?

MR. THOMPSON: Yes, Your Honor.

THE COURT: Okay. Well, then that solves number one. And then how long do you think you will need between the two of y'all to go through those search terms; or are you complete with the search terms, Mr. Goldstein, what you submitted an hour prior to the hearing is that all the search terms that you are requesting at this time?

MR. GOLDSTEIN: Yes, sir.

THE COURT: All right. Seems like problem solved. They consented to the bank statements. They will produce those.

How long do you need for that, Mr. Thompson?

MR. THOMPSON: Well, Your Honor, I -- obviously we can produce whatever we have. But to go to the bank if we don't have those statements we will have to request them from the bank to get them. I don't know how long that will take. Obviously we will make it an expedited effort. I can't imagine longer than 30 days. I would hate to commit to less than that.

THE COURT: All right. So we would do that. Give -- just tell Mrs. Harley we have 30 days to produce those documents as to the statements. And inside those 30 days if

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

y'all haven't been able to come up to dial in the search terms and have a time to -- you know, that y'all have agreed on to produce those then I will allow you to come back to the court and ask for the same thing again.

So I will just basically at this point in time take this matter under advisement for the next 30 days and we will see where we end up at the close of those 30 days.

MR. THOMPSON: Thank you, Your Honor.

THE COURT: All right. Problem solved. All right. If y'all need anything else just reach out and let me know.

MR. GOLDSTEIN: Okay, Judge, we are -- at some point we are going to have to talk about the access keys and the administrative keys to see what they have deleted though. I don't know that we touched on that. But if you want us to go through that in the next 30 days I am willing to do that as well.

THE COURT: All right. Let's try that. And if not, come back to me and I will make a decision.

MR. GOLDSTEIN: Yes, sir. Thank you.

THE COURT: All right. Thank y'all.

(WHEREUPON, the hearing concluded.)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1004083

Charleston Carriage Works L L C
PLAINTIFF(S)

Charleston Animal Society et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The Plaintiff's Motion to Compel Discovery against Defendants is granted. The Defendants will produce the bank statements. As to the search terms issue we will take this under advisement for thirty days. If a formal order is desired the parties are free to submit one.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/17/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

SCRCP Form 4CE (08/31/2017)

EXHIBIT D

ELECTRONICALLY FILED - 2020 Aug 17 4:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2020 Aug 17 4:08 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2020 Jun 17 8:36 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083



Charleston Common Pleas

Case Caption:	Charleston Carriage Works L L C VS Charleston Animal Society , defendant, et al
Case Number:	2018CP1004083
Type:	Order/Electronic Form 4

IT IS SO ORDERED!

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

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ROGERS LEWIS

ATTORNEYS AT LAW

Jenkins M. Mann, Esq.
803-978-2831
jmann@rogerslewis.com

December 11, 2020

Via US Mail and Dropbox
Thomas R. Goldstein, Esq.,
Belk, Cobb, Infinger & Goldstein, PA
PO Box 71121
Charleston, SC 29415-1121

Re: Charleston Carriage Works, LLC, v. Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.
C/A No.: 2018-CP-10-04083

Dear Tommy,

In follow up to our telephone conversations last week and previously, I am producing the Charleston Carriage Horse Advocates, Inc. bank statements you have requested. As we have agreed, we have redacted the portion of the statements' deposit tickets which could indicate the pledge source of the deposit. Additionally, CCHA's computer was imaged this week and I have provided your search terms to be run against the imaged hard drive. I should have the results for you shortly.

As we have discussed and I have emailed you, I understand that there are no other discovery disputes that Plaintiff has at this time with my clients. If that is incorrect, please let me know what they are as concisely as possible.

Sincerely

s/Jenkins M. Mann
Jenkins M. Mann

EXHIBIT
E

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Jenkins Mann

From: Tommy Goldstein <tgoldstein@cobblaw.net>
Sent: Sunday, November 22, 2020 2:44 PM
To: Jenkins Mann
Subject: Re: Two things and one VERY confidential thing

[This email originated outside the organization. Do not click any links or attachments unless you know the sender]
I would LOVE to talk tomorrow; however, I have to be in Magistrate's Court at 10 a.m. for what I regard as a HIGHLY DANGEROUS and unnecessary "pre trial hearing." [redacted] can be available tomorrow afternoon, or any time Tuesday that suits you.

Whinyingly yours,

Thomas O'Goldstein

From: Jenkins Mann <jmann@rogerslewis.com>
Date: Sunday, November 22, 2020 at 9:28 AM
To: "tgoldstein@cobblaw.net" <tgoldstein@cobblaw.net>
Subject: Re: Two things and one VERY confidential thing

Tommy, I got your letter. Can you talk tomorrow morning? Thanks

Sent from my Verizon, Samsung Galaxy smartphone
Get Outlook for Android

From: Jenkins Mann
Sent: Monday, October 26, 2020 8:05:35 AM
To: tgoldstein@cobblaw.net <tgoldstein@cobblaw.net>
Subject: RE: Two things and one VERY confidential thing

Tommy,
I'm following up again to see if you have a list of search terms that you want run through CCHA's computer. I cannot conduct a search unless and until I have that. This is akin to a discovery request – it comes from the lawyer, not the expert. Certainly if you want to consult with your expert regarding the terms to be search, I understand. If that's the case, please do so this week and get back to me.

I need to memorialize that I've been asking you for this list of search terms now for several months and repeatedly telling (as below) that I am prepared to respond to your request for information off of CCHA's computer (and any other databases you tell me you want us to search, if any) as soon as you tell me what it is us to look for and where you want us to look.

I remain concerned that this is an issue you don't want to resolve because you want to argue that you don't have documents or information to defeat summary judgment 2+ years into this case because of a failure by CCHA and Harley to respond to your discovery requests. I intend to show the court this repeated correspondence asking you to provide

EXHIBIT

me with what it is you want and attempting to resolve this "dispute." So, again, I need to know what it is you want off of their computer.

Jenkins M. Mann, Esq.
Member
1901 MAIN ST., SUITE 1200, COLUMBIA SC 29201
ROGERS LEWIS
803-978-2831 Direct Dial 803-252-3653 Fax
1901 Main St., Suite 1200, Columbia, South Carolina 29201
PO Box 11803 (29211)

The preceding email message (including any attachments) contains information that may be confidential, be protected by the attorney-client or other applicable privileges, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

CIRCULAR 230 NOTICE: To comply with requirements imposed by the United States Treasury Department, any information regarding any U.S. federal tax matters contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, as advice for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed therein.

From: Jenkins Mann
Sent: Tuesday, October 6, 2020 3:30 PM
To: 'tgoldstein@cobblaw.net' <tgoldstein@cobblaw.net>; 'Elizabeth Palmer' <epalmer@rosenhagood.com>; 'Joseph Thompson, III' <JThompson@hallboothsmith.com>
Subject: RE: Two things and one VERY confidential thing

Tommy[redacted] Let's set up a time to chat on tomorrow if you can.

On the first, I don't need anything technical at all from you. I just need the search terms you want our expert to search on CCHA's computer. I don't think that's something you want (or can) get from your computer guy. Once I have those terms, assuming I don't have an objection to them, I'll have my guy run the search on Ellen's computer.

Jenkins M. Mann, Esq.
Member
1901 MAIN ST., SUITE 1200, COLUMBIA SC 29201
ROGERS LEWIS
803-978-2831 Direct Dial 803-252-3653 Fax
1901 Main St., Suite 1200, Columbia, South Carolina 29201
PO Box 11803 (29211)

The preceding email message (including any attachments) contains information that may be confidential, be protected by the attorney-client or other applicable privileges, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

CIRCULAR 230 NOTICE: To comply with requirements imposed by the United States Treasury Department, any information regarding any U.S. federal tax matters contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, as advice for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed therein.

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

From: tgoldstein@cobblaw.net <tgoldstein@cobblaw.net>
Sent: Tuesday, October 6, 2020 1:06 PM
To: Jenkins Mann <jmann@rogerslewis.com>; 'Elizabeth Palmer' <epalmer@rosenhagood.com>; 'Joseph Thompson, III' <JThompson@hallboothsmith.com>
Subject: Two things and one VERY confidential thing

[This email originated outside the organization. Do not click any links or attachments unless you know the sender]

Thing One:

Ongoing discovery battle with Charleston Carriage Horse Advocates, etc.

Let's set up a time to discuss this, but I'm pessimistic that we can resolve it. Frankly, I think we're making it hard on ourselves. I consult with Steve Abrams—he tells me what to ask for; I try (and fail) to convey it to Jenkins, who in turn consults with Rosen Litigation Services, and the communication then reverses course. Let's PLEASE put Abrams and your contact, whoever it is at Rosen Litigation Experts, and let them communicate directly to one another. I'm sure the two whiz kids can figure out what we can't. I'm happy to discuss the philosophy of James Clerk Maxwell and Michael Faraday, or even Alan Turning (but not Charles Babbage), but when it comes time to operate a computer, I call someone else.

Thing Two:

Attached is a PROPOSED Motion for Extension of Scheduling Order. I'm not sure what I report to the Court on consultation. According to my tab, the votes on extending the scheduling Order are:

Elizabeth Palmer:	No
Trey Thompson:	No
Jenkins Mann:	Yes

Not sure where that leaves me.

[redacted]

Let me know what I am to say about consultation on the motion to extend scheduling Order.

Tommy, [redacted]

[redacted]

[redacted]

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-04083
	)	
Charleston Carriage Works, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,	)	
	)	
Defendants.	)	

AFFIDAVIT OF ELLEN HARLEY

PERSONALLY APPEARED before me, Ellen Harley, who being duly sworn does state as follows:

1. My name is Ellen Harley and, since its inception in 2017, I have served as President of Charleston Carriage Horse Advocates, Inc. ("CCHA").

2. I am over the age of 18 and have personal knowledge of and am competent to testify about the matters addressed in this Affidavit.

3. I have reviewed the Affidavit of Broderick Christoff and Supplemental Affidavit of Broderick Christoff, dated June 23, 2020, and am compelled to point out some of the more egregious false statements

4. I served on the Board of Charleston Animal Society from 2014 to 2019.

5. CCHA was organized and exists as a private, charitable 501(c)(3) organization for the purpose educating the public about and advocating for the humane treatment of livestock and animals that work in urban environments, with an emphasis on advocating for greater governmental oversight

EXHIBIT G

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

and regulation of the carriage horse industry, including concerns for the draught animals' welfare due to heat, size of the load they pull, hours that they work, time between pulling loads, and their stall size and care.

6. CCHA does not utilize a "professional fundraising counsel" or a "professional fundraising solicitor."

7. The name "Charleston Carriage Horse Advocates, Inc." was a name selected by me and other founding members of the group solely because it was befitting of our message and advocacy. It had absolutely nothing to do with any similarity it shares or does not share with the Plaintiff's name.

8. CCHA utilizes numerous forms of communication to educate and inform the public about its mission, legislative developments, its advocacy efforts, and opportunities for community involvement, including its website at https://www.charlestoncarriagehorseadvocates.com/, an online forum on Facebook https://www.facebook.com/ccha.join/ as well as accounts with Instagram and Twitter.

9. CCHA has approximately 19,200 "followers" on Facebook page. Some posts, such as those concerning the carriage horse industry, often spark spirited debates by commentors.

10. CCHA regularly sends out e-blasts via email to to more than 1,000 users.

11. CCHA does not create, and has never created, "a false narrative to cast [Broderick Christoff or Plaintiff] in a false light as an animal abuser, animal torturer, rule breaker, and to convict [Broderick Christoff or Plaintiff]in the court of social media as guilty of animal cruelty."

12. I have never followed Charleston Carriage Works tours or harassed their drivers or guests.

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

13. I do not have a Facebook page and to my knowledge have never used the website myself.

14. I have a personal Instagram account, but have to my knowledge never posted on it because I do not know how to.

15. I have never myself posted any content to any social media site, either as an individual or as an agent for CCHA.

16. Neither I, nor CCHA, ever posted that Big John "collapsed from heat and exhaustion."

17. I did not shoot the video that was posted regarding Big John's collapse on April 19, 2017 which can be found at https://www.youtube.com/watch?v=WLXdlMsxBZM ("Big John Video"), nor did I or anyone to my knowledge delete any "footage of [my] aggressive interference" on the scene that day.

18. As is indicated at the end of the video, CCHA published the Big John Video to raise awareness and support for the need of an independent, prospective, science-based, peer-reviewed study of the Charleston carriage industry.

19. CCHA did not publish the video with the intent to harm Plaintiff or injure its business.

20. Neither I, nor CCHA, was in possession then or now of any information that would call into question the veracity of the assertion that Big John "collapsed" on April 19, 2017.

21. Neither I nor CCHA ever received any April 25, 2017 letter from Plaintiff or Mr. Christoff.

22. Neither I nor CCHA ever received any request from the Plaintiff that we "publish the correct information and stop misleading people that Big John 'collapsed' from 'exhaustion'."

23. I have never harbored any personal animus toward Mr. Christoff or the Plaintiff.

24. CCHA is regularly asked to comment and give interviews concerning the carriage horse industry and on many occasions has issued and does issue press releases and hold press conferences regarding the same.

FURTHER AFFIANT SAYETH NOT.

Ellen A. Harley

Ellen Harley

SWORN to before me this
20 day of August, 2021

Chelsea Kennedy

Notary Public for South Carolina
My commission expires: 10/30/2025

CHELSEA KENNEDY
Notary Public-State of South Carolina
My Commission Expires
October 30, 2025

ELECTRONICALLY FILED - 2021 Aug 20 8:38 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-04083
	)	
Charleston Carriage Works, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,	)	
	)	
Defendants.	)	

DEFENDANT CHARLESTON ANIMAL SOCIETY'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT

This matter is before the Court on Plaintiff Charleston Carriage Works, LLC's Motion to Amend, filed pursuant to Rule 15, SCRCP on April 6, 2020, seeking leave to amend its Complaint to add two plaintiffs, five defendants, and a number of entirely new causes of action.

The discovery conducted in the almost three years since this case was filed has revealed that, at its core, this is a defamation lawsuit arising out of an incident in which one of Plaintiff's horses, Big John, fell to the ground during a carriage tour on April 19, 2017, and remained on the pavement for over 10 minutes until, with assistance, he was able to stand up. Defendants Charleston Animal Society (CAS) and Charleston Carriage Horse Advocates (CCHA) each, on April 20, 2017, posted eyewitness videos of the incident online and the videos became "viral." As to CAS, Plaintiff alleges that CAS's use of the word "collapse" to describe the horse, as well as the subtitles superimposed on the video[1], such as: "Was Big John exhausted or did he just 'trip'?" renders the video defamatory.

[1] https://www.youtube.com/watch?v=WLXdlMsxBZM (last accessed August 23, 2021).

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

PROCEDURAL HISTORY

Plaintiff's first lawsuit against Defendants arising out of the "Big John incident" was initiated when it filed a complaint in this Court on May 29, 2018 (C/A No. 2018-CP-10-2704). Because that complaint alleged the violation of Plaintiff's rights under the United States Constitution, Defendants removed it to federal court (C/A No. 2:18-cv-1980-RMG). Rather than proceed in federal court, Plaintiff filed a Notice of Dismissal on August 15, 2018. Plaintiff then initiated the current action by filing the same complaint (the "Complaint"), albeit without the references to federal law, in this Court on August 17, 2018.

The parties began engaging in discovery almost immediately. In addition to extensive written discovery, the depositions of the following individuals have been taken:

Broderick Christoff	Sole member/owner of Plaintiff CCW
Amber Christoff	Wife of Broderick Christoff
Katie Clarey	Accountant/tax preparer for Plaintiff CCW
Elizbeth Fort	Eyewitness to Big John incident, former member of CCHA
CCHA 30(b)(6)	Designated witness was Ellen Harley, founder of CCHA
Tyler Jones	Principal of public relations firm hired by Plaintiff CCW
Tara Little, DVM	Equine veterinarian that examined Big John shortly after collapse
Justin Miller, DVM	Esquire veterinarian designated by Plaintiff CCW as an expert
Dan Riccio	Director of the City of Charleston's Department of Livability and Tourism (which oversees the carriage industry)

By Consent Scheduling Order filed July 16, 2019, the parties agreed on a discovery deadline of February 7, 2020, a mediation deadline of March 9, 2020, and a trial not before date of May 11, 2020. Mediation was completed but was not successful.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Plaintiff has now at the eleventh hour filed a Motion to Amend, seeking to amend its Complaint to: 1) add Broderick Christoff, the sole member/owner of Plaintiff, and his wife, Amber Christoff, as plaintiffs; 2) add Catherine Poag, Elizabeth Fort, Elizabeth Slagsvol[2], Domangue Consulting, and Digital Solutions, Inc.[3], as defendants; and 3) add additional causes of action, titled "Fraud/Slander/Libel Defamation Per Se", "Fraud/Piercing the Corporate Veil", "Slander per se/Outrage", and "Outrage". Also, although unclear due to the inconsistent use of "plaintiff" versus "plaintiffs" and the absence of any identification as to which "plaintiff" the allegations are being made, it appears that Plaintiff is asserting on behalf of Mr. and Mrs. Christoff the Complaint's original causes of action: "Civil Conspiracy"; "Violation of Plaintiffs' Civil Rights under Article I, § 3, South Carolina Constitution – Gross Negligence, Recklessness"; "Tortious Interference with Business Relations"; and "Slander/Libel/Defamation *Per Se*".

As to Mr. and Mrs. Christoff, Plaintiff alleges that they have both been emotionally and financially damaged by the backlash stemming from the Big John video. However, the proposed Amended Complaint fails to allege any false statement concerning Mr. or Mrs. Christoff, individually. Likewise, it does not identify any threat made by any of the Defendants or anyone acting on their behalf. Notably, in letters threatening legal action sent to CAS and CCHA by counsel for Plaintiff days after the April 19, 2017, Big John incident (attached as Exhibits 1 and 2), the claims now made in the proposed Amended Complaint of alleged harm and damages sustained by Mr. and Mrs. Christoff personally are described. In fact, at the April 26, 2017, City of Charleston Tourism Commission meeting, Mr. Christoff spoke about the alleged threats to his and his wife's safety that had been made, noting that his wife was so fearful that she was unable to sleep for more than a few hours at a time. See 4/26/17 Tourism Commission Minutes, pp. 3-4

[2] These individuals are alleged to be affiliated with CCHA.
[3] These entities are alleged to be CCHA's "media companies".

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

(attached as Exhibit 3). Additionally, in his deposition, taken on December 7, 2018, Mr. Christoff testified that the first six weeks following the publication of the Big John video on April 20, 2017, were "scary times for – especially for me and my wife..." Christoff Depo., Vol. I, pp. 73:22-74:2 (attached as Exhibit 4). Although these alleged harms and damages were sustained by Mr. and Mrs. Christoff over a year before the first complaint was filed, Plaintiff, as master of its complaint, elected to bring the suit as the sole plaintiff. Accordingly, the tailoring of discovery, as well as the hundreds of hours of discovery conducted, has all been done in view of the action being framed as it was in the Complaint. Allowing Plaintiff to amend its Complaint to add new claims over four years after being in possession of knowledge of these claims and parties would greatly prejudice the Defendants and would be futile because the statute of limitations has run.

LEGAL ARGUMENT

Plaintiff has moved to amend its Complaint pursuant to Rule 15, SCRCP. A motion to amend or supplement a pleading is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999). "A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion." Skydive Myrtle Beach, Inc. v. Horry Cty., 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019). Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action. Ball v. Canadian Am. Exp. Co., Inc., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994); Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (stating "a proper reason" to deny a motion to amend could be "bad faith, undue delay, or prejudice"); Patton v. Miller, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (under Rule 15(a), the circuit

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

court should consider whether the defendants were prejudiced by the amendment, or whether there is some other substantial reason to deny it); Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235-36, 754 S.E.2d 714, 719 (Ct. App. 2014) (affirming the denial of a proposed amendment after the conclusion of discovery and the case had been placed on the trial roster because it would cause significant delay and impose substantial additional discovery costs that would not have been necessary if the plaintiff had timely made the motion to amend); Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010), rev'd on other grounds, 401 S.C. 1, 736 S.E.2d 242 (2012) (amendment properly denied where the proposed amendment would be futile).

I. Rule 15, SCRCP, does not allow the addition of new parties.

Plaintiff has moved pursuant to Rule 15, SCRCP, to amend its Complaint in order to name additional persons and entities as plaintiffs and defendants. However, Rule 15, SCRCP, does not allow such an amendment.

> Rule 15, SCRCP, does not allow an existing plaintiff to add a new plaintiff to the case to assert a claim against the defendant. ***Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing defendant.*** Rule 15(b)addresses amendments to conform to the evidence presented at trial. Rule 15(c) deals with relation back of amendments. None of these subsections addresses a motion to add a plaintiff as contemplated in this case.

Valentine v. Davis, 319 S.C. 169, 171, 460 S.E.2d 218, 219 (Ct. App. 1995) (emphasis added) ("We are unwilling to torture the rules in such a way to correct possible mistakes in the filing of motions or misjudgments in strategic procedural decisions."); Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992) (the rules of procedure, like statutes, should be given their plain meaning). Plaintiff's Motion, insofar as it attempts to add new parties, should be denied.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

II. Plaintiff's Motion to Amend should be denied because of Plaintiff's undue delay and the prejudice that would result to Defendants.

Even if Rule 15, SCRCP, were applicable, Plaintiff's Motion to Amend should be denied due to Plaintiff's inexplicable delay in seeking the amendment and the prejudice that would result to Defendants.

A. The addition of Broderick and Amber Christoff as Plaintiffs is untimely and prejudicial to the Defendants.

As stated above, Plaintiff, as well as Mr. and Mrs. Christoff, have been aware of the facts giving rise to the claims made in the Amended Complaint, including the damages and injuries allegedly sustained by Mr. and Mrs. Christoff, for over four years. There is no excuse for Plaintiff's delay in seeking to add them as plaintiffs now when the action has been pending for over three years and discovery concluded 18 months ago.

Additionally, Defendants will be prejudiced by the addition of new plaintiffs at this late date. An inordinate amount of discovery will have to be conducted and depositions re-taken. It appears that the proposed Amended Complaint seeks to assert, on behalf of Mr. and Mrs. Christoff, each of the original four causes of action as well as the four new causes of action. Thus, discovery as to each cause of action would be required in order to determine the basis for, and evidence relating to, Mr. and Mrs. Christoff's assertion of those causes of action. For example, the proposed Amended Complaint alleges Defendants have tortiously interfered with the contractual relationships Mr. Christoff and Mrs. Christoff allegedly have with the City of Charleston. (Prop. Am. Compl., ¶ 33) To date, the only business/contract that has been at issue or identified is Plaintiff CCW's carriage business and its franchise contract with the City of Charleston. Plaintiff's proposed Amended Complaint is the first that Defendant CAS has heard of any separate contract which Mr. and Mrs. Christoff are parties to or that has been breached because of the alleged actions

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

of Defendants. Another example: every claim asserted in the proposed Amended Complaint concerns allegedly defamatory statements in some respect. However, all of the discovery to date has concerned the alleged defamation of Plaintiff CCW. Defendant CAS is not aware of any statement made by Defendants concerning Mr. or Mrs. Christoff individually. See Ball v. Canadian Am. Exp. Co., Inc., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) (prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action). Likewise, the proposed Amended Complaint purports to state a claim for fraud. Fraud has not previously been alleged and would require completely different evidence (and discovery) to defend.

Allowing the addition of Mr. and Mrs. Christoff would require Defendants to essentially start at ground zero, more than three years after the action was commenced and four years after the events giving rise to the action occurred. Because Plaintiff was aware of the claims it now seeks to add and assert on behalf of Mr. and Mrs. Christoff, and because its undue delay in seeking amendment of its Complaint will greatly prejudice the Defendants, the Motion to Amend should be denied.

B. The addition of entirely new causes of action would be untimely and would prejudice the Defendants.

Plaintiff's proposed Amended Complaint seeks to add four causes of action: "Fraud/Slander/Libel Defamation Per Se"; "Fraud/Piercing the Corporate Veil"; "Slander per se/Outrage"; and "Outrage". These are entirely new claims, many of the elements of which were not included as part of the discovery completed in the three years this lawsuit has been pending. Moreover, it is undeniable that Plaintiff has been aware of these claims for at least four years because they are based on the same underlying facts as the original claims. There is no justification for Plaintiff's delay in seeking this amendment, and the Motion to Amend should be denied. See

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014), reh'g denied (amendment seeking to add claims against defendant following conclusion of discovery would have been prejudicial to defendant, where plaintiff had already obtained one amendment, had all knowledge necessary to alert him as to the claim prior to the close of discovery, and the new claim would have required defendant to conduct additional discovery).

C. The addition of additional defendants would be untimely and would prejudice the Defendants.

Just as the addition of new plaintiffs and causes of action would prejudice Defendants, the addition of new defendants, against which entirely new and separate causes of action are alleged in the Amended Complaint, would prejudice CAS. For example, the individuals Plaintiff seeks to add are alleged to be affiliated with CCHA, and Plaintiff seeks to pierce liability shield enjoyed by incorporated entities to impose liability on these individuals. Plaintiff apparently also seeks to add claims against all Defendants for violation of the S.C. Solicitation of Charitable Funds Act (as part of its fifth cause of action for "Fraud/Slander/Libel/Defamation P*er Se*"). These claims are largely unrelated to the existing claims in the Complaint and would certainly prejudice CAS if they are permitted to be added now and ultimately tried together with the defamation claims asserted against CAS.

III. Plaintiff's Motion to Amend should be denied because it is futile.

A trial court may deny a motion to amend if the amendment would be clearly futile. Skydive Myrtle Beach, Inc. v. Horry Cty., 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019) (citing Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010)); Health Promotion Specialists, L.L.C. v. S.C. Bd. of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 812–13 (2013) (affirming the circuit court's denial of a party's motion to amend its complaint when the

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

amendment would be futile). Because the amendments set forth in the proposed Amended Complaint would be futile, Plaintiff's Motion must be denied.

A. Statute of Limitations.

It has long been recognized that an amendment adding a claim barred by the applicable statute of limitations is futile and should be denied. See Coral Gables v. Palmetto Brick Co., 183 S.C. 478, 191 S.E. 337, 341 (1937) ("The court will not do a useless and a futile thing, by allowing an opportunity for setting up a new cause of action by amendment, which is barred by the statute of limitations.").

Plaintiff appears to argue (in its Reply Memorandum Supporting Motion to Amend, filed May 26, 2020) that Rule 20[4] allows the joinder of additional plaintiffs and defendants, and submits that "the proposed amendments arise out of the same transaction, the same occurrences, and the same allegations of defamation and add nothing other than to address the fact that, based on Ms. Harley's January 31st deposition, she identified for the first time two additional corporate entities that she claims are responsible for her defamatory content." Pltf. Reply Memo, p. 6; see also p. 9 ("The amended complaint alleges nothing new other than responding to Ms. Harley's January 31st identification of who is responsible for the allegations arising out of the original transaction and occurrence."); p. 5 ("The addition of the principals of the plaintiff are only to meet the allegations of the defendants that some of the damages pertain to the principals individually and not their limited liability company, but their claims are based on the original identification of defamatory publications."). A comparison of the original Complaint and the proposed Amended Complaint show that there are no new substantive allegations – the proposed Amended Complaint is based on the same exact facts. Given that all claims are based on the facts as set forth in the original

[4] Plaintiff's Motion to Amend was made solely pursuant to Rule 15, SCRCP.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Complaint, the statute of limitations began to run at the very latest on August 17, 2018, when Plaintiff filed its Complaint. More than three years have passed, therefore all new claims sought to be asserted in the proposed Amended Complaint are stale.

Moreover, there is no "relation back" argument available to Plaintiff and its attempt to add additional parties, even if Rule 15 was applicable. See Cline v. J.E. Faulkner Homes, Inc., 359 S.C. 367, 371, 597 S.E.2d 27, 29 (Ct. App. 2004) (relation back to original pleadings applies only when an existing party is changed, not when a new party is added to a complaint, emphasizing that "under South Carolina law, the date when a plaintiff learns of a potential new defendant has absolutely no bearing on the timing of the statute of limitations"); Gause v. Smithers, 384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009) (police officer's naming of son, in amended complaint, as actual driver of vehicle he stopped when officer was hit by second vehicle, amounted to the addition of a defendant and not the change of a party within meaning of relation back rule, and as such, the addition of son, while keeping father in case, did not relate back to original complaint filed against father as owner and erroneously assumed driver of the stopped vehicle, for statute of limitations purposes.); Jackson v. Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) ("The language of Rule 15(c) clearly speaks to a change in party, not the addition of a defendant to an already existing defendant. In our view, the addition of a party is not the same as a substitution or change of party.").

Because the addition of new parties is barred by the statute of limitations, amendment is futile and Plaintiff's Motion to Amend should be denied.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

B. Failure to state a cause of action.

Even if not barred by the statute of limitations, amendment would be futile because Plaintiff's proposed Amended Complaint fails to state a cause of action and fails to comply with the pleading requirements set forth in Rules 8, 9, and 10, SCRCP, as set forth below.

The proposed Amended Complaint attempts to state a cause of action (the first) on behalf of Mr. and Mrs. Christoff for "Civil Conspiracy" but fails to allege any additional acts taken in furtherance of the conspiracy that are not alleged elsewhere in the proposed Amended Complaint. "In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim." Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009). Because the allegations of Defendants' actions contained within this cause of action are identical to those alleged elsewhere in the proposed Amended Complaint, Plaintiff's Motion must be denied because amendment to allow a cause of action that is deficient on its face is futile.

The proposed Amended Complaint attempts to state a cause of action (the second) on behalf of Mr. and Mrs. Christoff for "Violation of Plaintiffs' Civil Rights under Article I, § 3, South Carolina Constitution, Gross Negligence, Recklessness." On its face this cause of action fails to comply with Rule 10(b), SCRCP, which requires that "[e]ach cause of action and each defense shall be stated in a separate cause of action or defense." This cause of action also fails to comply with Rule 8, SCRPC, which prohibits the "jumbling" of two or more causes of action in one count. See Rule 8, SCRCP, Notes ("The Rule does not allow 'jumbling' of two or more causes of action."). Additionally, to the extent Plaintiff seeks to state a negligence cause of action on behalf of Mr. and Mrs. Christoff, it fails to allege the existence of any duty or breach of that duty,

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

and thus is insufficient and subject to dismissal pursuant to Rule 12(b)(6), SCRCP. Allowing the proposed amendment as stated is futile and should be denied.

The proposed Amended Complaint attempts to state a cause of action (the third) on behalf of Mr. and Mrs. Christoff for "Tortious Interference with Business Relations." Specifically, it alleges that "plaintiffs", thus presumably including Mr. and Mrs. Christoff, have a contractual relationship with the City of Charleston (Prop. Am. Compl., ¶ 33) that Defendants have interfered with. However, the proposed Amended Complaints fails to state a cognizable cause of action for intentional interference with contract because it fails to allege any breach of any contract to which Mr. and Mrs. Christoff are/were parties. See First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 72–73, 451 S.E.2d 907, 913 (Ct. App. 1994) ("A cause of action for tortious interference with contractual relations requires: (1) the existence of a contract; (2) the defendant's knowledge of the contract; (3) intentional procurement of its breach; (4) absence of justification; and (5) damages.") (citing Todd v. S.C. Farm Bureau Mut. Ins. Co., 287 S.C. 190, 336 S.E.2d 472 (1985). Plaintiff's proposed Amended Complaint alleges only that Mr. and Mrs. Christoff have "*attempted* to procure a breach of that franchise contract." (Prop. Am. Compl., ¶ 32) (emphasis added). Allowing the proposed amendment as stated is futile and should be denied.

The proposed Amended Complaint attempts to state a cause of action (the fourth) on behalf of Mr. and Mrs. Christoff for "Slander/Libel/Defamation Per Se." However, it fails to state the "who, what, where, when" of the defamation. Defamation claims under South Carolina law are statement-specific; the plaintiff must point to a specific statement made by the defendant and published to a third party that is false. See Fleming v. Rose, 350 S.C. 3488, 494, 567 S.E.2d 857, 860 (2002). South Carolina courts have been clear that a defendant is liable only for its *own* publication of defamatory statements. "The tort of defamation allows a plaintiff to recover for

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

injury to his or her reputation as the result of *the defendant's* communications to others of a false message about the plaintiff." Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 485, 514 S.E.2d 126, 134 (1999). Thus, the plaintiff bears the burden of pleading and, later, establishing, that *each* named defendant published false information. The proposed Amended Complaint therefore fails to allege a plausible claim for relief because it fails to identify the statements made by each Defendant concerning Mr. Christoff or concerning Mrs. Christoff. Because the proposed Amended Complaint fails to identify at a minimum the content of each allegedly defamatory statement, the speaker of the statement, and how each plaintiff was allegedly damaged by the statement, it fails to state a cause of relief upon which relief can be granted. The amendment would be futile.

The proposed Amended Complaint attempts to state a new cause of action (the fifth) on behalf of Mr. and Mrs. Christoff as well as Plaintiff for "Fraud/Slander/Libel/Defamation Per Se." This cause of action fails to comply with the requirements of Rules 8 and 10, SCRCP. It also fails to comply with Rule 9, which requires that fraud be pled with specificity. See Rule 9(b), SCRCP ("in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity"). In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. M. B. Kahn Const. Co. v. S.C. Nat. Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980). A complaint is fatally defective if it fails to allege all nine elements of fraud. Inman v. Ken Hyatt Chrysler Plymouth,

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Inc., 294 S.C. 240, 363 S.E.2d 691 (1988). Where the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. Id. Here, Plaintiff has failed to allege that Defendant's alleged misrepresentations were done with an intent that they be acted upon, that Plaintiff(s) were ignorant of the falsity of the statements, that Plaintiff(s) relied on the truth of the statements, that Plaintiff(s) had a right to rely, or that Plaintiff(s) were damaged by such reliance.

Additionally, to the extent it is intended to allege defamation, it is duplicative of the fourth cause of action ("Slander/Libel/Defamation Per Se") and suffers from the same deficiencies as set forth above. Additionally, within this same cause of action Plaintiff appears to assert a claim for violation of the S.C. Solicitation of Charitable Funds Act, S.C. Code Ann. §§ 33-56-10, et. seq. However, that Act does not provide any private right of action. Georgetown Cty. League of Women Voters v. Smith Land Co., 393 S.C. 350, 353, 713 S.E.2d 287, 289 (2011) (legislative intent to grant or withhold a private right of action for a violation of the statute is determined primarily from the language of the statute). The Act does not explicitly provide for any private right of action. Rather, it provides that all penalties and fines imposed due to violations of the act are to be transmitted to the State. S.C. Code Ann. § 33-56-160. Finally, the "damages" alleged appear to be those sustained by the public at large, which Plaintiff and Mr. and Mrs. Christoff lack standing to assert. For all of these reasons, allowing Plaintiff to amend the Complaint to state this cause of action is futile.

The proposed Amended Complaint attempts to state a (new) cause of action (the seventh) on behalf of Mr. and Mrs. Christoff for "Slander Per Se/Outrage" Again, this cause of action fails to comply with the requirements of Rules 8 and 10, SCRCP, and would be subject to dismissal on that basis. Moreover, it appears this cause of action is duplicative of those attempted to be stated

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

elsewhere in the proposed Amended Complaint. For example, "Slander" is stated in the fourth and fifth cause of action, and "Outrage" is stated in the eighth cause of action. Nevertheless, to the extent it attempts to state a cause of action for "Slander Per Se", it fails to identify the specific statements alleged to be slanderous, the speaker of those statements (as opposed to just lumping "defendants" together), or the damages sustained. To the extent it is intended to allege a cause of action for "Outrage", it fails to properly allege the same as it fails to allege that the defendant(s) acted with intent to inflict emotional distress or acted recklessly when it was certain or substantially certain such distress would result from his conduct. Andrews v. Piedmont Air Lines, 297 S.C. 367, 377 S.E.2d 127 (Ct. App. 1989) ("To state a claim for outrage a plaintiff must allege: (1) conduct by the defendant which is atrocious, utterly intolerable in a civilized community, and so extreme and outrageous as to exceed all possible bounds of decency; (2) the defendant acted with intent to inflict emotional distress or acted recklessly when it was certain or substantially certain such distress would result from his conduct; (3) the actions of the defendant caused the plaintiff to suffer emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable man could be expected to endure it."). Because the proposed Amended Complaint fails to state a viable claim for "Slander per se/Outrage", amendment should be denied.

The final and eighth cause of action alleged in the proposed Amendment Complaint, which is also a new cause of action, is for "Outrage". For the same reasons as stated in the preceding paragraph, this cause of action is fatally deficient, and amendment would be futile.

IV. If Plaintiff's Motion to Amend is granted in whole or in part, it should be ordered to make a more definite statement of its causes of action in compliance with Rules 8(e), 9, and 10(b), SCRCP.

In the preceding section, numerous deficiencies in the proposed Amended Complaint have been identified. Taken as a whole, Plaintiff's action arises out of defamation. However, the

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

proposed Amended Complaint does not include any factual allegations regarding the supposedly false statements or representations made by Defendants, such as the content of the statements, the date(s) of the statements, the number of statements allegedly made, where the statements were made and the method of publication, the person or persons who made the statements, or the basis for Plaintiff's contention that the statements are false. It jumbles together causes of action and lumps the parties together (i.e., "Plaintiffs" and "Defendants") without alleging any facts specific to each or identifying which allegations apply to which party/parties. A more definite statement is necessary when, as here, the complaint "uses the terms 'defendant' and 'defendants' interchangeably" and does not "delineate which claim applies to which defendant." Secret of the Islands, Inc. v. Hyman's Seafood Co., 2018 WL 1566706, at *6 & n.3 (D.S.C. Mar. 30, 2018) (Norton, J.).

For example, para. 14 of the proposed Amended Complaint alleges that "persons acting on or at the direction of the defendants would approach the plaintiffs' carriages to interfere with the operation of the plaintiffs' business by shouting material false information at the plaintiff's clients..." Is it plaintiffs' or plaintiff's, and if the former, which one(s)? Para. 29 alleges: "The defendants knowingly and intentionally disseminated to third parties and governmental agencies false and misleading information concerning the plaintiff's carriage operation..." but then reverts to the use of plural "plaintiffs" in the following paragraphs, with no indication of what each defendant did or to which "plaintiff" (singular). Likewise, throughout the proposed Amended Complaint there are allegations of false statements published by "defendants" concerning the "plaintiffs" or the "plaintiffs' business" but fails to set forth the specific statements, making it impossible for Defendants to respond to the allegations or prepare a defense.

Should the Motion to Amend be granted in whole or in part, Plaintiff must be required to revise its Amended Complaint to cure the deficiencies outlined above.

CONCLUSION

For the above reasoning and law, Defendant Charleston Animal Society respectfully requests that Plaintiff's Motion to Amend be denied. Alternatively, if the Motion is granted in whole or in part, Defendant asks that the granting of the Motion be conditioned upon Plaintiff's curing the Amended Complaint's deficiencies as set forth herein before it is filed.

ROSEN HAGOOD, LLC

By: /s/ Elizabeth J. Palmer
Elizabeth J. Palmer
151 Meeting Street, Suite 400
Charleston, SC 29401
epalmer@rosenhagood.com
(843) 577-6726

ATTORNEYS FOR DEFENDANT
CHARLESTON ANIMAL SOCIETY

Charleston, South Carolina
September 29, 2021

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

EXHIBIT 1

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address
PO Box 71121
Charleston, SC
zip 29415-1121
Ph (843) 554-4291
Fax (843) 554-5566

April 25, 2017

Ms. Ellen Harley
23 Wentworth Street
Charleston, S. C. 29401

Re: Charleston Carriage Works

Dear Ms. Harley,

This office represents the interests of Charleston Carriage Works and Broderick Christoff. I have reviewed the false and libelous material you published concerning my client and his business, falsely implying that a healthy and uninjured horse collapsed from neglect and misuse. I am also aware that you spend a considerable amount of time following various tours, harassing companies, their employees and guests. I know you are a part time resident of South Carolina and therefore, you may be unaware of South Carolina laws. South Carolina allows suits for slander/libel, and under South Carolina law, "words that falsely charge a person with conduct, characteristics or a condition incompatible with the exercise of a lawful business, trade, profession or office are slander/libel *per se*." Moreover, your reckless and false statements have generated numerous serious threats directed against Broderick, his family and his employees. In addition, Congress responded to tactics such as yours by passing the *Animal Enterprise Terrorism Act* (AETA), 18 U.S.C. § 43. This act prohibits any person from engaging in certain conduct "for the purpose of damaging or interfering with the operations of an animal enterprise." The statute covers any act that either "damages or causes the loss of any real or personal property" or "places a person in reasonable fear" of injury."

In South Carolina, we consider it courteous to approach directly someone in order to express concerns with his or her activities. Should you have any concerns about the well-being of Charleston Carriage Works' horses, all you have to do is request information. You may not be aware, but the City of Charleston has rigorous regulations governing the care and conduct of the horses, including the number of hours they can work and the maximum temperature during which they can work. Broderick, the employees of Charleston Carriage Works and their guests love the horses, and the care and affection for their horses is second to none. It is extremely reckless of you to disseminate information that you know is false. You are aware that the horse that tripped, easily regained his feet as soon as he was unharnessed and walked back to the barn unassisted and was thoroughly checked by a doctor of veterinary medicine who cleared Big John to return to work. If you had real concerns about the horse—as opposed to publishing knowingly false information to suit your agenda—it would have been simple for you to request the veterinary records from the examination in order to determine accurate information about the horse's well-being. You did not do this because you chose to turn a blind eye to the facts in order to publish libelous material. Instead of making an effort to determine whether the horse was or was not injured, you published false information with the view of whipping up anger and hostility toward Charleston Carriage Works. In this you have succeeded, and if anyone there is attacked, injured, or killed as a result of your intentionally false publication, you will be responsible for this.

EXHIBIT
3 Harley
January 31, 20

EXHIBIT 11
Deponent Fort
Date 5/2/19 Rpt

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

In the meantime, in the spirit of the Southern tradition of courtesy, we are happy to answer any relevant questions about the health, maintenance, and care of any animal. We expect you to do the right thing and immediately publish a retraction and correct the false impression that you created that the animal was injured in any way. Please provide evidence that you have published a retraction and correction. I am in no position to give you legal advice, but I suggest that you get legal advice from any of the excellent lawyers in Charleston who can advise you on what is and is not permissible under South Carolina tort law and under the *Animal Enterprise Terrorism Act*. I also ask that you notify your Homeowner's Insurance Carrier of our intent to make a claim. Your failure to do so could void your coverage. As always, you can contact me at the above telephone number, e-mail address, or street address to discuss this matter. I hope you will do so.

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

cc: Broderick Christoff

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

EXHIBIT 2

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.
ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Harry C. Belk (1919-2003)

Duke I. Cobb, Jr.
dncobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

Mailing Address
P.O. Box 71121
Charleston, SC
zip 29415 1121
Ph (843) 554-4291
Fax (843) 554-5566

May 11, 2017

Mr. Joe Elmore
Charleston Animal Society
2455 Remount Road
N. Charleston, S. C. 29405

Re: Charleston Carriage Works

Dear Mr. Elmore,

This office represents the interests of Charleston Carriage Works and Broderick Christoff. I have reviewed a number of examples of false and libelous material the Charleston Animal Society has published concerning my client and his business, falsely implying that a healthy and uninjured horse "collapsed" and died from neglect and misuse. A number of people, claiming to be speaking on behalf of the Charleston Animal Society have been following various tours, harassing companies, their employees and guests. While I recognize the significant service you provide to the people of South Carolina by caring for unwanted and abandoned pets, and while I have spent my legal career defending the right of free speech under the First Amendment, you must be aware that South Carolina allows suits for slander/libel, and under South Carolina law, "words that falsely charge a person with conduct, characteristics or a condition incompatible with the exercise of a lawful business, trade, profession or office are slander/libel *per se*." Moreover, the Society's reckless and false statements have generated numerous death threats directed against Broderick, his family and his employees. Such tactics motivated Congress to respond to tactics such as yours by passing the *Animal Enterprise Terrorism Act* (AETA), 18 U.S.C. § 43. This Act prohibits any person from engaging in certain conduct "for the purpose of damaging or interfering with the operations of an animal enterprise." The statute covers any act that either "damages or causes the loss of any real or personal property" or "places a person in reasonable fear" of injury."

In South Carolina, we consider it courteous to approach directly someone in order to express concerns with his or her activities. Should you have any concerns about the well-being of Charleston Carriage Works' horses, all you have to do is request information. Of all the people in Charleston, you must be the most aware that the carriage horses are carefully monitored and protected by the City. You are well aware that the City of Charleston imposes rigorous regulations governing the care and conduct of the horses, including the number of hours they can work and the maximum temperature during which they can work. Broderick, the employees of Charleston Carriage Works and their guests love the horses, and the care and affection for their horses is second to none. It is extremely reckless of you to disseminate

information that you know is false. You are aware that the horse that tripped, easily regained his feet as soon as he was unharnessed and walked back to the barn unassisted and was thoroughly checked by a doctor of veterinary medicine. If you had real concerns about the horse—as opposed to publishing knowingly false information to suit your agenda—it would have been simple for you to call Broderick, whom you know, and request the veterinary records from the examination in order to determine accurate information about the horse's well-being. You did not do this because you chose to turn a blind eye to the facts in order to publish libelous material that you know is false. Instead of making an effort to determine whether the horse was or was not injured, you published false information with the view of whipping up anger and hostility toward Charleston Carriage Works in an effort to damage their business. In this you have succeeded, and if anyone there is attacked, injured, or killed as a result of your intentionally false publication, you will be responsible for this.

In the meantime, in the spirit of the Southern tradition of courtesy, we are happy to answer any relevant questions about the health, maintenance, and care of any animal. We expect you to do the right thing and immediately publish a retraction correcting the false impression that you created that the animal was injured in any way. Please provide evidence that you have published a retraction and correction. In the meantime, I request that you turn this letter over to your counsel so that he or she can notify Insurance Carrier of our intent to make a claim. Your failure to do so could void your coverage. Since your organization is an agency of the County of Charleston, I am also sending a copy of this letter to the County Attorney. Since Charleston County supports the Charleston Animal Society, the County may wish to participate in this discussion. As always, you can contact me at the above telephone number, e-mail address, or street address to discuss this matter. I hope you will do so.

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

cc:
Joe Dawson, County Attorney
Broderick Christoff

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

CITY OF CHARLESTON TOURISM COMMISSION
April 26, 2017

A meeting of the City of Charleston Tourism Commission was held this date at City Hall, Council Chamber, 80 Broad Street.

Notice of this meeting was sent to all local news media.

PRESENT

Mr. Robert Seidler, Chair, Mrs. Elizabeth Bradham, Mr. Alphonso Brown, Mr. Randolph Cooper, Mrs. Lorraine Evans, Mr. Barry Kalinsky, Mr. Ernest Long, Mr. James Saboe, Mr. Richard Stello, Ms. Vanessa Turner Maybank, and Dr. Louis Weinstein. **STAFF**: Ms. Davida Allen, Manager, Arts and History Commission/ Tourism Commission, Mr. Tim Domin, Esq, Clawson and Staubes, LLC, Mr. Dan Riccio, Director, City of Charleston Department of Livability and Tourism, Mr. Robert Somerville, Interim Director, City of Charleston Department of Traffic and Transportation, and Mrs. Amy Southerland, Tourism and Special Events Manager, City of Charleston Department of Livability and Tourism.

The meeting was opened with a moment of silence.

Approval of Minutes: February 22, 2017 – **Deferred**

City Attorney Report – Mr. Tim Domin, Esq.

Mr. Domin had no report.

Dr. Weinstein asked Mr. Domin asked what happened with the lawsuit regarding the tour guide licensing.

Mr. Domin said the court decided not to make any final decisions right now.

Citizen Output

Elizabeth Ford, representing Charleston Carriage Horse Advocates, said they are a group of residents who are increasingly concerned about the working conditions of carriage animals in Charleston. They are not against the use of working animals on the streets of Charleston but they can't support the current working and living conditions of these animals in Charleston because they don't believe they are humane. Last week a horse collapsed while pulling a heavy load of passengers down Meeting Street. The incident was videotaped and placed on social media. Within 48 hours, USA Today picked up the story and the link to the video. Ten other national producers had requested the use of the video and with social media exposure; the video garnered 11 million views.

Since the viewing of the video of the collapsed horse by 11 million people, 125,000 people have signed a petition calling for a ban of industry in Charleston. Ms. Ford noted many thousands of those who signed are Charleston. She said if the Charleston government and the wagon industry do not agree to a study as requested by the Charleston Animal Society and many other animal organizations, then a move towards a ban will be an alternative that will likely be inevitable. It is time that the Charleston city government and the animal drawn wagon industry in Charleston agree to a peer review independent science based study as proposed by the Charleston Animal Society. They asked the Tourism Commission to move to support the study.

Benjamin Doyle of Palmetto Carriage Works said the carriage industry study currently being proposed by the Animal Society is not based on science. It is about achieving a predetermined outcome long desired by the Animal Society, which is to end his industry in Charleston. This was why the industry proposed the Society do their own study with their own horses. The outcome of the study conducted by the Charleston Animal Society would clearly be biased. That same bias is already written and evidenced in their public statements and activities.

Barbara Hart of Ansonborough asked the Commission to consider the negative neighborhood impact, the potential harm for tourists riding in wagons and the negative image for the city with these accidents that are factored in along with new development and traffic congestion that is the new reality in

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

downtown Charleston. She asked the Commission to consider how the recent accident will affect to come how long tourists remain in the city as well as neighbors who intend to live here against the congestion.

Ms. Hart noted the Ansonborough neighborhood is slated for two new hotels pushed up against the barns where the horses are supposed to rest. She quoted from petMD in their November 11, 2014 blog (*Contrary to Popular Belief, Horses Do Not Sleep Standing* by Dr. Anna O'Brien): "*Very busy, loud barns, or an area that is too small for the horse to feel comfortable lying down are some common problems for the modern horse. And the result? Horses that go without REM sleep over the course of weeks will have a negative effect on physical performance, and may even factor into irritability or behavioral problems.*" She said when horses stand and sleep they are only snoozing. They do not get REM sleep. If they don't have enough REM sleep they will collapse. She said they have to wonder about if that's the real problem with Big John last week if John is living in stalls that are too small in many cases for these animals to lie down.

Dr. Justin Miller of the Charleston Equine Clinic said his associate examined Big John after he went down. He did not actually collapse and to imply so is to indicate that there is some sort of a pathological medical condition. He, in fact, stumbled in his harness and waited until he could be unhitched then he walked back to the barn.

Dr. Miller met with a Charleston Animal Society executive a few weeks ago. They invited him there and he went with the blessing of the leaders of the carriage companies to open up a dialogue and to try to come to some common grounds. He did so with the idea that what he wanted to have happen was that there would be at least while there was some open talks a cease fire, that there would be no more banners, no more social media presentations, no more videos and no more activists' antics. That didn't even last a week. Even though he and the carriage companies are not opposed to a peer review prospective study it's not going to happen. No one, no individual, no group has the right to impose scientific research testing on someone else or their animals. If they can't get the cooperation of the local carriage companies, they are not going to get their study and that's their fault. He noted they tried to talk to them and tried to mediate. There are too many moving parts, too many subgroups, and too many people doing too many things on their own. It's either the Charleston Animal Society or Charleston Animal Society inspired. It doesn't make any difference. It's the same problem.

Kim Kelly, South Carolina senior state director for the Humane Society of the United States and resident of the City of Charleston, said she was there to join local animal organizations to ask the City to support a scientific prospective peer reviewed study on the carriage horse industry. Carriage horse rides in various settings can and do place horses in danger. Exposure to exhaust fumes, hard road surfaces and busy traffic patterns has all caused injuries to carriage horses. In addition even the most well-mannered and best trained horses are at risk at being spooked which can ultimately cause traffic collisions harming both humans as well as horses. Right now the most pressing concern in Charleston is the horses' exposure to heat. The City's current guidelines, which allows horses to work until its 95° and inexplicitly requires multiple readings of a thermometer that is high above street level all while carrying excessively heavy loads making Charleston's carriage horses working conditions among the hardest, if not the harshest in the nation. The Humane Society Veterinary Medical Association believes this creates an unreasonably dangerous work environment for horses. She asked the Commission to support the study.

Louise Palmer read a letter from Nancy Perry of the ASPCA who supported the science based peer reviewed study of the carriage horses. They aren't opposed to the use of horses or other equines pulling carriages and carts as long as "all their physiological and behavioral needs are met, housing and stable conditions are humane and their working hours and conditions are carefully regulated to temperature, humidity, proximity to traffic, rest periods, etc."

Tamara Brown said she is a local horse person and not affiliated with the Charleston Animal Society or the carriage companies. When all of this controversy started she decided to visit the carriage companies and check them out. She walked around, asked questions, and went on tours. She has been on three tours out of the five companies. She walked to the back area of the barns and was allowed to take pictures and videos. When she asked permission to post her pictures and videos, she was told she could post anything she felt like posting. She said they are not hiding anything. She met with a couple of companies and toured a plantation where the company keeps their horses. The one thing she found

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

consistently through the three that she have had time to tour in the past three weeks is the level of care that they offer the horses is beyond anything that anybody in the chamber would think about giving them. They love their horses. She listened to Broderick Christoff talk excitedly about what he does for an hour and half. She said unless you have been into these companies, looked around, asked questions, take a tour and watch these horses the majority of the time who are quiet and happy, you are missing out on the point.

Carol Linville, president of Pet Helpers and representing the Pet Helper board, said they support the study. At the end of the day, she wanted to see the carriage industry, the Animal Society and those that are concerned about the humane working conditions of the horses be resolved. This doesn't look good for the City of Charleston. Perception is the reality. No one here is happy about dealing with what they are doing. But they do have to come to some of solution. She didn't believe the carriage horses are mistreated in their barns. She doesn't believe Mr. Christoff has anything but massive love for his animals. She saw a carriage go across the street today – one horse and two people in a princess carriage. She turned a corner and saw a wagon with 14 people and one horse plodding along. She turned another corner and there were two horses pulling a wagon with about ten people. She said the issue is coming together, somehow getting both sides to sit down and have a conversation, really listen to what to what's involved in the study and what's involved in the horses doing that. She said obviously it's got to be working horses in the community. You can't bring horses down here to do a study, build a barn and go through of nine months of what it will take to do the study.

Ms. Linville said she didn't understand why they couldn't get back to two temperature readout like we had before and bring the thermometer down on the ground. That will relieve some of this perception and heat issues.

Joe Elmore, CEO of the Charleston Animal Society, noted as Dr. Miller said they agreed to meet with the carriage horse companies again. A day or two afterwards they were found out the carriage companies refused to meet with them and declined their offer. He understood. He understood there is volatility on both sides. It's a controversial issue. Social media is all over the place on this.

Mr. Elmore wanted to remind the Commission that the Animal Society was founded specifically to prevent cruelty to all animals, all species, with a focus on livestock and equines. He had never called out a carriage horse company or carriage horse employee as being cruel. This is not about how individuals care for their animals if they care for their animals. He didn't doubt that these individuals cared for their animals. It is the system that is inhuman and cruel. Two years ago the Animal Society, based on the number of complaints received from tourists, residents, City employees, former carriage horse employees, and horse lovers, started its own investigation. They found that this decade long law that is in place, that the Animal Society was a part of creating, wasn't being followed in many of its provisions and not being enforced in many of its provisions.

Mr. Elmore told Chair Seidler he could arbitrarily set up something up and he will provide him with proposal for a science based peer reviewed study.

Vicki Touché, a former employee of Dr. Simmons, who worked on the animal care guidelines, said she worked with him on these horses and mules. They were very well taken care of and if you go into a barn they are happy to let you see everything. You can take pictures and post them but you can't escape the media and Facebook. She said to condemn them because the horse fell down, which he was trained to stay still in his traces, is awful. She felt they should have an outside company to do the study and not someone from Charleston because of the bias.

Broderick Christoff, of Charleston Carriage, said it has his horse, Big John that tripped in the streets. He said he had a different side of this and wanted to explain to everyone and submit his comments in to record as well a glimpse into what his life has been like for the past week.

Mr. Christoff said for the past week the Charleston Animal Society has maintained a false and malicious campaign both against his business and him personally. Their board member Ellen Harley's shop video had been viewed 12 million times and of which they are admittedly proud, was crafted and published to suggest that his horse Big John was worked to an exhaustive death collapsing on Meeting Street. **The expected outrage that resulted from all of America watching, as they republished in their letter leading to the latest press release, has inspired a tremendous and predictable volume of serious threats**

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

to not only his business but to him personally and, most importantly, his safety and his wife's safety. His wife has not slept more than a few hours solid at a time for a week and wakes up at the slightest sound as a result of the sheer volume of threats.

While he may have a 20 year record of complete disagreement in this room he has always respected the process and has always been civil. In his over 20 years as a carriage operator, and at the end of the 20th he hopefully remain, the number of people to whom he will have represented in both his business and this City exceptionally will still be more than five times less than that video reached in its first five days. His only question to this Commission and every City representative here is how far are you going to let this go? If this recklessness is going to continue to be rewarded and his situation has to get to the point where his is stable is set on fire or his wife injured or worse in order for this City to grant the industry relief from the Charleston Animal Society, he will instead concede to both the City and Charleston Animal Society and voluntarily shut his carriage company down himself.

This Tourism Commission is going to grant agenda time and consideration to the Charleston Animal Society after what they have publically done to him as both a business and a citizen, and while their former board chair and 2017 Humanitarian of Year sits in an appointed voting seat, then will do so having heard his appeal and in the face of what is indisputable evidence that the Charleston Animal Society's publication of demonstrably false information accompanied by their intimidation and harassment.

Elizabeth White, a new resident to Charleston, has been around horses for 29 years. She agreed with a study being done. Her biggest issue is she has been informing people on the internet via Facebook of the facts for more than three days consistently on both the Charleston Animal Society Facebook page and the Charleston Carriage Advocate page. As far as she is aware, she can tell they are most probably monitored by Ellen Harley. After three days of providing facts and no emotion, she was actually banned from their site with her factual responses being removed. This made her question the ulterior motives behind all of this. If they were genuinely concerned about the animal's welfare, why was the public not allowed to read that factual information to reassure them about the nature of this. This happened yesterday.

Mr. Jerue asked who the Charleston Carriage Advocates were.

Mr. Cooper said they were Ellen Harley's subcommittee group from the Animal Society

Dr. Janet McKim, a resident and a practicing veterinarian, said she was here on the behalf of science. She noted this issue is extremely emotional for both sides and she couldn't understand why either side would be objecting to getting facts. At this point with this incident that got so many views it gives a black mark to this industry, tourism and the City of Charleston. Is it deserved? Apparently not. Is it going to be there? Absolutely. Having a peer reviewed scientific study could support this industry. It would allow them to have the facts to communicate what happened, why it wasn't a problem, that they are concerned and they have something to stand on. That Animal Society has offered to pay for it she thinks it's a gift. There seems to be some confusion as to what the terms means. "Peer reviewed" means not anybody can just write the study and publish it. It has to be reviewed by experts in the field. This is not going to be a sham study that's being done by local people who have an agenda. She encouraged everyone to bring down the volume, reduce the emotion, support the study and move this along.

Chair Seidler thanked everyone for their input.

Tourism/Livability Report – Mr. Dan Riccio

Mr. Riccio noted City Council passed the heat index ordinance and it has been ratified. His officers are preparing themselves for the summer and are looking forward to implementing the new ordinance.

Mr. Riccio introduced the newest and fifth Tourism Enforcement Officer (TEO) Gerald Jackson. Mr. Jackson retired from the US Navy with 21 years of service. He joined Los Angeles Police Department (LAPD) where he served as a patrol officer, training officer, detective, and community service officer at a Korean substation due to his ability to speak Korean. Under the LAPD he received numerous commendations including the Medal of Valor, the highest award given by the City of Los Angeles. After serving 11 years with the LAPD, he laterally transferred to the Los Angeles County Sheriff Department

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

where he served as custody deputy, court services deputy, patrol deputy and station jail deputy. He retired after 14 years in law enforcement and moved to South Carolina. He was hired by State of South Carolina Department of Corrections where he was corrections officer for Lieber Correctional Institute. He later went to school full time to earn his Criminal Justice degree.

Update on Zone 4 and 5 Pilot Program – Mrs. Amy Southerland

Mrs. Southerland said the pilot program was for 60 days and will end April 30. They went before the City Council's Traffic and Transportation Standing Committee yesterday and asked for a 90 day extension of the pilot program. She said they don't believe at this time they are ready to adopt it. There are a few changes they would like to make and test. They needed more time to review the new routes and new processes. The request for the 90 day extension was granted.

Dr. Weinstein said he lives in Zone 4 and he bikes everywhere. His concern has been not in his neighborhood, but they are going out on Meeting Street and King Street. He felt sooner or later there is going to be an accident. He was concerned about the drivers. He noted the cars don't stop for red lights.

Mrs. Southerland said they are going to bring original neighborhood representatives and carriage industry representatives who worked on the program back together. They will look at what they proposed, what's been tested and any changes that need to be made.

Chair Seidler asked Mrs. Southerland if she would say the efforts on the pilot program was generally successful and this is a tweaking.

Mrs. Southerland said the one big success has been altering the time. There was ban on traffic on Meeting Street between the hours of 4 p.m. to 6 p.m. That has proved to be a nonissue. There haven't been any incidents, complaints or concerns throughout the three month period. They have heard concerns about specific streets that weren't used to seeing traffic but do now and very specific areas repeatedly being reported. These are some of the things they will look at and Dr. Weinstein's concerns have been voiced.

Dr. Weinstein said he was concerned about the safety, not them being there. He was concerned that someone is going to get hurt.

In response to a question by Mr. Brown regarding the Mrs. Southerland's comment about the traffic ban on Meeting Street, Mrs. Southerland said the routes are open from 9 a.m. to 6 p.m. DST and 9 a.m. to 5 p.m. EST. The part she was referring to was there used to be a ban on Meeting Street between 4 p.m. to 6 p.m.

Coordinator's Report – Ms. Davida Allen

Ms. Allen noted the bus statistics on the sheet were for the actual motor coach buses, which are the permitted buses, not the small buses and the carriages for February and March. At the last meeting she accumulated the numbers for January so it will be the prior March prior to the meeting.

The numbers for the operation of motor coaches have increased for the month of March for 2017. The carriage numbers have increased for February 2017 and decreased in March. She noted as she stated during last month's meeting, she didn't think they had a down season this year for either the carriages or buses due to the wonderful weather we have in Charleston. There were only about five days of winter in the actual winter season. She added they were in the busy season now so they will definitely see the numbers increase.

New Business

1. *Small Business Replacements* – Ms. Allen
   a. Gullah Tours Bus Replacement – Alphonso Brown
   b. Sights and Insights Bus Replacement – Alfonzia Miller

Ms. Allen said Mr. Brown is replacing his one bus. The bus is the same size 25 feet.

Mr. Alfonzia Miller is also replacing his one bus. It is the same bus. Ms. Allen recommended approval of both replacements.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Mr. Kalinsky moved for approval for both bus replacements.

Mr. Cooper seconded the motion.

Mr. Brown abstained.

The motion was passed.

2. New Bus Company - *The Pineapple Tour Group*

Ms. Allen said the company wanted to enter the world of tourism in Charleston. It is a bus company. The bus is 25 feet. It meets the City's requirements for the measurements of the buses. The company's name is Pineapple Tour Group. The folder contains the logo for the vehicle. They will be part of the shuttle service for the new hotel being constructed on Market Street on the former site of the Wild Wings restaurant. They want to certified and provide tours for the tourists in the City of Charleston.

Mrs. Evans asked where the bus is going to be parked.

Ms. Allen said to be a certified bus they will use the bus shed.

Mr. Benjamin, representing the Pine Apple Tour Group, said they will use the bus shed until the hotel comes on line and they will have adequate parking facilities for the bus at the hotel once it's completed. The bus will park behind the hotel and not on Market Street.

Dr. Weinstein asked if they have a theme for their tours.

Mr. Benjamin said they could probably develop a theme as they go but as a new company they are going to keep it as a general history tour. In response to a question regarding the length of the tour, he said it will be an hour and twenty minutes. They will hire experienced drivers.

Dr. Weinstein asked if they will be able to carry handicapped passengers.

Mr. Benjamin said not on this particular bus. They have plans to purchase a handicapped accessible bus in the future, maybe this calendar year.

Mr. Kalinsky how many buses are there currently on the street.

Ms. Allen said there are currently 27 buses with 25 operating. The ordinance cap for the buses is 36. There are 13 bus companies.

Mrs. Evans asked how often the tours will run.

Mr. Benjamin said they plan to offer two tours daily.

Mr. Brown asked when the hotel is completed will the bus be leaving from the hotel and have the hotel approved it.

Mr. Benjamin said yes they will leave from the hotel and they are owned by the same hotel group.

Mrs. Bradham asked how many buses will there be.

Mr. Benjamin said just one bus.

Mrs. Bradham asked when the bus is put into service will it have to come back for permitting.

Ms. Allen said yes it will come back before the Commission.

Mr. Jerue asked how many tour buses leave from locations other than the bus shed.

Ms. Allen replied currently none.

Mr. Brown asked about the Absolutely Charleston buses.

Ms. Allen said those are not certified buses. They are strictly for transportation.

Mr. Jerue concluded this will be first one that would be allowed to leave from a location other than the bus shed.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Mr. Brown said it will probably be the second. He used to leave from the Gallery. When they moved to the market place he went to the Visitor's Center.

Mr. Brown moved for approval and Mr. Kalinsky seconded the motion.

The motion passed unanimously.

3. *Market Business Location: Gullah Gullah Tours* – Jeffrey Hill

Chair Seidler said Mr. Hill is requesting the ability to operate out of the Market area. While he currently operates out of the bus shed and he has an approved vehicle, he would like to expand his operations to conducting tours from a Market based motorized tour.

Mr. Hill thanked the Commission for the opportunity to be heard. He was looking for an equal opportunity to sell his tours for the first time in history from the City Market. He noted African Americans represented less than 1% in tourism so he would like the chance for the first time ever to sell his tickets in the City Market area.

Mrs. Evans asked where he would park on Market Street.

Mr. Hill said he would need a parking space.

Chair Seidler suggested this request be referred to the Routes, Parking and Touring Rules Subcommittee to study it and see specifically what they would like to do, interact with City staff to make sure that the area they identify is appropriate and that it falls within the guidelines tourism ordinances. He asked the Routes, Parking and Touring Rules Subcommittee members to meet prior to the next Commission meeting with Mr. Hill.

Mr. Kalinsky asked what the opposition was.

Chair Seidler speculated the opposition was the impact on traffic and congestion in the Market area.

Mr. Kalinsky said they were talking about one vehicle. Chair Seidler said yes.

Mr. Brown noted if there was nothing in the ordinance that says he can't park there he guessed they could make a dent.

Chair Seidler concluded the Routes, Parking and Touring Rules would come back and make a recommendation to the Commission, the Commission approves it and he surmised it would have to get City Council approval.

Mr. Jerue wished they had done that with the previous request because that was a request to also not park in the bus shed. He thought it would have been more appropriate to send that request to the Routes, Parking and Touring Rules Subcommittee.

Chair Seidler said his understanding is that Mr. Benjamin's bus will either be at the bus shed or behind the hotel on private property. What is different is Mr. Hill is asking for space in the Market area parked on the street.

In response to a question by Mr. Cooper regarding if they will be setting a precedent if they do for Mr. Hill, Chair Seidler said this will be something the subcommittee will to work on as to what is the availability of space.

Mr. Long asked if it would also be appropriate to ask the subcommittee to look at the speed of these buses travel on the streets from 2 mph to 0 mph. They do not do not pull over and cannot pull over because sometimes they can't. They just stop on the street. He understood they were giving a tour. He thought it was very inconvenient and wanted to know if it would be appropriate for the subcommittee look into it. Chair Seidler said yes.

Chair Seidler said any member of the Tourism Commission is welcome to the subcommittee meetings. He recalled while they were working on Routes 4 and 5 Tourism Commission members who weren't members of the subcommittee had information that they wanted to make sure was there.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Mr. Domin noted for a legal point clarity that the Commission members have to be in the audience and not a participating subcommittee member or the second you get to a quorum of the Tourism Commission and not announced, that is then a public meeting of the Tourism Commission.

Commission Member Michael Saboe, who was unable to attend the previous meeting, introduced himself to the Commission.

Presentation by Charleston Animal Society - Kurt Taylor, Director of Government Relations, Charleston Animal Society

Chair Seidler said the Charleston Animal Society will make a PowerPoint presentation. He stated there was a series of meetings facilitated by the City with carriage industry and citizen input that came up with the recently enacted temperature ordinance. As part of that process, the Charleston Animal Society was offered the opportunity to make a presentation to the Tourism Commission.

Mr. Taylor said to the Commission what they were seeing tonight was the reason why they have this proposed scientific study. Nobody wants to have emotions churned up. No one wants to feel they are under attack. No one wants their motives to be questioned. We are all interested in the welfare of the animals.

The Board of Directors of the Charleston Animal Society voted in 2015 to state they support working animals in downtown Charleston as long as the system is humane. The decision was made that under the current system and questions about the enforcement that the current system is not humane. They questioned what could they do to fix that and what the definition of humane was. They decided they could have thrown out a list of limits that differ from the city ordinance but that would be just as arbitrary and uninspired as anything else that is not done in a scientific way. They pondered how they could do some research to find out what is happening and figure out what is a way to proceed.

They got in touch with a number of experts, equestrian veterinarians around the country and the world. They spoke to veterinarian schools around the South, specifically Dr. Paul Lunn, Dean, , NC State University, an inactive equine veterinarian and Dr. Jennie L. Ivey, Assistant Professor, Extension Equine Specialist, University of Tennessee Institute of Agriculture, College of Veterinarian Medicine, whose proposal they studied. This is where they came up with the idea they are presenting.

The objective is there be a regulatory system that doesn't simply regulate animals to the limits of what they can do but it creates a system in which the animals can thrive while they do the work initially based on science, not arbitraries, not conjecture and not mere opinion. Mr. Taylor noted controversy has existed on this issue for many years and no one wanted it to continually come up. They questioned what they could do to try to assist in the issue being settled to the extent that it can so that people on the extremes of both opinions can be satisfied, to the extent it can satisfy the City, the community and the carriage industry. They want this to happen. There has never been a science-based study to collect data regarding stress levels of the carriage animals at work. There have been many studies of horses. Horses and animals of all types are affected by work and stress in higher levels of heat and humidity. But there has never been a study particular to carriage animals, let alone carriage animals in Charleston.

After their consultation with the veterinarians and after hiring another Dr. Andrew Stringer of NC State College of Veterinary Medicine to look for them at whether there were any studies or guidelines particular to carriage animals, Dr. Stringer concluded there has not been a scientific prospective peer-reviewed study on carriage animals and it would add to the scientific literature for one to be done, not just for Charleston but for everywhere.

Dr. Weinstein noted he has heard during the past months the comments that the heat index and the temperature are too hot. He surmised what he (Mr. Taylor) was saying there has never really been a scientific study to determine that. Mr. Taylor said correct. It would study all of the load and stressors together.

Dr Weinstein said but the comment that refer this is all of a sudden inhumane has really never been studied according to what he was saying. Mr. Taylor said that was correct. It was the opinion of the Board of Directors of the Charleston Animal Society that they want to resolve.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Mr. Taylor continued with the definition of prospective, peer-reviewed and science –based as they were very important to what the study is and how it will be done. *Prospective* means creates data looking forward. *Peer-reviewed* is science for being checked to confirm that it is valid. *Science–based* means it will inform everyone of what the appropriate guidelines are for the welfare of the working horses downtown.

Prospective - a researcher will come in and create the data. They will measure in real time in the work environment the stressors and responses to those stressors on the animal, not looking back at records that have been kept and no one knows the validity or the care with which the records have been kept. It is creating the data pursuant to a model that will have been approved by the university's research department. Data is gathered as it occurs under the conditions of the study parameters.

Science-based – generally involving observation of the phenomena, the formulation of a hypothesis about what the data should or should not provide, the experimentation to test the hypothesis and develop a conclusion that confirms, rejects or modifies the hypothesis. Hypothesis can change as the data is collected. It's a scientific way to look at information that's collected.

Peer-reviewed is an academic term for quality control. The study can't be released or published until it has been reviewed by people who are equally experts in the field as the persons who have done the study. It has to go through multiple steps before it can be concluded and released.

Mr. Taylor said this is not a new idea. The late Dr. John Malark, founder of Edisto Equine and who serviced four carriage companies, stated in 2009 that studies need to focus on these horses and if you wanted answers you need to fund the research. Dr. Julie Rosser, whom some people erroneously said was hired by Palmetto Carriage but actually worked with Dr. Malark in a surgical residency, looked at the records of Palmetto Carriage and other carriage companies, and wrote a retrospective report. After thoroughly reviewing the records, talking about the good conditions under which the animals were typically kept, their performance and whether there were any heat related incidents, she said in a report published February 2014 entitled *Retrospective Review of Carriage Horses in Charleston, 2009-12*, "Further studies are needed to define acceptable minimum standards for carriage animals throughout the United States. *Particularly, prospective studies should be performed to collect objective, evidence-based data regarding stress levels in the animals.*"

Mr. Taylor sent an email to Dr. Rosser in March asking if she believed that is still a legitimate statement since no such study has been done. She replied, "I absolutely support any well conducted, well designed study which would further our knowledge and proper regulation of equine welfare in working conditions..."

The study will measure physiological responses to stressors in the environment of the horses. It will be during different times of the year during the most hot and humid days, as well as other times of the year. Charleston Animal Society has agreed to pay for the cost. It will conducted independently by researchers. He offered the University of Tennessee because that is whom they spoke with and got a proposal from them. The study will be independent of any party with financial ties, directly or indirectly, to the carriage industry. The protocols would have to be submitted to two University of Tennessee boards that approve studies so the design of the study will be approved by the board of the university. The conducting of the initial research will be one board and the actual on the ground work will be approved by a different animal research board. The study results will be peer-reviewed.

Mr. Cooper asked what failsafe is there to maintain that this is a nonbiased independent research.

Mr. Taylor it will be conducted completely and exclusively by the University of Tennessee. He added they hadn't gotten to the point where they could talk about finalizing the design of the study yet because since August of last year when he first proposed it they hadn't gotten to point to be able to talk about what it really needs. The study is not completely designed. It would have to involve meeting with the Animal Society, the City and the carriage operators so they can all get comfortable with what the study is going to do. Once they got that, the researchers could work independently.

Dr. Weinstein said if it's approved by an IRB (institutional review board), it has to be. If its equivalent to a human study, it has to be free of that because that is the role of an IRB. He said we can't

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

do any human studies without IRB. He said they do the same thing in medicine and it's no different from what Mr. Taylor is presenting. The IRBs will decide.

Mr. Taylor said in reference to funding, they identified a lot of funding sources that could be sought in the grant world to pay for this. They offered this to get the study off the table. They would rather have it be grant funded or city funded. The Society didn't have to fund it.

Mr. Taylor listed those who endorsed the idea of the study. These were national and international organizations. Dr. Rosser is a veterinarian at the University of Vienna. The American Association of Equine Professionals is the largest entity in the world representing veterinarians who are equine specialists, as well as veterinarian students and technicians. They endorsed the idea of the study but they want to see more, they want to see the design and they want to follow as it goes along. They also received endorsements from the national organization of the Humane Society of the United States and the ASPCA. The Charles Towne Neighborhood Association, who was on the heat index committee, Historic Ansonborough Neighborhood Association, Hallie Hill Animal Sanctuary, Pet Helpers and the Trident Veterinarian Medical Association also endorsed the study. Some of the expert vets they consulted were Dr. Kenneth Marcella, who helped develop heat regulations for the Atlanta Olympics equestrian events, Dr. Rosser, Dr. Stringer, who did the data analysis for the Society, and Dr. Ivey, who will do the work for them if it would go forward as they suggest.

Mr. Taylor said the overriding theme is if the industry is to operate the regulations and practices shouldn't reflect the worst conditions that the animals can survive in. It should be the animals are all very healthy and happy and can work here for decades. Charleston is the epicenter for the carriage tour business. They want to make it the model for the world and they want to make that happen.

Mr. Taylor noted it has been said it can't be done and won't be done. The question is whether the City can require participation in the study. He believed the answer is yes. The City has a current ordinance stating there are 195 different requests to requirements of the limitations that applies to the carriage industry. They must submit the animals for veterinarian testing at least one a year. They must weigh the animals. They must do these things because it is a franchise system that carriage companies get to operate on the public rights-of-way. The City has the right to regulate that industry so he believed yes, while it shouldn't come to that as they should get together and agree on it, the City could require participation in the study. They request the Commission recommend to City Council that a prospective, science-based, peer-reviewed study be conducted.

Dr. Weinstein said his interpretation without seeing the study is there is no experimentation and they are not administering anything. They are doing a prospective analysis of the data obtained in a proper manner as such whoever is assigned as the senior investigator.

Mr. Taylor said the Commission members have an outline on what the study would be and that is the University of Tennessee's proposal that has not been finalized. He knew there was some objection to the placement of a port to take the blood samples to measure blood cortisol levels. That is not the only way the cortisol levels can be measured. The proposal that didn't get fleshed out completely proposed using salivary and fecal cortisol as opposed to blood cortisol. There ways to do this that they can all get together and agree.

Dr. Weinstein surmised there is no experimentation, they are not administering any drugs, and they are not forcing the animal to work overtime.

Mr. Taylor said they are simply measuring them in their environment with the proper controls.

Mr. Cooper concluded they were not moving the horses from their working environment at any time.

Mr. Taylor said no.

Mr. Brown said at the last meeting he thought the attorney said they couldn't do a study on their private property unless they agree.

Mr. Taylor said the Commission's former police officer it that but the attorney said it could be done by amending the franchise ordinance and he agreed with that.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Mr. Domin said there are certain aspects with a regulated industry like this where you can reasonably, for example, as they already point out, they said they are going to take the temperature of the horse on some certain things and have the right to inspect stalls. There is a point at which you may cross a threshold where you are being too intrusive where you're asking to place a semi-permanent port into the vein that the horse has to stay with. These kinds of things gave him some concern. So he can't say they could do whatever they want. What is appropriate to say is you would need ordinances to force specifically what it is you are going to ask for and you need to be reasonable with respect to the science you put in the business.

Mr. Jerue said there are two ways this study can be passed: 1) a voluntary agreement with the Animal Society and the carriage industry or 2) you have to pass an ordinance to require as a condition of doing business. He noted getting ordinances passed by City Council is a challenge. He didn't know how long the study takes.

Mr. Taylor said it would take approximately a year.

Mr. Brown said it sounds as if the carriage industry does not have to agree to this study.

Mr. Taylor said they hoped that they would.

Mr. Brown said but they don't have to so you can't go on their property to do a study.

Mr. Domin said if the industry is not going to comply then you would need to have an ordinance. That ordinance would have to be constitutional, meaning you have to be not overreaching, you have to be not overly invasive onto the business, meaning that that ordinance would have to have a rational basis. You need to know exactly what you are doing before you pass that ordinance because you would have to say this exactly what the carriage company is obligated to do - a, b, c and d. You can't just say you're passing an ordinance just so you can do a study. It is not specific. You would have to say a carriage company has to give access to an official to measure temperature or measure cortisol.

Mr. Cooper didn't think this specific enough. They were getting so much new information and it is controversial in our community and it has gained national attention as well. Everyone has mentioned the video but he has not seen it. He has just received a number of these documents. He doubts the rest of the Commission has had a chance to review it as well. He would form a subcommittee for the Tourism Commission to further assess and study on this particular issue. He said he would be happy to share the effort.

Chair Seidler said since this is not an agenda item, the Commission is not in the position to make a decision at this time. In reference to Mr. Jerue's point that they could go the ordinance route or a less official route, he recalled in the past iteration of the Tourism Commission they faced two specific controversial questions. One was around Zones 4 and 5. A subcommittee that struggled with it and the suggestion was made to get all the interested parties together - residents of the impacted neighborhoods, the carriage industry and the City. They assembled and what came out of that was the pilot program that has had some initial success though it might need some tweaking but it seems to be based in solid thinking. They also used the same process for the recent temperature issue in the ordinance. He noted that while it is not unanimity around the numbers and methods they did make progress. During the last meeting Councilmember White expressed a pleasant surprise that the Commission had moved to that point after so many years of batting that about.

Chair Seidler also wanted to draw on what Ms. Linville stated which was what is the greater common purpose here? He said his sense is the carriage industry and the Humane Society has the greater common purpose of the animals in mind. So what he thinks will be appropriate is to use a similar strategy that was used for two other issues in the past and get representatives from the carriage industry, the Humane Society, City staff and some Tourism Commission members to sit down and talk through what this is and see what a study entails. He felt before they approach an ordinance they should find out specifically what it is.

Mr. Jerue said thought that made sense as knowing the City Council's schedule for the next several months, it probably won't be an issue before City Council. He thinks there is some time to get the groups together to try to see and if they can't come to some agreement, they can always go about it.

Mrs. Evans questioned why the carriage industries don't want to participate and the objection to using their horses. She said it would behoove them to use their horses to get the proper research done.

In response to questions by Mr. Cooper regarding whether the carriage companies attended a meeting he had with the Charleston Animal Society or were they not invited, Dr. Miller said he was invited to that meeting but the carriage companies didn't attend the meeting because they weren't invited. They wanted to meet with him to see if he would be able to build a bridge between the Charleston Animal Society and the carriage companies.

Mr. Cooper asked if any carriage company owner present who were willing to meet with the Charleston Animal Society.

Mr. Doyle commented he wanted to find a resolution to this issue two to three years ago before any of this began. He thought they could hammer out some of the differences and head off some of the hated and distrust. He said he would be more than willing to speak with them.

Chair Seidler said there has been some recent coverage in the newspaper saying that the carriage industry is not opposed to learning more about it. He thanked Mr. Doyle for being willing to begin discussions.

Mr. Elmore said he will be open to dialogue and they will not be conducting the scientific study. However, scientific study can't be done on horses that are brought in. Bringing horses in that are not trained on the carriage animal routes and working horses will have a higher reaction to the stress, it will have an adverse impact.

Mr. Christoff said this is a good stopping point for them to stop hating each other and meet. He was willing to draw the line on his side and but he insisted the line be drawn on the other side. He didn't want any more public discourse, people driving up threatening the lives of his drivers and passengers on his carriages lying in front of the carriage.

Chair Seidler said well before the next meeting they will convene the beginnings of a discussion between the Charleston Animal Society, the carriage operators, and the Tourism Commission, and begin to understand the legal, financial and operational implications of this study. In response to a comment by Mr. Cooper, he said will act as facilitator to bring together those with the carriage operators and the Animal Society members who wanted to participate.

There being no further to discuss, the meeting was adjourned at 6:26 p.m.

Marcia L. Grant
Council Secretary

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-04083
CHARLESTON CARRIAGE WORKS, LLC, Plaintiff, vs. CHARLESTON ANIMAL SOCIETY, ELLEN HARLEY, CHARLESTON CARRIAGE HORSE ADVOCATES, INC. Defendant.	VIDEO DEPOSITION OF BRODERICK CHRISTOFF DECEMBER 7, 2018

Deposition on oral examination of BRODERICK CHRISTOFF, reported by Kathryn B Bostrom, Court Reporter and Notary Public in and for the State of South Carolina; pursuant to Rule 30 of the South Carolina Rules of Civil Procedure; said deposition was taken at the offices of Hall Boone & Smith, 111 Coleman Boulevard, Suite 300, Mt. Pleasant, South Carolina, on Friday, the 7th day of December, 2018, commencing at the hour of 10:08 a.m.

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Q Okay. We'll talk about that in a little bit. I asked you several questions earlier about whether or not anyone else was assisting Charleston Carriage Work in pay- -- Charleston Carriage Works in paying your legal fees in this lawsuit and -- to which you said no. Correct?

A Correct.

Q Does anyone else stand to benefit if you were to win a money judgment in this lawsuit?

A No.

Q You don't have any agreement with any other operator to share any of the proceeds of this lawsuit.

A No.

Q Okay. Why'd you bring this lawsuit?

A You know, we had the situation with Big John in April and the videos were published and those videos created a just -- an incredible backlash against us. And we tried -- We sent letters, both to Ellen Harley and the Charleston Animal Society and asked them to stop, correct the video, correct the misunderstanding. We offered to answer any questions that they might have, and we heard nothing. And so it kept going on and it kept getting worse and, you know, the first -- well, probably the first six weeks after that, the video got as big as it did where, I mean, it was scary times for

ELECTRONICALLY FILED - 2021 Sep 29 11:28 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

-- especially for me and my wife and -- and it wouldn't stop. And we -- You know, we'd sent the letter. That was what we thought we should -- was the right thing to do within a week of the video being posted to try to stim some of the response that we were getting from the public from all over the world and it failed. And so we didn't -- You know, it went -- it was a year -- when a year went by, nothing changed. And so I'm not sure what else we could've done. As far as I was concerned, we tried everything else. We asked, we got no response. So we filed suit to try and make it stop.

Q Are you the person that makes directional decisions for Charleston Carriage Works regarding this lawsuit?

A Yes.

Q What do you want from it?

A I want them to stop.

Q Do you want money?

A You know, I -- That's not for me to decide. That's for other -- That's for a jury to decide. That's not my decision. What I want is for it to stop.

Q Right, but you --

A I want --

Q You just testified that you're the one who's in control of the lawsuit. Correct?

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS CASE NO.: 2018-CP-10-4083
Charleston Carriage Works, L.L.C.,)) Plaintiff,)) vs.)) Charleston Animal Society, Ellen) Harley and Charleston Carriage) Horse Advocates, Inc.,)) Defendants.))	**SUPPLEMENTAL MEMORANDUM OF LAW**

On September 29, 2021, the Court posed six questions to the parties relative to the legal issue of whether the plaintiff has or has not demonstrated the existence of genuine issues of material fact to six elements of defamation:

1. Is the plaintiff a public figure?
2. Is the subject of the alleged defamatory statements a matter of public concern?
3. Are the statements published by the defendants true?
4. Are the defendants "media defendants"?
5. Are the alleged statements about the plaintiff or concerning the plaintiff?
6. Has the plaintiff produced evidence that the statements are made with malice?

In the colloquy with the Court on September 29th, 2021, the parties agreed that the subject of tourism is a frequently discussed matter of public concern, which includes horse-drawn carriages. Both the Charleston Carriage Horse Advocates and the Charleston Animal Society have been publicly involved in shaping Charleston Tourism regulations governing carriage tours, so this

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

supplemental memorandum omits a detailed discussion of the Court's second question as being almost unnecessary.

Prior to addressing the Court's specific questions (question #2 being unnecessary to analyze in any detail), the plaintiff emphasizes two preliminary matters that must precede any analysis of whether the plaintiff has or has not demonstrated a genuine question of material fact: the first is that the plaintiff has pending several motions that must be resolved prior to settling the question of summary judgment; those being (1) the plaintiff's motions to amend, (2) the plaintiff's motion to extend the scheduling Order, and (3) and most importantly the plaintiff's motion to require the defendant, Charleston Carriage Horse Advocates to respond to the plaintiff's discovery requests, including making its electronic media available for forensic examination by the plaintiff's expert, Steve Abrams. These matters are fully briefed in previous filings and do not require repetition.

The second preliminary matter is the defendants' contention that the plaintiff must prove its case by "clear and convincing evidence." Leaving aside the question of whether the "clear and convincing standard" applies in instructing a jury in this case, the question currently before the Court is whether the plaintiff has demonstrated a genuine issue of material fact, and thus the "clear and convincing" standard has no applicability to a motion for summary judgment. The clear and convincing standard in defamation is drawn from the seminal defamation case in South Carolina, *Erickson v. Jones Street Publishers, L.L.C.* 368 S. C. 444, 629 S.E.2d 653 (2006). There, a guardian ad litem, Linda Erickson sued a "media defendant," Jones Street Publishers (*The Charleston City Paper*) after it published an article critical of the South Carolina Guardian Ad Litem system. (As discussed more fully below, neither defendant is a "media defendant.) The Supreme Court said:

In South Carolina, they are called Guardian Ad Litems (GALs). In a perfect world, they provide an objective perspective for what's best for the child—mom's house, dad's house, neither.

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

But what happens if their objectivity is compromised? What if, while carrying out their duties, they step across the line, like sleeping with the client's father?

It already happened, and the result is a public effort to abolish half of the GAL system and radically modify the other half.

Erickson at page 659, quoting *The Charleston City Paper*

In *Erickson*, the newspaper never identified the plaintiff by name, which is far different from the present case in which the plaintiff's name is displayed on all of its carriages, and where the Charleston Animal Society supplemented its video five days after the event with a publication **specifically identifying the plaintiff** (Exhibit 4, discussed more fully below), and where the plaintiff asked both defendants to retract and correct their publications prior to filing suit. Despite not being identified in the article: "The article did not name the guardian who represented Pat Beal's granddaughter," *Erickson* at page 456, Linda Erickson brought suit, claiming that there was enough information in the article to identify her. The trial court submitted the case to the jury to determine if the defendant were liable by submitting 4 special interrogatories. Interrogatory #4 posed this question for the jury: "(4) whether Appellant had proven by clear and convincing evidence that Newspaper acted with actual malice in publishing a false and defamatory statement about Appellant." After the jury returned a special verdict answering "yes," to all four questions, then the Court proceeded to the damages portion of the case. After the Newspaper put up its defense, the trial court granted a directed verdict for the Newspaper because "Appellant was a limited public figure who had not presented clear and convincing evidence to prove Newspaper acted with actual malice." *Erickson* at page 663. On appeal to the Court of Appeals, the Court of Appeals certified the case to the Supreme Court under Appellate Court Rule 220(c). The Supreme Court reversed the directed verdict and remanded the case for trial. The Supreme Court's conclusion summarized its analysis:

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

We reverse the trial judge's grant of a directed verdict to Newspaper on the issues of Appellant's status and liability for defamation. Appellant, as a matter of law under the facts and circumstances of this case, is a private-figure plaintiff who demonstrated Newspaper was liable for defaming her pursuant to a jury charge agreed upon by both parties. The jury determined by a preponderance of the evidence that the published statements were false and defamatory, and that Newspaper acted negligently in defaming Appellant as a private figure. These factual findings are supported by evidence in the record and will not be disturbed on appeal. The jury further determined Appellant had proven by clear and convincing evidence Newspaper acted with constitutional actual malice in publishing the statements. Our independent examination of the record reveals evidence which sufficiently supports the jury's findings of actual malice.

Erickson at page 674

The present case is before the Court on summary judgment, not directed verdict, so the parties have not yet reached a procedural benchmark in which the "clear and convincing evidence" stage applies, if it applies at all. The standard of review required in evaluating the "drastic remedy" of summary judgment is already fully briefed and does not need to be repeated here. The only point the Appellant makes here is that the "clear and convincing" standard applies if, and only if, the Appellant is a public figure (which is the Court's first question and addressed below), and this record does not contain a *scintilla* of evidence that the plaintiff holds office or occupies a position of authority to transform it into a "public figure." Therefore, the "clear and convincing" standard is not before the Court at this time and only becomes applicable at a trial if the defendants demonstrate the plaintiff is a public figure (discussed below in answering the Court's Question # 1).

Before turning to the Court's first question, it is important to know that every citizen has a right to operate a business without government entanglement. Every citizen has a fundamental right to pursue economic interests, and operating a business does not transfer anyone into a "public figure." See United States Constitution Article I, § 10: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." The defendants' summary judgment theory is that the plaintiff is transformed into a "public figure" because it took steps to protect itself against the

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

attacks of the defendants and mitigate its damages, and this brings the analysis to the Court's first question:

Question 1: Is the plaintiff a public figure?

The answer is "no." The answer is "no" for two independent reasons:

A. The plaintiff did not voluntarily insert itself into the defendants' false narratives.

Our Supreme Court has specifically rejected the notion that a tortfeasor's publication of a defamatory statement transforms the object of the statement into a public figure. See *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001), citing the United States Supreme Court in *Milkovich v. Lorain Journal Co.* discussed more fully below.

Therefore, because the plaintiff is a private figure, the actual malice standard has no application to this case: "The constitutional actual malice standard requires a **public official** to prove by clear and convincing evidence that the defamatory falsehood was made with the knowledge of its falsity or with reckless disregard for its truth." *Erickson* at 671 (emphasis added) Here, the evidence is uncontroverted—especially at the summary judgment stage—that the plaintiff has done nothing other than try to mitigate the damage flowing from the defendants' numerous false publications that the plaintiff worked a horse to "collapse" and is an animal abuser. The defendants, both of which have a long running, long documented hostility to carriage tours, conspired to push out a false video, shot by Ellen Harley, Elizabeth Fort, and at least one other unknown person, carefully edited by Charleston Animal Society's media specialist, Dan Krosse, to promote the libelous falsehood that the plaintiff is an animal abuser, and then attempted to hide behind their false narrative by utilizing the excuse made famous in "political" discourse under the rubric of "I am just asking the question." When the defendants jointly published a video emblazed with all capital letters—and notice the quotation marks around 'trip':

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Was Big John exhausted or did he just 'trip'?

they knew the ambient temperature on April 19th was low, that Big John can easily pull a carriage of school children nearly effortlessly, and they also knew that both the City Equine Manager, Shannon Tillman, and a qualified veterinarian, Dr. Little, examined Big John and pronounced him fit with no restrictions and with no injury other than "superficial abrasion." It was the defendants' carefully tailored joint enterprise that created a tsunami of social media of hate speech and threats and which forced the plaintiff to take steps to try to save his business from being destroyed. Not one case evaluating defamation has held that by slandering a plaintiff, the tortfeasor gets a pass because his or her defamatory statement transforms the victim into a public figure. By defending himself, as a matter of law, he is not a public figure:

> If an individual "voluntarily injects himself or is drawn into a particular public controversy," he "becomes a public figure for a limited range of issues. . . and assume[s] special prominence in the resolution of public questions." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 94 S.Ct. 2297, 41 L.Ed.2d 789 (1974). In determining whether a plaintiff is a limited-purpose public figure, the court should look "to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation." *Id.* at 352, 94 S.Ct. 2997.
>
> *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001)

The plaintiff here did not voluntarily inject himself into a public controversy any more than a pedestrian tripping on Charleston's notoriously dangerous bluestone sidewalks becomes a public figure by falling. As in *Gertz*, where the Supreme Court decided Gertz, a lawyer, was not a public official and could maintain a defamation action for being labeled a "communist," here, the plaintiff's only "participation in the particular controversy" was in (1) operating a lawful business and (2) taking steps to mitigate his damages, and thus under the holdings of the United States Supreme Court, he has created a jury question of fact as to whether the defendants defamed him. No experienced trial lawyer attacks the plaintiff in a defamation case for creating her own damages by being defamed by a defendant, but the defendants are welcome to test those waters. In footnote

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

10 of the *George* case, our Supreme Court carefully emphasized that commercial speech, as opposed to political speech receives a different analysis, but here, the defendants' coordinated attacks are not "commercial speech," but rather an effort to gin up pressure against the plaintiff and induce readers to make financial contributions to the defendants. (This is demonstrated below when examining Exhibit 4, Charleston Animal Society's April 24, 2017 publication and is also supported in the testimony by Dr. Miller also discussed below.) As discussed more fully below on page 22, these defendants are not "media defendants," but rather putative charities, which, as a condition of their favorable tax treatment, are **statutorily prohibited** from disseminating false or misleading messages. More importantly, as our Supreme Court held in *Erickson*, a defendant's defamatory statement does not transfer a plaintiff into a public figure. The United States Supreme Court made this same point more emphatically in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1. 110 S. Ct. 2695, 111 L.Ed.2d 1 (1990), where the Supreme Court found that a high school wrestling coach was not a public figure because he held a public position. Moreover, after a jury awarded a California lawyer/businessperson 2.25 million dollars in damages for defamation, the Santa-Barbara News-Press asked the Supreme Court to review the award on the same ground alleged here—that the plaintiff was a public figure because he is a lawyer and the major stockholder of the Santa Barbara Savings and Loan. In June, 2004, the U.S. Supreme Court denied *certiorari* to review the 2003 California Court of Appeals' unpublished opinion, allowing the verdict to stand. See *Santa Barbara News-Press v. Ross*, 541 U.S. 1073 (2004): "Ct. App. Cal., 2d App. Dist. *Certiorari* denied F2d." (The newspaper reported that federal agencies had investigated Ross, which was not true and then refused to print a retraction.)

Here, the evidence demonstrates that the defendants drug the plaintiff into the public arena against his will. On April 19, 2017, the plaintiff's horse slipped and fell on Meeting Street. As a

result, in keeping with the City's regulations governing the use of horses, a qualified veterinarian, Dr. Tara Little, along with the City's Equine Manager, Shannon Tillman, immediately examined Big John and found him healthy, free from serious injury, and fit for work:

Q. . . . So if you had seen anything significant on April 19th, when you examined Big John, would you have written it down?

A. Yes.

Q. And did you write down everything that you saw that was significant?

A. Yes.

Q. Did you see anything significant about Big John that you thought constituted a threat to his health or impaired his ability to pull a carriage?

A. No.

. . .

Q. As a Doctor of Veterinary Medicine, not Big John, just the average Belgian draft horse of average height and weight—

A. Right.

Q. --in your mind, as a Doctor of Veterinary Medicine does that strike you as being animal abuse?

. . .

A. Draft horses pull carriages.

. . .

A. They're capable of doing that, and have done it, historically.

Q. . . . when you examined Big John on April 19th, did you see any signs of ill treatment or mistreatment to Big John?

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

A. No.

Q. If you had, would you have noted it?

A. Yes.

Q. . . . Does the word "collapse" have a medically significant term to you, as a Doctor of Veterinary Medicine?

A. The word, "collapse," in medicine, can mean something different than fall down.

Q. . . . how would you characterize that difference between fall down and collapse?

A. The horse could fall, could trip, and that would be fall down. Collapse could have many other etiologies.

. . .

Q. If Big John had collapsed on April the 19th from a medically significant condition, whatever, would you have expected to see other injuries on him than the ones you did see?

A. If—if he had collapsed due to an internal medical problem, I would expect to have some indication on his physical exam.

Q. Did you see any such indications?

A. I did not.

. . .

A. . . . I recorded what I saw, and those were the superficial abrasions.

At the time of the defendants' initial April 19th defamatory publication, which they followed up with an April 24th Facebook Post (Exhibit 4), **identifying the plaintiff and Brody by name and celebrating that 11 million viewers had seen their video**—complete with Dan Krosse's edits—even though they knew Big John suffered no serious injury, did not "collapse" from any

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

underlying medical condition or abuse because both defendants had the examining veterinarian's findings and the City's Equine Manager's findings, which were reduced to writing and filed with the City.

The second prong of the numerous court opinions analyzing defamation address the question of whether the plaintiff is a public v. private figure due to the plaintiff's status.

B. The plaintiff does not hold public office or possess power to make policy.

The factual underpinning to support a finding of public figure requires that a person whom the Court regards as a "public" figure have "substantial responsibility for or control over the conduct of governmental affairs":

> *b. Public officials.* The question of who is a public official so as to come within the constitutional restriction is one on which Supreme Court rulings are controlling. The characterization of public official has been said by the Court to apply at least to those governmental employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs; and it has added that the "position must be one which would invite public scrutiny of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy."
> *Restatement of Torts 2d*, § 580A "Defamation of Public Official or Public Figure"

The leading case on this issue is *Milkovich v. Lorain Journal Co.*, 497 U.S. 1. 110 S. Ct. 2695, 111 L.Ed.2d 1 (1990) where the U. S. Supreme Court remanded a wrestling coach's claim for defamation for trial because a high school wrestling coach is not a public figure. The case is also important because it distinguishes between First Amendment freedom of speech and defamatory speech subject to claims for damages, and it eviscerates the defendants' efforts to hide behind the spurious claim of "just asking questions":

> If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications; and the statement, "in my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar." As Judge Friendly aptly stated: "[It] would be destructive of the law of libel if a writer could

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

escape liability for accusations of [defamatory conduct] simply by using, explicitly or implicitly, the words, 'I think.'" See *Cianci*, supra, at 64. It is worthy of note that at common law, even the privilege of fair comment did not extend to "a false statement of fact, whether it was expressly stated or implied from an expression of opinion." Restatement (Second) of Torts § 566, Comment a (1977).

Here, the evidence is uncontroverted that plaintiff occupies no position other than that of a private citizen trying to protect his business from the defendants' attacks. Whether the defendants' attacks on the plaintiff as an animal abuser are "explicit" or "implicit" is of no consequence, especially at the summary judgment stage. There is not a *scintilla* of evidence in this record that the plaintiff has done anything other than try to operate his business lawfully and tried to protect his interest in his business from unwarranted, false attacks. He holds no position of "substantial responsibility for or control over the conduct of governmental affairs," and is, therefore, a private person. Finally, as a plaintiff, resisting the "drastic remedy" of summary judgment, the plaintiff is entitled for all of these inferences to be resolved in his favor.

As discussed more fully below in the next section, citing *Restatement of Torts 2d*, § 580, *George v. Fabri*, *Milkavitch v. Lorain Journal*, and *Erickson v. Jones Street Publishers*, there is no such thing as an involuntary public figure. In 1976, the United States Supreme Court in *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), remanded an award of $100,000.00 for recalculation after Time magazine published salacious, exaggerated story about Ms. Firestone's divorce, and Time appealed arguing she was a public figure. The U. S. Supreme Court held, citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 418 U.S. 345 (1974):

In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 418 U.S. 345 (1974), we have recently further defined the meaning of "public figure" for the purposes of the First and Fourteenth Amendments:

"For the most part, those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved."

Here, the plaintiff has done everything possible to avoid entanglement with the defendants and in defending himself, he is not transformed into a "public figure." After the defendants launched their campaign on April 19th against the plaintiff (remember—they boasted about having 11 million views by April 24th, see Exhibit 4), he wrote to Charleston Carriage Horse Advocates and to Charleston Animal Society on April 25, 2017 and May 11, 2017, (Exhibits 1 and 2), asking them to cease and desist creating the false impression that he was an animal abuser. The defendants' response was to double down on their attacks as Ms. Harley succinctly put it, to "depress their income." (Exhibit 3. In examining Exhibit 3, it is important to note that the e-mail circulated between Harley and the principals of the Charleston Animal Society, including their lawyer.) There is not a *scintilla* of evidence in this record that the plaintiff has done anything to "assume the role of especial prominence in the affairs of society," *Gertz*, *op. cit.*, or done anything other than try to prevent further damage to his company, and thus, by definition, is not a "public figure."

2. Is the subject of the alleged defamatory statements a matter of public concern?

The plaintiff concedes that the subject tourism is a matter of public concern—especially to the millionaires and billionaires who have claimed peninsula Charleston as their trophy province. However, in keeping with the U. S. Supreme Court's analysis as summarized in §580 of the Restatement: A "public controversy" is held not to be equated with "all controversies of interest to the public." Thus, even though a controversy leads to an extensively publicized judicial proceeding in which there is widespread interest, that fact alone is not sufficient to characterize it as a "public controversy," or to establish a party to the proceeding as a "public figure." While the

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

subject of tourism in general, including horse tours, are fairly characterized as matters of "public controversy," the fact is that the City of Charleston extensively regulates and taxes horse carriage tours, so it is equally fair to say that the legislative expression of the City has laid the "controversy" to rest. Many people are not aware that the General Assembly specifically protects the right to use horses on public roads. See § 56-5-790, S. C. Code, ann.: "Every person riding an animal or driving any animal-drawn vehicle or pushing a pushcart upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application."

Not only has the City addressed tourism controversies through regulations, but also created a Tourism Commission by which citizens, such as the defendants, may be heard and which provides a mechanism for orderly changes to regulations. The defendants have participated fully in the City's Tourism procedure and when they became dissatisfied that the City did not adopt their views entirely, they coordinated, as set forth in Ms. Harley's March 30, 2017 coordinating e-mail to "depress the income" of the carriage companies, including the plaintiff. The City, in contrast, has enacted and implemented extensive rules governing all tours, but it is an undisputed fact that there are at least just as many Charleston citizens, if not more, who enjoy the presence of horses in the City as there are who do not. It is not a coincidence that the vocal minority of complainers are a group of usually part-time, extremely wealthy objectors who act as if they occupy a special status because of their economic power. The push for privatization of the toney parts of South Carolina is not a new phenomenon as the history of Hilton Head, Daufuskie, Debordieu, Isle of Palms, *etc.* will attest. A recently deceased retired lawyer from Boston, who became chairperson of the Charleston City Council Sub-Committee on Tourism, proposed erecting a gate at Calhoun Street beyond which only residents and their "employees" would be allowed to

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

operate a motor vehicle without purchasing a daily 24-hour pass. The existence of internet memes such as the "Go Back to Ohio" movement do not spring up in a vacuum, it is a matter of common sense that such expressions represent pushback against elite newcomers who exhibit a frequent and unseemly rate of complaining.

The point is that the subject of tourism touches everyone in the same way that zoning rules or speed limits do, and the fact that Charleston has evolved into a major tourism destination favors the plaintiff, not the defendants, because the plaintiff exists because of Charleston's charm and the iconic contribution his carriages contribute to its wide appeal.

3. Are the statements published by the defendants true?

The statements published by the defendants are demonstrably false in distinct ways:

The first and most obvious is because the defendants were aware that both a qualified veterinarian, Dr. Little, and the City's Equine Manager, Shannon Tillman, examined Big John immediately after the incident and found no evidence of any injury to Big John other than "superficial abrasions" as quoted above. The defendants pin their hopes on being able to convince a jury that when they selected the word "collapse" to describe Big John's condition on their jointly produced video, that they chose a purely innocuous word, and not that their carefully constructed media campaign is not part of a larger pattern of harassment of the plaintiff. Exhibit 4, which identifies the company and its principal by name, lays bare the defendants' intent. The effect of their publication raises the quintessential jury question, and when a jury places the word "collapse" in context with the other acts of the defendants, a reasonable jury might find sufficient evidence to reach a conclusion that the defendants set out to destroy the plaintiff.

A second, more subtle—and more sinister—form of defamation is the defendants' coordinated disinformation effort to shape the narrative to cast the plaintiff in a false light by

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

suppressing truthful information to create a false narrative and stoke the enmity raining down on the plaintiff. Such coordination and the effect of it is the central issue in the Lorain County Court of Common Pleas case, *Gibson Bros, et. al. v. Oberlin College, et. al.* 17CV193761, where a jury held the college accountable for facilitating its students' dissemination of false statements. (Lorain County was also the site of the *Milkovich* case.) Here, the defendants play the role of the students **and** the college because not only are they coordinating efforts to drive the plaintiff out of business, like the students did in *Gibson Bros.*, but also they are charities prohibited from disseminating false or misleading information, like Oberlin College, which they did by (1) initially publishing the defamatory material and then (2) deleting and blocking factually correct statements by deleting truthful information and blocking commentators from correcting the record. (For media defendants, this issue comes up as refusing to print a retraction or correction.)

Notwithstanding the evidence that Big John suffered no serious injury, which defendants knew, they cobbled together two, three or four videos, which they overlaid with all capital letters to include demonstrably false statements, and pushed them out to a worldwide audience insinuating that the plaintiff's horse collapsed from exhaustion, overwork, heat, disease, *etc.* They carefully edited the video to create the false impression that the carriage driver, Gabby Byrd, asked Ellen Harley to stop filming, when she really asked her to step back because other video, not broadcast, showed Ms. Harley actively interfering in the process to unharness Big John. They followed up their misleading video 5 days later with a publication that not only identifies Charleston Carriage by name, but also more dangerously identifies Broderick Christoff by name, which resulted in months of terror for him and his wife as set forth in his affidavits. The defendants do not attempt to disguise their defamation, but rather justify it by invoking the spurious suggestion of insulation by re-framing their defamation as being nothing more than innocuous questions. In

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

the defendants' myopic and self-serving view of liability they could push out a video of plaintiff's counsel under the caption "Should a pederast be allowed to practice law?" and escape liability because they are just asking the question, a defense rejected by the U. S. Supreme Court in *Milkovich*, quoted above. As discussed below, not only is such an assertion desperately self-serving, but it also the slender reed the U. S. Supreme Court specifically rejected. As discussed above, the defendants cannot utter known false information and then hide behind it being posed as a question or try to cloak their defamation because an alleged injury to Big John transformed the plaintiff into a public figure:

> The question of who is a public official so as to come within the constitutional restriction is one on which Supreme Court rulings are controlling. The characterization of public official has been said by the court to apply at least to those governmental employees who have, or appear to be public to have, substantial responsibility for or control over the conduct of governmental affairs; and it has added that the "position must be one which would invite public scrutiny of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy." By analogy to the fair-comment cases, the protection would apparently not be confined to communications made inside the geographic area in which the official has authority or by person subject to that authority.
>
> . . .
>
> In the case of the person whose characterization as a public figure depends upon his involvement in a particular controversy, the Supreme court declares that the controversy should involve a "public issue and the person should "engage the public's attention" in regard to it or "assume special prominence in [its] resolution." A "public controversy" is held not to be equated with "all controversies of interest to the public." Thus, even though a controversy leads to an extensively publicized judicial proceeding in which there is widespread interest, that fact alone is not sufficient to characterize it as a "public controversy," or to establish a party to the proceeding as a "public figure." The voluntary nature of a person's participation in the controversy is a fact to be considered by the Court in determining whether he is a public figure but is not controlling. The same is true of the availability to him of access to the communications media for response or other means of self-help.
>
> § 580A *Restatement of Law 2d, Torts*, "Defamation of a Public Official or Public Figure"

There is not a single case in the jurisprudence of South Carolina or the United States Supreme Court that suggests, let alone holds, that a person attacked by a defamatory publication is transformed into a "public figure" by the defamation, and it is the defendants' statutory obligation

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

to refrain from disseminating false or misleading information. This is the holding of *Erickson op cit.* This is the holding of *George op cit.*, and this is the holding of *Milkovich, op. cit.* The evidence in this case is that once the defendants launched their attack video, the plaintiff wrote to both defendants on April 25, 2017, and May 11, 2017, (Exhibits 1 and 2 attached here) and asked that they correct the misinformation. Not only did the defendants ignore the plaintiff, but they redoubled their efforts to destroy him as discussed more fully below. Prior to the launch of the Big John video, the plaintiff had done nothing to draw attention to himself, and possessed no "substantial responsibility for or control over the conduct of governmental affairs;" or occupied a "position . . . which would invite public scrutiny of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy." § 580A *Restatement of Law 2d, Torts* The defendants' argument is in essence that they converted him into a public figure by libeling him, a principle specifically rejected by South Carolina jurisprudence and that his status as a public figure permitted them to publish false information under the guise of just asking questions. In response to the defendants' attacks, the plaintiff did nothing more than attempt to defend himself and his business against numerous attacks launched by the defendants designed to cast him in a false light as an animal abuser and this included reaching out to both defendants to provide them with the correct information on April 25th and May 11th and asking for a correction. See Exhibits 1 and 2, plaintiff's April 25, 2017 letter to Charleston Carriage Horse Advocates and May 11, 2017 letter to Charleston Animal Society. Neither defendant provided plaintiff with the courtesy of a reply. Instead, both defendants ignored him and doubled down. There is not a case in American jurisprudence that suggests a party mitigating his damages transforms him into a public figure. As the Ellen Harley/Charleston Animal Society March 30, 2017 e-mail (Exhibit 3) demonstrates, the defendants conspired with one another to destroy his

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

business since they could not get their way through the legislative process. (Not only is the e-mail specific about depressing his income, but it also demonstrates the coordination between Ellen Harley's putative charity and the Charleston Animal Society. The evidence shows that they are the same.) By taking steps to protect himself, the plaintiff did not transform into a public figure, and the defendants knew the information they were publishing was intentionally false. Their defense is to claim that the plaintiff is a public figure even though he holds no position of authority, makes no governmental decisions, and has tried his best to stay out of the public controversy. The defendants suggest that by exercising his First Amendment right to petition the government for redress of his grievances he transforms into a public figure. Under their theory of the case, the plaintiff has to remain silent in the face of vicious attacks, but there is no case law to support such a farfetched legal argument, which would, if applied, abrogate the well-developed common law of defamation.

Even if the plaintiff were a public figure, the statements published by the defendants and the false narrative created by them are false, and they know they are false. As set forth above, and as established by numerous affidavits, testimony of veterinarian experts, and exhibits, the plaintiff's horse, Big John, slipped and fell on Meeting Street on April 19, 2017. Big John was hitched to a carriage carrying school children, and the temperature that day was in the 70's. Big John was on the ground for approximately 11 minutes, but that was time enough for both Ellen Harley and Elizabeth Fort to be on the scene with their video phones. They took their two videos and combined them with at least a third from an unknown source and cobbled together a demonstrably false video montage. They did this by sending the raw footage to the Charleston Animal Society, and its "Director of Media," Dan Krosse, who edited the videos together and included blatantly libelous and false statements to create the inference that Big John "collapsed," when they knew he

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

did not. They also carefully edited the videos to make it look like the driver of the carriage, Gabby Byrd, attempted to stop Ellen Harley from filming, which is false. They then pushed the video out with the superimposed misleading language insinuating that Brody overworked his horse and it "collapsed." The defendants knew that the statements imprinted on the video created and promoted a misleading narrative and cast the plaintiff in a false light because they had the City's and the veterinarian's reports in hand, verifying that Big John suffered nothing more than a minor abrasion.

But they were not through.

What followed the initial publication was more insidious and much more dangerous. When numerous commentators attempted to correct the false statements to correct the record, the defendants deleted the posts containing truthful corrections and banned the commenters thereby further promoting and publishing a false narrative, demonstrating an intentional common scheme to defame the plaintiff. They used the video to supercharge their fundraising. As discussed in more detail in the next section, neither defendant is a "media defendant," as each is a registered charity, and charities are statutorily prohibited from publishing false or misleading information. § 33-56-120, S. C. Code, Ann. "Misrepresentations prohibited" The defendants attempted to duck their liability by intimidating Big John's veterinarians into supporting their false narrative. Not only was the treating veterinarian, Dr. Little, clear that Big John did not "collapse" or suffer a serious injury, but also the defendants lawyers acknowledged the difference between "fell" and "collapse":

Q. . . . Do you recall the – there being an incident on April 17 – or April 19th, 2017, when Big John, the horse, fell during a carriage tour?
A. Yes. That's the day I think I examined him.
Deposition October 30, 2019, of Dr. Little, page 16, lines 15—19

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

At Dr. Little's October 30th deposition, defendant's counsel asked her to interpret her office notes from her examination of Big John on the day he fell, and Dr. Little testified:

A. Sure. So, the first line is "Hx." That's shorthand—shorthand for history. "Slipped while in harness pulling carriage." And that was the history that was provided to me.

And then, Physical Exam. This is the exam that I performed. "BAR" means bright, alert, responsive. "T = 100.3ºF." That's temperature. That's a normal temperature for a horse. Heart rate equals 36. That's 36 beats per minute. That is a normal heart rate for a resting horse. Respiratory rate equals 12. That would be breaths per minute, and that is also within normal range for respiratory rate for a horse at rest. "MN" stands for mucus membranes, and the shorthand means it's P/moist. That means pink and moist for mucus membranes. "CRT" is cutaneous refill time, and that's less than two seconds. GI equals – and then there's, like, four quadrants of plus marks, and that means that he had gut sounds in all four quadrants in his gut. Then, "Superficial abrasion distal to right elbow and small superficial abrasion on left hind point of hock," and that is a visual exam notes I made. And, "No apparent lameness."

Dr. Little deposition, page 17, line 11—page 18, line 5

After examining Big John, Dr. Little concluded Big John "was fit to work immediately with no restrictions." Dr. Little deposition, page 18, line 9. Not only did a qualified veterinarian examine Big John immediately after his fall, but also the City Equine Manager, Shannon Tillman, investigated the incident. Dr. Little provided her records to the City, which were open to the defendants, as part of her examination ("it's my understanding that [the records] are sent to the City, so I probably left one there, but I don't remember it." Little deposition at page 29, line 8), and both the Charleston Carriage Horse Advocates and the Charleston Animal Society were aware of both the examinations, the medical findings, and the release to work. They knew the truth.

Despite knowing the truth, they published a video and libeled the plaintiff by inserting their demonstrably false—and the defendants knew they were false—statements over the images:

"Was Big John exhausted or did he just 'trip'?"

"Did Big John collapse or was he exhausted?"

"Why were eyewitnesses intimidated to stop taking video when a horse collapsed?"

"Tourists jumping off."

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

"By law, the City is required to weigh each carriage, filled with passengers, before each tour, but Charleston does not enforce this."

Big John neither "collapsed" nor was he "exhausted," and no one "intimidated" anyone from taking video, yet both defendants contended otherwise. (To be fair to the defendants, an unknown third party can be heard on the video chastising Ellen Harley for interfering.) But what followed the initial publication of the video was more calculated and more dangerous. As millions of viewers looked at the video, 11 million in 5 days according to the Charleston Animal Society (See Exhibit 4, Charleston Animal Society's publication), and read Dan Krosse's leading questions, thousands of people commented, asking questions about whether the horse died or recovered from his "collapse," and instead of publishing truthful answers to questions stirred up by the defendants' shameful conduct, the defendants took pains to delete, block, and ban any effort to correct the record. As the death threats and hate mail rolled in, the plaintiff wrote to Charleston Carriage Horse Advocates and the Charleston Animal Society letters on April 25, 2017 and May 11, 2017 (Exhibits 1 and 2), asking them to please correct the false impression they created that the plaintiff worked the horse to death. Both defendants ignored the plaintiff and sensing that they were causing significant damage to the plaintiff, doubled down on their efforts to destroy his business.

Both Ellen Harley and Joe Elmore have a demonstrable animus for the plaintiff—and use their attacks to fundraise—and they attempt to disguise their animus by hiding behind what they contend is the innocuous use of the word "collapse." However, they both knew at the time of their publication and their subsequent manipulation of their social media presence that Big John did not "collapse." Human beings fall down from time to time, and so do horses. If someone sees a tourist trip over a Broad Street bluestone, no one describes the occurrence as a "collapse" any more than when a child falls down on a playground, the parent rushes him or her to the emergency room for

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

a "collapse." It is for a jury to decide how the defendants used the word "collapse," and if a jury believes the defendants' selection of the word is an accurate description of what happened, then a jury will acquit them. However, they knew when they chose their word "collapse," that there is no medical evidence in the record to suggest how that word is used as either a medical term of art or in common parlance:

Q. If Big John had collapsed on April the 19th, from a medially significant condition, whatever, would you have expected to see other injuries on him than the ones that you did see?
A. If -- if he had collapsed due to an internal medial problem, I would expect to have some indication his physical exam.
Q. Did you see any such indications?
A. I did not.
Deposition of Dr. Little, page 68, line 18—page 69, line 1

Joe Elmore admitted that he uses inflammatory language, according to him, "to get people to listen," but the rapid rise of his compensation running a charity suggests other motivations:

Q. Now, you told us in response to a question from Ms. Palmer that you have had conversations with Joelle Moore and Kurt Taylor on behalf of the Charleston Animal Society.
A. Yes.
Q. And you have spoken to them – I think in response to a question from her that you urged the two of them to quit using inflammatory language; is that correct?
A. Right.

. . .

At that time, we were hoping that everybody could come together and try to work towards something positive.

. . .

And I felt that that was important for that conversation to begin.
Q. . . . And did they explain to you why they chose inflammatory language?
A. Mr. Elmore did.
Q. . . . What was his explanation that he provided to you?
A. That that was how he was able to get people to listen.
Deposition of Dr. Justin Miller, February 11, 2020, Page 136, lines 20—137

In short, the record demonstrates that both defendants intentionally and willfully continue to push out a false narrative designed to ruin the plaintiff's business, or, as Ms. Harley states it, "to depress their income" (Harley e-mail to Joe Elmore March 30, 2017, Exhibit 3) because they cannot achieve their means through proper legislative channels. As discussed in more detail in

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

the following section, the defendants also use the misrepresentations about the plaintiff to generate substantial donations.

4. Are the defendants "media defendants"?

This is the most important question of the six questions the Court posed. "Media defendants" enjoy broad immunity under the *New York Times* standard. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)—public official cannot sue for defamation unless he or she can prove "actual malice." Neither defendant is a "media defendant." Both defendants are "charities," and as such, they each receive favorable tax treatment in exchange for adhering to the rules of conduct much like lawyers receive permission to represent clients provide we each adhere to the rules governing our conduct. South Carolina law specifically prohibits charities from disseminating misleading information. § 33-56-120 More importantly, the Charleston Animal Society is a quasi-governmental agency. Charleston County provides the home for the Charleston Animal Society on Remount Road as well as a monthly stipend of $175,000.00 of taxpayer money. As a condition of receiving the favored charitable tax treatment and taxpayer support, both defendants are statutorily prohibited from disseminating false or misleading information. See § 33-56-120, S. C. Code, Ann., "Misrepresentations prohibited":

> (A) In connection with the solicitation of contributions or the sale of goods or services for charitable purposes, a person shall not represent or mislead, knowingly and willfully, a person by any manner, means, practice, or device.

In a defamation suit brought in Florida, the Florida trial court had to decide if the Society for Science-Based Medicine was a "media defendant" and therefore entitled to pre-suit notice under the Florida procedural statutes. The Court decided it was and offered the following definition of "media defendant." *Tobinick v. Novella*, 108 F.Supp.3d (S.D. Fla. 2015), affirmed 848 F.3d 935 (11th Cir. 2017):

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

Thus, media defendants are not just those who "impartially disseminate information," or "issue unsolicited, disinterested and neutral commentary as to matters of public interest." The term also applies to those who "editorialize as to matters of public interest without being commissioned to do so by [their] clients."

Obviously, these defendants are at the opposite extreme of "media defendants," because they publish their defamatory assertions toward the view of increasing contributions to their organizations and are, therefore, commissioned by themselves to increase revenue. A "media defendant" by definition has some journalistic ethics as its foundation where these defendants are in the business of ginning up controversy to increase contributions to their organizations. In 1985, the United States Supreme Court affirmed a Vermont Supreme Court's decision to uphold a jury verdict against a defendant whom the Vermont courts found not to be a "media defendant":

The Vermont Supreme Court reversed. 143 Vt. 66, 461 A.2d 414 (1983). Although recognizing that "in certain instances, the distinction between media and nonmedia defendants may be difficult to draw," the court stated that "no such difficulty is presented with credit reporting agencies, which are in the business of selling financial information to a limited number of subscribers who have paid substantial fees for their services." *Id.* at 73, 461 A.2d at 417. Relying on this distinguishing characteristic of credit reporting firms, the court concluded that such firms are not "the type of media worthy of First Amendment protection as contemplated by *New York Times Co. v. Sullivan*, 376 U.S. 254, (1964),] and its progeny." *Id.* at 73-74, 461 A.2d at 417-418. It held that the balance between a private plaintiff's right to recover presumed and punitive damages without a showing of special fault and the First Amendment rights of "nonmedia" speakers "must be struck in favor of the private plaintiff defamed by a nonmedia defendant." *Id.* at 75, 461 A.2d at 418. Accordingly, the court held "that as a matter of federal constitutional law, the media protections outlined in *Gertz* are inapplicable to nonmedia defamation actions." *Ibid.*

Recognizing disagreement among the lower courts about when the protections of *Gertz* apply, [Footnote 1] we granted certiorari. 464 U.S. 959 (1983). We now affirm, although for reasons different from those relied upon by the Vermont Supreme Court.

II

As an initial matter, respondent contends that we need not determine whether *Gertz* applies in this case because the instructions, taken as a whole, required the jury to find "actual malice" before awarding presumed or punitive damages. [Footnote 2] The trial court instructed the jury that, because the report was libelous *per se,* respondent was not required "to prove actual damages . . . since damage and loss [are] conclusively presumed." App. 17; *accord, id.* at 19. It also instructed the jury that it could award punitive damages only if it found "actual malice." *Id.* at 20. Its only

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

other relevant instruction was that liability could not be established unless respondent showed "malice or lack of good faith on the part of the Defendant." *Id.* at 18. Respondent contends that these references to "malice," "lack of good faith," and "actual malice" required the jury to find knowledge of falsity or reckless disregard for the truth -- the "actual malice" of *New York Times Co. v. Sullivan,* 376 U.S. 254 (1964) -- before it awarded presumed or punitive damages.

We reject this claim because the trial court failed to define any of these terms adequately. It did not, for example, provide the jury with any definition of the term "actual malice." In fact, the only relevant term it defined was simple "malice." [Footnote 3] And its definitions of this term included not only the *New York Times* formulation but also other concepts such as "bad faith" and "reckless disregard of the [statement's] possible consequences." App.19. The instructions thus permitted the jury to award presumed and punitive damages on a lesser showing than "actual malice." Consequently, the trial court's conclusion that the instructions did not satisfy *Gertz* was correct, and the Vermont Supreme Court's determination that *Gertz* was inapplicable was necessary to its decision that the trial court erred in granting the motion for a new trial. We therefore must consider whether *Gertz* applies to the case before us.

Dun & Bradstreet v. Greenmoss Builders, 472 U.S. 749 (1985)

The U. S. Supreme Court went on to hold that the Vermont jury could award punitive damages because the First Amendment offers less protection to private speech than to public speech, and especially less to speech "being solely motived by a desire for profit." Like the credit reporting agency in *Dun & Bradstreet*, both defendants are engaged in dedicated fundraising to support their causes—and in Ms. Harley's case eliminating the carriages from her street—the precise opposite of a "media defendant," which is regulated by journalism ethics. See preamble to the Society of Professional Journalists statement of ethics:

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. Ethical journalism strives to ensure the free exchange of information that is accurate, fair and thorough. An ethical journalist acts with integrity.

There is no such journalistic ethical restraint on fundraising by charities, which is why the General Assembly placed restrictions against charities employing false or misleading publications to solicit contributions. The false statements made here are particularly problematic for the Charleston Animal Society which not only has 25 million dollars in cash reserves on hand and

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

which pays Joe Elmore an astronomical salary, but also—and more importantly—receives substantial monthly contributions from local governments. The defendants are both money-making enterprises and thus the opposite of what is considered a "media defendant." It is common knowledge that "nonprofits" are very profitable for the people who run them. In fact, as set forth above, the General Assembly has specifically prohibited both defendants from dispensing false or misleading information—the precise opposite of a "media defendant."

5. Are the alleged statements about the plaintiff or concerning the plaintiff?

There is little doubt that both Harley's organization and the Charleston Animal Society piled on the plaintiff using Big John's 11 minutes on the ground as a cudgel to put their March 30, 2017 plan into effect and run Brodie out of business by publishing false statements to incite a torrent of threats and hatred directed at Charleston Carriage Company. The plaintiff cannot even get a "very fine people on both sides" statement from the defendants. Moreover, after the plaintiff wrote to both defendants on April 25, 2017 and May 11, 2017 (Exhibits 1 and 2), asking both defendants to tone down the publications, they redoubled their efforts and stoked the hostility. As set forth above, the seminal case in South Carolina on defamation is *Erickson v. Jones Street Publishers, op. cit*, and as the Supreme Court made clear in *Erickson*, the defendant never named the plaintiff but held she could maintain an action because she could be identified. Here, as Exhibit 4, Charleston Animal Society's publication 5 days after the event, demonstrates, there is little doubt that the defendants identified the plaintiff. (Exhibit 4 is quoted *verbatim* on page 28 below.)

Before *Erickson* in 2006, the Supreme Court addressed the issue of identification in *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 332 S.C. 502 (S.C. 1998). There, as in *Erickson*, the plaintiff was not named in the challenged article but could be identified as a member of a small group—a family. The Supreme Court held:

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

The newspaper also asserts it was entitled to a directed verdict because respondent, Shannon's mother, failed to prove the statement that Shannon lacked family support was "of and about her." *Kendrick v. Citizens & Southern Nat'l Bank*, 266 S.C. 450, 223 S.E.2d 866 (1976). While the general rule is that defamation of a group does not allow an individual member of that group to maintain an action, this rule is not applicable to a small group. *50 Am.Jur.2d*, Libel and Slander § 349 (1995); *Hospital Care Corp. v. Commercial Casualty Ins. Co.*, 194 S.C. 370, 9 S.E.2d 796 (1940) (defamation of a class not actionable by member unless statement has special and personal application to plaintiff). We hold there was evidence from which a jury could have found the statement was "of and about" respondent and thus the directed verdict motion was properly denied. *Washington v. Whitaker, supra; Hospital Care, supra.*

The Court of Appeals addressed the issue of sufficient identification in *Adams v. Daily Telegraph Printing Co.*, 292 S.C. 273, 356 S.E.2d 118, 13 Media L. Rep. 2034 (Ct. App. 1986). In that case, the plaintiff alleged defamation against a local television station owner after it broadcast a segment implying Adams committed murder without naming him because he declined to participate in a news conference. The trial judge granted summary judgement on the same basis asserted by the defendants here; to wit, that the broadcasts never identified the plaintiff or made a direct accusation against him. (They also claimed immunity as a "media defendant," which, as set forth above, is not applicable here because the defendants here are not media defendants—they are charities which use social media to fundraise.) In reversing the grant of summary judgment, the Court of Appeals held:

> The general rule applicable to the issue before us is set forth in 53 C.J.S. Libel and Slander Section 223(a) (1983) as follows:
>
> The defamatory character of the words complained of is for the jury if the language is susceptible of two meanings, one defamatory and the other innocent; but if the language is unambiguous the question is for the court. The court determines whether the language is capable of the meaning ascribed to it and the jury determines whether the language had the meaning ascribed to it.
>
> The South Carolina rule goes further and holds that a demurrer to a complaint (and inferentially a motion for summary judgment) "will only be sustained where the court can affirmatively say that the publication is incapable of any reasonable construction which will render the words defamatory." Our courts also hold that any words which raise a strong suspicion of the plaintiff's guilt in the minds of the hearers are sufficient upon which to base a cause of action for slander or libel. And even stronger, our courts hold that if the words are capable of the offensive meaning attributed to them, then an action for libel or slander lies. *Flowers v. Price*, 192 S.C. 373, 6 S.E.2d 750 (1940).

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

We therefore reverse the appealed orders holding that Adams was not identified; this is a jury question and we so hold. Similarly, we hold that whether the TV 13 broadcast sufficiently identified appellant Adams is a jury question.

Here, the evidence is much stronger than *Adams* as to both (1) the identification of the plaintiff which the defendants laid to rest in their April 24, 2017, publication and (2) the defamatory meaning of the words used in initial publication, quoted *verbatim* below on page 26, followed by the selective doubling down by monitoring and deleting truthful corrective comments to cast plaintiff in a false light.

As to the first, there is abundant evidence in the record that the publication of the video and the years of selectively publishing and promoting false information—which continues right up to this date—sufficiently identified the subject: Charleston Carriage Company. Lest there be any doubt in any juror's mind that Brodie and his company were the target, the jury only has to review the Charleston Animal Society's April 24, 2017, publication, attached here as Exhibit 4. There, the Charleston Animals Society promoted numerous falsehoods and left no doubt who the target of their campaign is:

> Christoff's statement is a reaction to the fact that more than 11-millon people saw the video of his horse "Big John" collapse on Meeting Street last week. The Charleston carriage industry knows that America is watching. It's time to move forward with a true, independent study. The research team will only come from a top-rated university that uses humane and the least possible invasive research methods.
>
> Charleston Animal Society April 24, 2017 Facebook post, attached here as Exhibit 4

This post is important for two reasons. Not only does it end any question about who the defendants were targeting, but also gives a glimpse into the commonly employed use of social media for fraudulent solicitation. Notice the post in the lower right corner where Rachael Ellis informs readers the completely bogus claim that "Rancho Relaxo is offering a safe retirement for Big John! Please sign and share!" "Rancho Relaxo" generated over $100,000.00 in contributions

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

in a matter of days plying this lie. And both Charleston Animal Society and Charleston Carriage Horse Advocates have generated untold amounts of money off their lies.

Even though the defendants are charities, and therefore statutorily prohibited from disseminating false or misleading information, they both took great pains to monitor comments to prevent the dissemination of corrections and truthful information correcting their misinformation from being seen and took affirmative acts to both delete the truthful information and ban such commentators from further comment to shape and promote their false narrative. See affidavit of affidavit of Katherine Vaughn filed September 28, 2021: "I have attempted several times to post accurate, truthful, and polite information, and almost immediately the Administrator of the page deletes my comments, bans me from the site, and blocks me from posting additional information." They did not just "stand by their story," they saw that their initial false publication made the plaintiff vulnerable, so they went in for the kill. Instead of printing a "correction," which a "media defendant," governed by journalistic ethics would do, the defendants specifically edited out truthful information as part of their coordinated plan tailored to cast the plaintiff in a false light. Neither the photographs, the numerous comments, the continual monitoring by Ms. Harley, *et. al.* left any doubt as to who the target of the defendants was, and if there were any doubt about the subject of the defendants' numerous publications, any doubt evaporated on April 24, 2017, when the Charleston Animal Society not only identified Charleston Carriage Works but also Brody by name. Whether the plaintiff is sufficiently identified is a question for a jury as to whether the plaintiff was sufficiently identified. Leaving aside that the defendants outed the plaintiff on April 24th, there are only four horse carriage companies in Charleston, so even without a specific identification, the plaintiff has made out a claim under *Holtzscheiter* and *Erickson*.

6. Has the plaintiff produced evidence that the statements are made with malice?

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

As a private figure and as the subject of slander *per se*, the plaintiff is not required to show malice:

Slander is actionable *per se* when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics:

(1) commission of a crime of moral turpitude;

(2) contraction of a loathsome disease;

(3) adultery;

(4) unchastity; or

(5) unfitness in one's business or profession.

Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998)(Majority Opinion); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)(Toal, J., concurring)(when statement falls into one of five categories of slander, damages are presumed; in all other cases-namely, when slander does not fall into above-named categories-special damages must be established); *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997); *Constant v. Spartanburg Steel Products, Inc.*, 316 S.C. 86, 447 S.E.2d 194 (1994)(in slander per se action, general damages need not be proven by plaintiff; damages are presumed); *Galloway v. Cox*, 172 S.C. 101, 172 S.E. 761 (1934); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001)(in defamation action that is actionable per se, general damages are presumed and need not be proven by plaintiff).

However, even if he were required to prove malice, there is abundant evidence in this record to satisfy the preponderance of evidence that the defendants were and are motivated by actual malice to drive the plaintiff out of business. First, there is evidence of Ms. Harley's continual harassment of the plaintiff by following carriage tours and repeatedly surveilling the plaintiff, by her March 30, 2017, e-mail to Joe Elmore, Dan Krosse, and Kurt Taylor, Exhibit 3, defining the group's objective to "depress" plaintiff's income, by monitoring comments to delete truthful information demonstrating the falsity of the defendants' joint message, and, of course, by carefully

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

editing video with defamatory language (quoted below) insinuating that Big John collapsed from exhaustion and overwork. Even the City of Charleston's chief Tourism Enforcement Director, Dan Riccio, testified that she is a bully. The defendants in this case attempted to regulate the plaintiff out of business through the legislative process, and when that failed, they launched an all-out war on the plaintiff by harnessing the power of the Internet to disseminate a false message to gin up anger and hostility toward the plaintiff. Through the intentional dissemination of false insinuation and the purposeful editing of responses, the defendants coordinated their efforts to paint the plaintiff in a false light as an animal abuser and unfit for his chosen vocation, which is slander *per se*. "A mere insinuation is as actionable as a positive assertion if it is false and malicious and its meaning is plain." *Tyler v. Macks Stores*, 275 S.C. 456, 272 S.E.2d 633 (1980) There is sufficient evidence to allow a jury to decide the questions of fact as to whether the defendants acting in concert did or did not act with malice. The original video that sparked the public's outrage against Charleston Carriage began with Dan Krosse's editing of the Ellen Harley/Elizabeth Fort video by inserting in large letters: **"Why were eyewitnesses intimidated to stop taking video when a horse collapsed?" "Tourists jumping off." "Was Big John exhausted or did he just 'trip?'" "By law, the City is required to weigh each carriage, filled with passengers, before each tour, but Charleston does not enforce this**." Each of these statements is demonstrably false, and no one had difficulty identifying the plaintiff as the carriage company. (All of Charleston Carriage Company's carriages are uniquely burgundy, and when the torrent of abuse and threats poured in, they were directed at the plaintiff as encouraged by the defendants who deleted and banned anyone who furnished truthful correction.) Any of these false statements or suggestions are sufficient for a jury to determine if the language is "innocent" or "slanderous" and whether the false communications identify the plaintiff. In reversing a trial

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

court's grant of a directed verdict on similar issues, the Court of Appeals said in *Anderson v. The Augusta Chronicle*, 355 S.C. 461, 585 S.E.2d 506 (S.C. App. 2003):

The sole basis of the trial court's decision to direct a verdict in The Chronicle's favor, and the only question before this Court, is whether Anderson presented sufficient evidence to create a jury question on the constitutional malice element of defamation. We therefore assume for purposes of this opinion that The Chronicle published "Let the liar run" and that it contained false and defamatory statements. See *George*, 345 S.C. at 456 n. 7, 548 S.E.2d at 876 n. 7 ("Because summary judgment was granted solely on the issue of actual malice, we assume arguendo that the statements were false and defamatory."). Moreover, since "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict," the evidence presented by Anderson "is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); see *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520, 111 S.Ct. 2419, 115 L.Ed.2d 447 (1991) ("[W]e must draw all justifiable inferences in favor of the nonmoving party, including questions of credibility and of the weight to be accorded particular evidence.").

As an initial matter, it is important to recognize the presumptively false and defamatory statements contained in "Let the liar run" may constitute libel in two separate ways. First, the statement that Anderson "told this newspaper he was called away to National Guard duty in the last weeks of the 1996 election" could cause injury by attributing to Anderson a statement of fact he did not make. See *Masson*, 501 U.S. at 511, 111 S.Ct. 2419 ("A fabricated quotation may injure reputation ... [and] giv[e] rise to a conceivable claim of defamation ... because it attributes an untrue factual assertion to the speaker."); *White v. Wilkerson*, 328 S.C. 179, 184, 493 S.E.2d 345, 347 (1997) (holding a statement is defamatory "if the words used ... convey to the minds of those to whom they are addressed ... the impression that the plaintiff has done wrong" when considered in the context of the entire publication) (internal citation omitted). Such a statement is defamatory *per quod*, because its defamatory meaning is [355 S.C. 476] derived from facts extrinsic to the statement itself, in this case Anderson's denial that he ever said what the editorial claims. See *Holtzscheiter*, 332 S.C. at 509, 506 S.E.2d at 501 ("If the defamatory meaning is not clear unless the hearer knows facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*.").

Second, the statements that Anderson "has been exposed as a liar," is a "proven prevaricator," and effectively "lies on his resume" are actionable in their own right as being defamatory *per se*. See *id.* at 508-09, 506 S.E.2d at 501 ("The defamatory meaning of a message or statement may be obvious on the face of the statement, in which case the statement is defamatory *per se*."). Thus, we must look to each potential libel and determine if Anderson presented sufficient evidence to permit us to conclude a reasonable jury could have found The Chronicle acted with actual malice in publishing the statements. Viewed in the light most favorable to Anderson, the evidence reveals the following . . .

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

The Court then reviewed the evidence which demonstrated that the newspaper published an article about the plaintiff called, *Let the Liar Run*, with reckless disregard for whether it was true or not that the plaintiff falsely claimed to be in the National Guard. The evidence presented here is far worse than the evidence presented in *Anderson*. In *Anderson*, the newspaper was sloppy about confusing "National Flood" an agency in which the plaintiff had been involved, with the "National Guard" in which he had not been involved. In reversing the trial court's grant of summary judgment, the Court of Appeals determined that a reasonable jury could conclude that the newspaper published the false statement without making an effort to verify whether it was true or not true, which was "reckless disregard" for the truth.

Here, the defendants did much worse. They did not have a "reckless disregard" for the truth; they set out to use their vast network to create and shape the false narrative that Big John "collapsed," that Brodie worked him to "collapse," that Brodie violated City Ordinances (which do not exist), that Brodie is an animal abuser, and that Charleston Carriage Works is cruel and inhumane. The reason for this is made clear in the defendants' joint enterprise laid out in Ellen Harley's March 20, 2017 e-mail (Exhibit 3) to "depress their income." The false statements knowingly promulgated by the defendants and then shaped by blocking truthful corrections demonstrate far more than a genuine issue of material fact of the defendants' intent and the malice motivating their actions. It is up to a jury to read and hear the statements in open court to decide if they conveyed an "innocent" or slanderous message.

Conclusion

The plaintiff has made out more than a genuine issue of material fact on all the elements of its claims as articulated by the Court in posing its six questions to the parties on September 29, 2021. The plaintiff is entitled to have the defendants respond to discovery even before the Court

entertains a motion for summary judgment, but even at this early stage, the plaintiff has demonstrated sufficient evidence to allow a jury to decide the important questions raised by this case.

Respectfully submitted,

January 25, 2022

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar No. 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
Charleston, S. C. 29415-1121
(843) 554 4291

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
PO Box 71121
Charleston, SC
zip 29415-1121
Ph (843) 554-4291
Fax (843) 554-5566

April 25, 2017

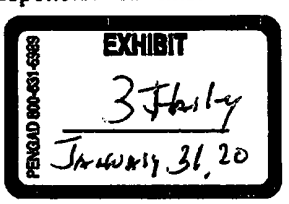
Ms. Ellen Harley
23 Wentworth Street
Charleston, S. C. 29401

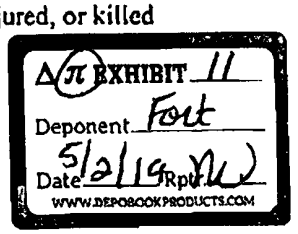
Re: Charleston Carriage Works

Dear Ms. Harley,

This office represents the interests of Charleston Carriage Works and Broderick Christoff. I have reviewed the false and libelous material you published concerning my client and his business, falsely implying that a healthy and uninjured horse collapsed from neglect and misuse. I am also aware that you spend a considerable amount of time following various tours, harassing companies, their employees and guests. I know you are a part time resident of South Carolina and therefore, you may be unaware of South Carolina laws. South Carolina allows suits for slander/libel, and under South Carolina law, "words that falsely charge a person with conduct, characteristics or a condition incompatible with the exercise of a lawful business, trade, profession or office are slander/libel *per se*." Moreover, your reckless and false statements have generated numerous serious threats directed against Broderick, his family and his employees. In addition, Congress responded to tactics such as yours by passing the *Animal Enterprise Terrorism Act* (AETA), 18 U.S.C. § 43. This act prohibits any person from engaging in certain conduct "for the purpose of damaging or interfering with the operations of an animal enterprise." The statute covers any act that either "damages or causes the loss of any real or personal property" or "places a person in reasonable fear" of injury."

In South Carolina, we consider it courteous to approach directly someone in order to express concerns with his or her activities. Should you have any concerns about the well-being of Charleston Carriage Works' horses, all you have to do is request information. You may not be aware, but the City of Charleston has rigorous regulations governing the care and conduct of the horses, including the number of hours they can work and the maximum temperature during which they can work. Broderick, the employees of Charleston Carriage Works and their guests love the horses, and the care and affection for their horses is second to none. It is extremely reckless of you to disseminate information that you know is false. You are aware that the horse that tripped, easily regained his feet as soon as he was unharnessed and walked back to the barn unassisted and was thoroughly checked by a doctor of veterinary medicine who cleared Big John to return to work. If you had real concerns about the horse—as opposed to publishing knowingly false information to suit your agenda—it would have been simple for you to request the veterinary records from the examination in order to determine accurate information about the horse's well-being. You did not do this because you chose to turn a blind eye to the facts in order to publish libelous material. Instead of making an effort to determine whether the horse was or was not injured, you published false information with the view of whipping up anger and hostility toward Charleston Carriage Works. In this you have succeeded, and if anyone there is attacked, injured, or killed as a result of your intentionally false publication, you will be responsible for this.





ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

In the meantime, in the spirit of the Southern tradition of courtesy, we are happy to answer any relevant questions about the health, maintenance, and care of any animal. We expect you to do the right thing and immediately publish a retraction and correct the false impression that you created that the animal was injured in any way. Please provide evidence that you have published a retraction and correction. I am in no position to give you legal advice, but I suggest that you get legal advice from any of the excellent lawyers in Charleston who can advise you on what is and is not permissible under South Carolina tort law and under the *Animal Enterprise Terrorism Act*. I also ask that you notify your Homeowner's Insurance Carrier of our intent to make a claim. Your failure to do so could void your coverage. As always, you can contact me at the above telephone number, e-mail address, or street address to discuss this matter. I hope you will do so.

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

cc: Broderick Christoff

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale I. Cobb, Jr.
dicobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph (843) 554-4291
Fax (843) 554-5566

May 11, 2017

Mr. Joe Elmore
Charleston Animal Society
2455 Remount Road
N. Charleston, S. C. 29405

Re: Charleston Carriage Works

Dear Mr. Elmore,

This office represents the interests of Charleston Carriage Works and Broderick Christoff. I have reviewed a number of examples of false and libelous material the Charleston Animal Society has published concerning my client and his business, falsely implying that a healthy and uninjured horse "collapsed" and died from neglect and misuse. A number of people, claiming to be speaking on behalf of the Charleston Animal Society have been following various tours, harassing companies, their employees and guests. While I recognize the significant service you provide to the people of South Carolina by caring for unwanted and abandoned pets, and while I have spent my legal career defending the right of free speech under the First Amendment, you must be aware that South Carolina allows suits for slander/libel, and under South Carolina law, "words that falsely charge a person with conduct, characteristics or a condition incompatible with the exercise of a lawful business, trade, profession or office are slander/libel *per se*." Moreover, the Society's reckless and false statements have generated numerous death threats directed against Broderick, his family and his employees. Such tactics motivated Congress to respond to tactics such as yours by passing the *Animal Enterprise Terrorism Act* (AETA). 18 U.S.C. § 43. This Act prohibits any person from engaging in certain conduct "for the purpose of damaging or interfering with the operations of an animal enterprise." The statute covers any act that either "damages or causes the loss of any real or personal property" or "places a person in reasonable fear" of injury."

In South Carolina, we consider it courteous to approach directly someone in order to express concerns with his or her activities. Should you have any concerns about the well-being of Charleston Carriage Works' horses, all you have to do is request information. Of all the people in Charleston, you must be the most aware that the carriage horses are carefully monitored and protected by the City. You are well aware that the City of Charleston imposes rigorous regulations governing the care and conduct of the horses, including the number of hours they can work and the maximum temperature during which they can work. Broderick, the employees of Charleston Carriage Works and their guests love the horses, and the care and affection for their horses is second to none. It is extremely reckless of you to disseminate

information that you know is false. You are aware that the horse that tripped, easily regained his feet as soon as he was unharnessed and walked back to the barn unassisted and was thoroughly checked by a doctor of veterinary medicine. If you had real concerns about the horse—as opposed to publishing knowingly false information to suit your agenda—it would have been simple for you to call Broderick, whom you know, and request the veterinary records from the examination in order to determine accurate information about the horse's well-being. You did not do this because you chose to turn a blind eye to the facts in order to publish libelous material that you know is false. Instead of making an effort to determine whether the horse was or was not injured, you published false information with the view of whipping up anger and hostility toward Charleston Carriage Works in an effort to damage their business. In this you have succeeded, and if anyone there is attacked, injured, or killed as a result of your intentionally false publication, you will be responsible for this.

In the meantime, in the spirit of the Southern tradition of courtesy, we are happy to answer any relevant questions about the health, maintenance, and care of any animal. We expect you to do the right thing and immediately publish a retraction correcting the false impression that you created that the animal was injured in any way. Please provide evidence that you have published a retraction and correction. In the meantime, I request that you turn this letter over to your counsel so that he or she can notify Insurance Carrier of our intent to make a claim. Your failure to do so could void your coverage. Since your organization is an agency of the County of Charleston, I am also sending a copy of this letter to the County Attorney. Since Charleston County supports the Charleston Animal Society, the County may wish to participate in this discussion. As always, you can contact me at the above telephone number, e-mail address, or street address to discuss this matter. I hope you will do so.

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

cc:
Joe Dawson, County Attorney
Broderick Christoff

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

From: Ellen Harley
To: Joe Elmore; Dan Krosse; Kurt Taylor, Esquire
Subject: Channel 5 Digital Impressions
Date: Thursday, March 30, 2017 6:51:30 PM

Started today. Running 150K through next Wednesday.
I am thinking the only way to defeat this City/Industry cartel is by depressing their income.
The corruption is too great to fight and win.

Hi Amy,

Currently we are targeting anyone who is searching for the keywords or reading about things to do in Charleston for the whole Charleston DMA (this includes the islands, so they are covered). For the rooftop targeting component of targeting by virtual perimeter, we are targeting hotels and tourist locations. With these online and offline mechanisms in place, we are able to capture all tourists. Does that make sense? Any other questions?

Thanks,

Erin

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

ELECTRONICALLY FILED - 2022 Jan 26 2:51 PM - CHARLESTON - COMMON PLEAS - CASE#2018GP1004083

CARRIAGE COMPANIES RESPOND TO INDUSTRY STUDY

Today's statement by Broderick Christoff of Charleston Carriage Works,is a non-endorsement endorsement of Charleston Animal Society's call for an independent, scientific, peer-reviewed study of the carriage industry downtown. "The carriage industry thinks they placed the ball back in our court, but the ball they sent back is flat," said Charleston Animal Society CEO Joe Elmore.

Christoff states that he speaks on behalf of the entire carriage industry downtown and that the industry now backs a study as endorsed by several local and national organizations including the TVMA (Trident Veterinary Medical Association), AAEP (American Association of Equine Practitioners), HSUS (Humane Society of the United States), and the ASPCA (American Society for the Prevention of Cruelty to Animals).

However, Christoff says the industry will not make their horses and mules available to take part in the study. This should raise a red flag with the public. Clearly, a study cannot be done without the horses and mules that actually live and work in Charleston. To use a replacement herd as Christoff suggests would raise questions about the validity of the study and is yet another hurdle thrown in the way of getting answers on what comprises humane working conditions in Charleston.

Christoff's statement is a reaction to the fact that more than 11-million people saw the video of his horse "Big John" collapse on Meeting Street last week. The Charleston carriage industry knows that America is watching. It's time to move forward with a true, independent study. The research team will only come from a top-rated university that uses humane and the least-possible invasive research methods.

The point of the study is to clarify with independent research, what is the most humane working environment for horses and mules in Charleston. This independent study would provide unbiased and objective answers to questions that we receive year-round from residents, tourists and experienced horse owners, who worry about the working horses and mules downtown. The research would address questions involving heat, load, congestion and other stressors, including how they relate to each other.

Before last week's incident involving the collapsed horse "Big John," Charleston Animal Society had reached out to industry leaders to meet about the study, but was turned down. We are hopeful that a meaningful dialogue can begin with this new statement from the industry. #adoptatcas #DotheStudy



Animal Shelter in Charleston, South Carolina

Invite friends to like this Page

We are 143 years old! We save more animals than all other Charleston animal organizations combined! We impact the lives of nearly 20,000 animals per year!

250,708 Likes

About

(843) 747-4849

Typically replies within a few hours
Send Message

www.charlestonanimalsociety.org

Animal Shelter · Non-Profit Organization

Opens at 12:00pm 12:00PM - 5:00PM

Popular hours

Tue

Visitor Posts

Lacie Rinehart

Like · Comment

Rachael Ellis

Rancho Relaxo is offering a safe retirement for Big John! Please sign and share!
https://m.facebook.com/story.php

Like · Comment

Jamie Michelle Meador