

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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JUL 23 2015

S.C. Supreme Court

Case No. 2014-CP-02-00259

Appellate Case No. 2014-002728

Retail Services & Systems, Inc., dba Total Wine &
More, ...

Appellant,

v.

South Carolina Department of Revenue and ABC Stores
of South Carolina, ...

Respondents.

RECORD ON APPEAL

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"any interest whatsoever" in more than three retail liquor stores. The DOR is charged with administering and enforcing the ABC Act, including the Statutes' licensing limitations.¹

According to its Complaint and an affidavit signed by its president, Retail Services intends to open a retail liquor store in Aiken County but cannot because the DOR has already issued the maximum number of licenses that can be issued for its use in South Carolina. Therefore, Retail Services alleges that the Statutes have caused, and are continuing to cause it harm, in Aiken County because they are preventing it from opening a retail liquor store there.

Retail Services claims that the Statutes are unconstitutional because (1) the General Assembly violated S.C. Const. Art. VIII-A by not acting within the scope of its police powers when it enacted them; (2) they violate the "One Subject Rule" as set forth in S.C. Const. Art. II, § 17; and (3) they violate the Constitution of the State of South Carolina's Equal Protection and Due Process Clauses, S.C. Const. Art. 1, § 3. Retail Services' Complaint does not assert any claim based on the manner in which the DOR applies the Statutes. Further, at the April 21, 2014 hearing, Retail Services' attorneys explained that Retail Services is asserting a facial challenge to the Statutes and is not challenging how the DOR enforces them.

According to Defendants, this Court lacks subject matter jurisdiction over this case because under the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.*, Retail Services should have filed its action with the Administrative Law Court.² Alternatively, Defendants claim that venue is not proper in this Court because Retail Services' cause of action arose in Lexington County where the DOR processes license applications and

¹ Retail Services alleges that Defendant ABC Stores has lobbied the General Assembly to maintain the Statutes as they currently exist in order to promote the economic interests of its members. As such, Defendant ABC Stores is a proper party under S.C. Code Ann. section 15-53-80, which states that "all persons shall be made parties who have or claim any interest which would be affected by the declaration."

² Defendants' arguments were initially raised as "motions" in their answers to the Complaint. The DOR submitted a memorandum in support of its arguments on April 18, 2014. At the hearing, Defendant ABC Stores stated that it agreed with the DOR and adopted the arguments in the DOR's supporting memorandum as its own.

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because neither defendant has its principal place of business in Aiken County. Therefore, Defendants ask this Court to dismiss this Action or transfer it to either Lexington or Richland County.³ For the following reasons, Defendants' Motions are DENIED.

CONCLUSIONS OF LAW

I. Retail Services Properly Filed This Action in the Circuit Court.

The South Carolina Revenue Procedures Act states as follows:

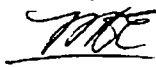
(A) Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.

(B) Notwithstanding subsection (A), *an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court.* This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

S.C. Code Ann. § 12-60-80 (emphasis added). "It is well settled in this State that [Administrative Law Courts ("ALCs")], as part of the executive branch, are without power to pass on the constitutional validity of a statute or regulation." Travelscape, LLC v. S.C. Dept. of Revenue, 391 S.C. 89, 109, 705 S.E.2d 28, 38 (2011). Rather, ALCs may only hear "as applied challenges to statutes and regulations." Id. at 109, 705 S.E.2d at 39.

"An as-applied challenge requires the moving party to show that the statute cannot be constitutionally applied to the defendant under the particular facts of the case." Town of Mt. Pleasant v. Chimento, 401 S.C. 552, 543, 737 S.E.2d 830, 843 (2012); see also McCoy v. City of Columbia, No. 5:10-132, No. 2013 U.S. Dist. LEXIS 58574, at *33 (D.S.C. Jan. 16, 2013) ("An 'as-applied' challenge consists of a challenge to a regulation's application only to the party before the court."). In contrast, in a facial challenge, "the challenger must establish

³ The DOR's principal place of business is in Lexington County, and Defendant ABC Stores' principal place of business is in Richland County.


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that no set of circumstances exists under which the Act would be valid.” Chimento, 401 S.C. at 543, 737 S.E.2d at 843; McCoy, 2013 U.S. Dist. LEXIS 58574, at *19 (“One making a ‘facial’ challenge to a law is arguing that the law is ‘invalid in toto-and therefore incapable of any valid application.’”).

The Complaint does not challenge the manner in which the DOR has interpreted or applied the Statutes as to Retail Services. Rather, Retail Services is challenging the constitutionality of the Statutes on their face and asks the Court to declare them invalid in toto. For instance, Counts I and II allege that the Statutes are unconstitutional because the General Assembly exceeded the scope of its police powers and violated the One Subject Rule when it enacted them. Count III alleges that the Statutes violate the Equal Protection and Due Process Clauses because they arbitrarily treat similarly situated people differently and arbitrarily deprive retail liquor store owners of the right to expand their business. None of these claims concern how the DOR has applied the Statutes specifically to Retail Services.

Because Retail Services has brought a facial challenge and not an as-applied challenge, the Administrative Law Court does not have authority to decide this matter. Travelscape, LLC, 391 S.C. at 109, 705 S.E.2d at 38. Accordingly, Retail Services properly filed its declaratory judgment action in the circuit court. S.C. Code Ann. § 12-60-80(B). Defendants’ motion to dismiss is, therefore, denied.

II. Defendants’ Motion to Transfer Venue is Denied.

An action against the DOR is proper where the “question, action or controversy shall arise.” S.C. Code Ann. § 15-77-50. An action against Defendant ABC Stores, which is a domestic corporation, may be brought in the county where (1) Defendant ABC Stores “has its principal place of business . . . or (2) [the] most substantial part of the alleged act or omission

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giving rise to the cause of action occurred.” S.C. Code Ann. § 15-7-30(E)(1-2) (emphasis added). Where a venue statute gives a plaintiff the choice to sue in the defendant’s resident county or in the county where the action arose, the plaintiff may properly file suit in either county. See Dove v. Gold Kist, Inc., 314 S.C. 235, 239, 442 S.E.2d 598, 600 (1994). Thus, if Retail Service’s claim arose in Aiken County, venue is proper.

Defendants assert that Retail Services’ claim arose in Lexington County because that is where the DOR would process its application for a retail liquor dealer license. Defendants’ argument is incorrect because Retail Services has not sued based on a licensing decision made by the DOR. Rather, it is seeking a declaration that the statutes are unconstitutional, and therefore, no action taken by the DOR in Lexington County forms the basis of Retail Service’s action.

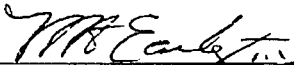
According to its Complaint and the affidavit of its president, Retail Services has incurred, and is continuing to incur, damages in Aiken County, which is where the Statutes are preventing it from opening a retail liquor store and deriving revenue. Because Aiken County is where the Statutes’ impact is being felt and where Retail Services has been damaged, this Court is the proper venue. See S.C. Code Ann. §§ 15-77-30(E) & 15-77-50. Accordingly, Defendants’ request to transfer venue is denied.

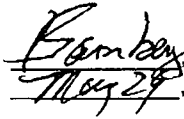
NOW, THEREFORE, based on the forgoing reasons, Defendants’ Motions to Dismiss, or in the Alternative to Transfer Venue, are **DENIED**.

IT IS FURTHER ORDERED that a hearing on Retail Services’ Motion for Summary Judgment, as well as any other dispositive motions filed by Defendants, is scheduled for _____, 2014 at _____.

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IT IS SO ORDERED.


The Honorable Doyet A. Early, III
Second Judicial Circuit


South Carolina
May 28, 2014

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP0200259

Retail Services & Systems Inc	Total Wine & More	Department Of Revenue South Carolina	Abc Stores Of South Carolina
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ 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:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

5/30/2014

Date

CPFORM4Cm
SCCA SCRPC Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 5-30-14, and a copy mailed first class or placed in the appropriate attorney's box on 5-30-14, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Retail Services & Systems, Inc., dba
Total Wine & More

Plaintiff,

vs.

South Carolina Department of Revenue and
ABC Stores of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Case No. 2014-CP-02-00259

ORDER

FILED November 26/14
Liz Godard
C.C.P. AIKEN
Shirley Comer
RECEIVED 12:55pm

I. INTRODUCTION

Retail Services initially sought an Order from this Court declaring S.C. Code Ann. Sections 61-6-140 and -150 (the "Statutes") unconstitutional, principally because they violate the Due Process and Equal Protection Clauses of the United States and South Carolina Constitutions. Plaintiff also alleges the statutes were not properly enacted within the scope of the state's police powers, and thus are unconstitutional pursuant to Art. VIII-A of the South Carolina Constitution.

Sections 61-6-140 and -150 are part of the Alcoholic Beverage Control Act (the "ABC Act"), and they limit to three the number of retail dealer licenses that the Defendant South Carolina Department of Revenue ("DOR") can issue to an individual or corporation.

All three parties in this case have moved for Summary Judgment. There is no fact in dispute. For the reasons stated below, I find that the statutes are constitutional, and were enacted pursuant to the state's police powers and thus rule in favor of the defendants' Motions for Summary Judgment.

[Handwritten signature]

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
21st day of November 2014
Liz Godard
C.C.P. AIKEN
Shirley Comer
Clerk of Court

NPCOL1:4022967.1-TBF-(BMA YBANK) 041608-00002

II. FINDINGS OF FACT

1. Retail Services owns the following three retail liquor stores in South Carolina: Columbia Fine Wine, Inc., Charleston Fine Wine, Inc., and Greenville Fine Wine, Inc.
2. Pursuant to the ABC Act, each of Retail Services' stores has a retail dealer license issued by the DOR to sell alcoholic liquors.
3. Retail Services would like to expand its business in South Carolina by opening more retail liquor stores.
4. Based on its market research, Retail Services intends to open a store in Aiken County.
5. The ABC Act prohibits Retail Services from obtaining another retail dealer license. Without another license, Retail Services cannot proceed with its plans to open a retail liquor store in Aiken County.

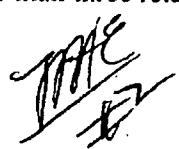
III. CONCLUSIONS OF LAW

A. ABC Constitution and Statutes

Article VIII-A of the South Carolina Constitution provides:

In the exercise of the police power, the General Assembly has the right to prohibit and to regulate the manufacture, sale, and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture, sell, and retail alcoholic liquors or beverages within the State under the rules and restrictions as it considers proper. The General Assembly may prohibit the manufacture, sale, and retail of alcoholic liquors and beverages within the State, and may authorize and empower state, county, and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities, under such rules and regulations, as it considers expedient. (Emp. added.)

Pursuant to the police power referenced above, the General Assembly in Section 61-6-140 provided that "No more than three retail dealer licenses may be issued to one licensee...."



In Hon. John D. Geathers, *The Regulation of Alcoholic Beverages in South Carolina* (S.C. Bar) at page 135, the authors describe the regulation of the sale of alcoholic Liquors as follows:

In South Carolina, the retail sale of alcoholic liquors for off-premises consumption may only be made from stand-alone liquor stores. That is, bottles of liquor may not be sold from grocery stores, convenience stores, or other retail food and beverage outlets, but may only be sold from specialized liquor stores. And, perhaps somewhat unfairly, these liquor stores are subject to the most stringent regulations of South Carolina's alcoholic beverage laws.

The authors at pages 137-38 describe the no more than three license statutes as follows:

The ABC Act also places strict restrictions on how many liquor stores a single licensee may own and operate. Specifically, a single retail liquor licensee, whether an individual or a corporation, may not be issued more than three retail dealer licenses, and these retail licenses may only be issued to one member of a single household. Beyond these restrictions upon formal licensure, the Act also prohibits a retail liquor license from holding a financial interest, either directly or indirectly, in more than three liquors stores. This type of regulation of the number of licenses that may be issued to one person is aimed at "controlling the tendency toward concentration of power in the liquor industry[,] preventing monopolies[,] avoiding practices such as indiscriminate price cutting and excessive advertising[,] and preserving the right of small, independent liquor dealers to do business," and *these restrictions have been held not to violate the due process or equal protection rights of liquor licensees.*

The authors at page 7 also note:

Laws regulating the manufacture, sale, and consumption of alcoholic beverages have been with South Carolina for as long as the states have had laws. Within the first four recorded acts of the colonial government, enacted on May 26, 1682, was "An Act for the suppression of Idle, Drunken and Swearing Persons, inhabiting within this Province," and, just over one year later, on September 25, 1683, South Carolina would enact its first law directly regulating the sale of alcoholic beverages in an act requiring licenses for taverns and "punch houses."

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B. Due Process Standard of Review

Plaintiff's argue the statutory three store maximum violates their due process rights. In *R.L Jordan Company, Inc. v. Boardman Petroleum, Inc.*, 338 S.C. 475, 527 S.E.2d 763 (2000) the South Carolina Supreme Court adopted the current due process standard. The Court stated:

Until today, we have adhered to the traditional substantive due process analysis developed by the United States Supreme Court during the first third of the 20th century. Under this "Lochner Era" approach, statutes regulating private economic relationships, such as this price control statute, are subject to a unique constitutional test, which most fail to pass. 527 S.E.2d at 764.

The Court then declared the new due process standard as follows:

Only South Carolina and Georgia have continued to adhere to this traditional approach.

The modern rule gives great deference to legislative judgment on what is reasonable to promote the public welfare when reviewing economic and social welfare legislation. 2 Rotunda & Nowak, *Treatise on Constitutional Law*, § 15.4 (1992). *Legislation is not "overturned unless the law has no rational relationship to any legitimate interest of government."* Id. At p. 407. This is the same standard we apply when reviewing substantive due process challenges to other types of statutes. E.g., *State v. Kiser*, 288 S.C. 441, 343 S.E.2d 292 (1986). (Emp. added.)

Accordingly, we overrule our cases which apply the traditional approach, and adopt this standard for reviewing all substantive due process challenges to state statutes: "*Whether it bears a reasonable relationship to any legitimate interest of government.*" Id at 765. (Emp. added).

In *Treatment and Care of Luckabaugh*, 351 S.C. 122, 568 S.E.2d 338 (2002) the Supreme Court further refined the test:

When an act is challenged under the due process clause, this "Court only requires the act to be reasonably designed to accomplish its purposes, unless some fundamental right or suspect class is implicated." *State v. Hornsby*, 326 S.C. 121, 125-26, 484 S.E.2d 869, 872 (1997). Legislation restricting or impairing a fundamental right "is subject to 'strict scrutiny' in determining its

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constitutionality." *Hamilton v. Board of Trustees*, 282 S.C. 519, 523, 319 S.E.2d 717, 720 (Ct. App.1984). *Legislation that does not infringe on fundamental rights is subject only to a rational basis test*, 19 S.C. Juris. *Constitutional Law* § 74 (1993). Under either type of analysis, the one who attacks the law bears the burden of showing it is unconstitutional. *See State v. Hornsby, supra*. 568 S.E.2d at 347. (Emp. added).

Obviously the right to own a fourth liquor store in South Carolina is not a fundamental right. Accordingly, the rational basis test is used. The rational basis looks at whether the three store limit bears a reasonable relationship to any legitimate interest of government. The burden is on the Plaintiff to show it does not. As stated below Plaintiff has failed to meet its burden.

C. Equal Protection Standard of Review

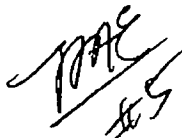
Plaintiff's Complaint alleges that the statutes violate the Equal Protection clauses found in the South Carolina and United States Constitutions, S.C. Const. Art. I, § 3, U.S. Const. Amend. XIV.

In *Fraternal Order of Police v. S.C. Department of Revenue*, 352 S.C. 420, 574 S.E.2d 717 (2002) the Supreme Court declared the Equal Protection test as follows:

The requirements of equal protection are satisfied as long as (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis. *Id.* According to the United States Supreme Court, [u]nless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. 574 S.E.2d at 722.

In *American Service Corp. of S.C. v. Hickie*, 312 S.C. 520, 435 S.E.2d 870 (1993) the Court similarly stated:

"In determining whether a statute violates the equal protection clauses of state and federal constitutions, we must give great deference to the classification passed by the legislature, and the



classification will be sustained against constitutional attack if it is not plainly arbitrary and there is 'any reasonable hypothesis' to support it." *Smith v. Smith*, 291 S.C. 420, 424, 354 S.E.2d 36, 39 (1987) [citing *Gary Concrete Products, Inc., v. Riley*, 285 S.C. 498, 331 S.E.2d 335 (1985)]. Equal protection is satisfied if: "(1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis." *Samson v. Greenville Hospital System*, 295 S.C. 359, 364, 368 S.E. 2d 665, 667 (1988).

A statute enacted pursuant to the legislature's powers is presumptively constitutional. 435 S.E.2d at 871.

In *Ed Robinson Laundry and Dry Cleaning, Inc. v. SC Department of Revenue*, 356 S.C. 120, 588 S.E. 2d 97, 99 (2003) the Court noted that the Plaintiff "must overcome this Court's mandate to sustain a legislative enactment if there is 'any reasonable hypothesis to support it.'"

Accordingly, for Plaintiff to prevail, this Court would have to find that (1) the three store limit does not bear a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are not treated alike; and (3) the classification does not rest on some reasonable basis. As stated below, the Court finds that (1) the three store limit does bear a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike; and (3) the classification does rest on some reasonable basis.



D. Due Process and Equal Protection Challenges to ABC Licensing Statutes

In 48 C.J.S. Intoxicating Liquors §62, the authors state, "A state legislature may provide for a licensing system for the granting or revocation of licenses for the sale of liquor and may limit the number of licenses which may be granted.... *The licensing of persons to sell liquor is not an exercise of the taxing power of the state to raise revenue, but rather of the police power.*" (Emp. added.)

The authors go on to state that "The legislature may limit the number of licenses, or the number of licenses for a particular species of liquor business which may be owned by the same person, group or organization, where the statutes are reasonable and not unduly discriminatory."

Id.

45 Am.Jur. 2d Intoxicating Liquor §102 similarly states:

As a general rule, a state may, without impairing constitutional rights, limit the number of liquor licenses that may be issued within a given area or political subdivision when the public good seems to so require. Placing a limitation on the number of licenses which will be issued for the sale of intoxicants within a municipality or within a given area is not in itself prohibitory, and is recognized as a legitimate regulation tending to promise public health, safety, and welfare within the police power, at least as long as the limitation is not carried to such an extreme as to amount to an absolute or practical prohibition. Such statutes have been upheld against attack on the grounds that they deny equal protection of the laws, create an illegal monopoly, discriminate in favor of a limited number of licensees, and amount to class legislation. They work no unlawful discrimination, since all have an equal right to apply for one until the maximum number of licenses are issued, and when the maximum is reached, all are equally excluded from applying. *The regulation of the number of licenses issued having as its aim controlling the tendency towards concentration of power in the liquor industry, preventing monopolies, avoiding practices such as indiscriminate price cutting and excessive advertising, and preserving the right of small, independent liquor dealers to do business is not discriminatory and does not violate equal protection principles.* (Emp. added.)

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Virtually every court which has examined limitations on the number of licenses against due process and equal protection claims has upheld them. See *Parks v. Allen*, 426 F.2d 610 (5th Cir. 1970) (2 licenses per family); *Peoples Super Liquor Stores, Inc. v. Jenkins*, 432 F.Supp.2nd 200 (2006) (3 licenses); *Johnson v. Martignetti*, 374 Mass. 784, 375 N.E.2d 290 (1978) (3 licenses); *Granite State Grocers Assoc. v. State Liquor Commission*, 112 N.H. 62, 289 A.2d 399 (1972) (2 licenses); and *The Grand Union Co. v. Sills*, 43 N.J. 390, 204 A.2d 853 (1964) (2 licenses). See also, *Maxwell's Pic-Pac, Inc. v. Dehner*, F.3d. 936 (Sixth Cir. 2013) (Kentucky statute which barred grocery and convenience stores from selling liquor while permitting drug stores and others from doing so did not violate due process); *Manuel v. State of Louisiana*, 982 So.2d 316 (2008) (three tier system didn't violate Sherman Act); *Massachusetts Food Assoc. v. Massachusetts Alcoholic Beverages Control Commission*, 197 F.3d. 560 (1st Cir. 1999) (3 License limitation does not violate Sherman Act.)

Several of the cases cite the public policy reasons for limiting the number of licenses which a person may hold. In *Johnson v. Martignetti*, *supra*, the Massachusetts Supreme Court stated:

First, many sound reasons have been advanced to support restrictions on the number of liquor licenses allowed any one business interest. Concentration of retailing in the hands of an economically powerful few has been thought to intensify the dangers of liquor sales stimulations, thereby threatening trade stability and promotion of temperance. Regulation of the number of licenses issued, therefore, aims at controlling the tendency toward concentration of power in the liquor industry; preventing monopolies; avoiding practices such as indiscriminate price cutting and excessive advertising; and preserving the right of small, independent liquor dealers to do business.



In *Granite State Grocers Assoc. v. State Liquor Commission*, *supra*, the New Hampshire

Supreme Court stated:

The obvious purpose of this well-rounded regulatory system is to supervise and to fractionalize the beverage industry....

The belief that concentration of control within the alcoholic beverage industry should be avoided is not unique to New Hampshire. At least twenty states similarly restrict the number of alcoholic beverage permits. Such statutes have been held constitutional as serving a public purpose in the two states where the question has been considered.

The issue here is whether the limitation confers a public benefit, not whether it also incidentally confers a private benefit.

Regulations against concentration in the alcoholic beverage business necessarily discriminate against chain stores.

Moreover, the only evidence suggesting that the limitation was intended as class legislation is that the smaller grocers were pleased with it. That a law is popular is insufficient to make it unconstitutional. 289 A.2d at 402.

In *The Grand Union Company v. Sills*, *supra*, the New Jersey Supreme Court stated:

In fixing its policy, the Legislature accepted widely held views as to sound liquor control. These include beliefs that the consumption of liquor is elastic rather than inelastic, that price cuttings and their advertisement, along with comparable practices, are undesirable in the liquor field as tending to stimulate consumption, and that absentee ownership or domination of retail establishments by distillers or other economically powerful interests, or the concentration of retaining in the hands of an economically powerful few, would intensify the dangers of sales stimulations and other abuses and would be inimical to temperance and trade stability. 204 A.2d at 859.

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The court also stated:

Similarly, it may not be said as a matter of law that the New Jersey Legislature's conclusion, that restricting multiple retail holdings would serve the interests and purposes of sound and effective liquor control, had no connection with the public health, safety, morals or general welfare. It may be that the acknowledged sales stimulating abilities and tendencies of the chain liquor store operation have thus far not been as inimical as in the tied house system. But the Legislature, being aware of the threatened growth of chain liquor stores, including those associated with well-known supermarkets and discount establishments, need not wait until the evils have become flagrant and the State's liquor control policy has been impaired. *Id.* at 862.

In *Parks v. Allen, supra*, the Fifth Circuit Court of Appeals adopted the District Court's Order upholding against due process and equal protection grounds an ordinance limiting two licenses per family. The District Court Order described the rationale for the limitation as follows:

Evidence produced at the hearing shows that there is no city regulation governing discrimination in pricing and/or brand preferences. But, in spite of state-prohibitions on the subject, there exist preferential pricing in favor of large retailers usually in the form of discounts or 'extras,' i.e. a 13th bottle to the case, etc. Also, scarce preferred brands are often 'paired' with volume purchases of common brands. Moreover, again in spite of state prohibitions to the contrary, 'split deliveries' exist wherein a discount is granted for large purchases delivered to two or more locations. Small single-location licensees have found it difficult to survive under such circumstances and, in some instances, have been driven out of business.

While 'bigness' itself can produce such abuses, the concentration of numbers of licenses in one family can and does create additional opportunities to nullify competition. Thus, volume could be built up by combined purchases between family licensees and 'split deliveries' could easily be arranged under such circumstances. Moreover, such concentration of licenses in one geographical area could itself facilitate retail price-fixing, even under a competitive system. 426 F.2d at 613.

The Court found the ordinance valid, stating:

Tested on the above principles, there is no hesitancy in concluding that the ordinance in question reasonably relates to the problem

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#10

sought to be controlled....Certainly, it cannot be said as a matter of law that the ordinances have no rational basis on which to rest. Their enforcement tends to increase competition and lessen the evils described of price discrimination and split deliveries.

Over and beyond such factual determination, however, the plaintiff contends that the ordinances per se are unconstitutional in that they penalize him unjustly. Thus, 'the condition of a man's birth or a matter over which he has no control cannot be made the basis of a rule restricting him from a license unless his condition is something that would make him unfit.' This claim that the ordinances are facially unconstitutional is likewise rejected. The argument presupposes that the sale of liquor is a right, rather than a privilege. And the test is the reasonableness of the ordinance as relates to the business licensed and not the reasonableness as it relates to a particular applicant. As seen, the ordinance is reasonably related to the control of abuses in the industry and plaintiff is on prior notice of its requirements. The mere fact that he does not qualify by virtue of birth is no bar, even though it might create a personal hardship. *Id.* at 614.

E. Valid Exercise of Police Power

Plaintiff contends that the 3 store limit statute is not a valid exercise of police power. In *The Regulation of Alcoholic Beverages in South Carolina*, *supra*, current Court of Appeals Judge Geathers states:

The regulation of alcoholic beverages in South Carolina is principally a matter reserved to state government, under the licensing system imposed by state law and administered by the South Carolina Department of Revenue. *This licensing system has been characterized as a "typical exercise of the police power of the State...designed for the comprehensive system of regulation that closely polices the commerce in alcoholic beverages. Id.* at pg 11. (Emp. added.)

See *Davis v. Query*, 209 S.C. 41, 56, 39 S.E.2d 117, 124 (1946) (recognizing the "fundamental fact" that a liquor retailer "is not engaged in an ordinary business and has no vested right to operate, despite his license, in any manner other than that dictated by the state; his is a perilous business; there is probably no field in which legislative bodies, and the people themselves in referenda, have been more fickle").

Judge Geathers also states:

By constitutional provision and by statute, the state holds nearly exclusive power over the regulation of the manufacture and sale of alcoholic beverages in South Carolina. Article VIII-A of the South Carolina Constitution authorizes the General Assembly, "[i]n the exercise of the police power," to address the sale of alcoholic liquors and beverages in one of three ways: it may (1) absolutely prohibit the manufacture and sale of alcoholic liquors and beverages within the state, (2) license persons or corporations to manufacture and retail such liquors and beverages "under such rules and restrictions it deems proper," or (3) restrict the sale of liquor to sales by designated governmental entities, as under the Dispensary system of the late-nineteenth and early-twentieth centuries. This Article further makes it clear that however this police power is exercised, licensing authority must remain with the state and may not be delegated to municipal governments. *Id* at 25.

The statutes in question were clearly enacted as part of the General Assembly's police power. The South Carolina Supreme Court has addressed a predecessor statute in *Pendarvis v. Berry*, 214 S.C. 363, 52 S.E.2d 705 (1949). At issue was the enforceability of a contract designed to circumvent or violate subsection (c)(9) of Section 4 of the ABC Act of 1945, which limited ownership to a single license. The action was brought for an accounting of a claimed partnership which was formed for the operation of a presumably illegal second liquor store. The Supreme Court held that the contract was unenforceable as it was designed to violate the single license requirement. The Court noted the Appellant's argument that the contract was nevertheless enforceable as follows:

The excellent brief of appellant is principally upon the contention that in view of the fact that the Act of 1945 contains no declaration that a contract in evasion of its terms is void and unenforceable and the Act is not designed to protect the public health and morals or to protect the public from imposition and fraud, a contract of evasion is not void but is enforceable in such a case as this. 52 S.E.2d at 706.

The Court rejected the argument stating:

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A further obstacle to appellant's attempted distinction is that it overlooks or ignores the consideration that the Alcoholic Beverage Control Act of 1945 is a typical exercise of the police power of the State and is designed for the protection of the morals and welfare of the public. The universality of this conception of legislation looking to control of the liquor traffic was pointed out in *Davis v. Query*, 209 S.C. 41, 39 S.E.2d 117. It cannot be gainsaid that, while the Act of 1945 is also a revenue law, its principal purpose is the protection of the public health and morals. Liquor control legislation is generally of such purpose. *Id.* (Emp. added).

F. Conclusion

As the U.S. Supreme Court has repeatedly stated, "The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." *Grenholm v. Heald*, 544 U.S. 460, 488 (2005).

"Because of its inherent evils, liquor has always been dealt with as a subject apart. ... Its sale may be prohibited entirely or permitted under severe restrictions." *The Grand Union Co. v. Sills*, *supra*, 204 A.2d at 857.

"The belief that concentration of control within the alcoholic beverage control industry should be avoided is not unique to New Hampshire. At least twenty states similarly restrict the number of alcoholic beverage permits." *Granite State Grocers Association v. State Liquor Commission*, *supra*, 289 A.2d at 402.

As stated above, many sound reasons have been advanced to support restrictions on the number of liquor licenses allowed any one business interest. Such restrictions have been upheld in virtually every case considering the issue.

The three store limitation bears a reasonable relationship to the legitimate interest of government.

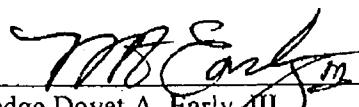
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The court finds that (1) the three store limit does bear a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike; and (3) the classification does rest on some reasonable basis.

Lastly, Sections 61-6-140 and 150 were validly enacted as part of the state's police powers.

Defendants' Motions for Summary Judgment are hereby granted.

AND IT IS SO ORDERED.



Judge Doyet A. Early III
Judge Second Judicial Circuit
Nov 19, 2014

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP0200259**

**Retail Services & Systems Total Wine & More
Inc**

**Department Of Revenue Abc Stores Of South
South Carolina Carolina**

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED November 21, 2014
Dej. Sedard
CLERK, S.C.A.O.S.
12:55pm

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:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

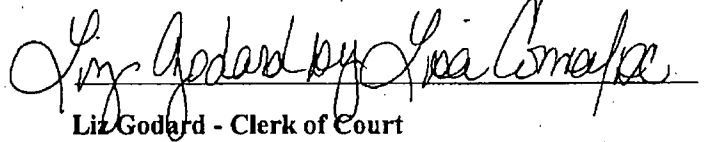
This judgment was entered on **11-21-2014**, and a copy mailed first class or placed in the appropriate attorney's box on **11-24-2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Montgomery Barnwell
Meridian/17Th Floor
1320 Main Street Columbia, SC 29211

Burnet Rhett Maybank III
PO Drawer 2426 Columbia, SC 29202-2426
Carol I. McMahan
PO Box 12265 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-02-00259

Retail Services & Systems, Inc., d/b/a Total Wine & More

South Carolina Department of Revenue and ABC Stores
of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ 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: Plaintiff's Motion to Reconsider Order Granting Defendants' Motion for Summary Judgment is DENIED. 12/18/14

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

[Signature]
S.C.P. & G.S.
[Signature] 12/35
Deputy Clerk

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

0136

Judge Code

12/18/14

Date

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of DEC, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of DEC, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Brian M. Barnwell

Burnett R. Maybank III
Carol McManahan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Lined area for additional information regarding decision by the court.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Retail Services & Systems, Inc., dba Total Wine &
More,

Plaintiff(s)

vs.

South Carolina Department of Revenue and ABC
Stores of South Carolina,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-02-00259

Submitted By: Brian M. Barnwell
Address: Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

SC Bar #: 78249
Telephone #: 803-799-2000
Fax #: 803-255-5944
Other:
E-mail: brian.barnwell@nelsonmullins.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)

- Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)

- Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☒ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510)

- ☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799)

Submitting Party Signature:

Brian M. Barnwell

Date: 2/5/14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc., dba
Total Wine & More

Plaintiff,

vs.

South Carolina Department of Revenue
and ABC Stores of South Carolina,

Defendants.

Civil Action No. 2014-CP-02-00259

SUMMONS

C O P Y
ORIGINAL FILED

FEB 05 2014
10:12 AM
AIKEN COUNTY
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Brian M. Barnwell

Dwight F. Drake

SC Bar No. 001745

E-Mail: dwight.drake@nelsonmullins.com

Brian M. Barnwell

SC Bar No. 78249

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1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

BAYLEN T. MOORE ATTORNEY AT LAW, LLC

Baylen T. Moore
SC Bar No. 16703
7001 Saint Andrews Rd, Ste 316
Columbia, SC 29212
(803) 513-2619
baylenmoore@bellsouth.net

*Attorneys for Retail Services & Systems, Inc., dba
Total Wine & More*

Columbia, South Carolina

February 5, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc., dba
Total Wine & More

Civil Action No. 2014-CP-02-

00259

Plaintiff,

vs.

South Carolina Department of Revenue
and ABC Stores of South Carolina,

Defendants.

COMPLAINT
(Declaratory Judgment)
Non-Jury

C O P Y
ORIGINAL FILED

FEB 05 2014
AIKEN COUNTY
CLERK OF COURT

COMES NOW Retail Services & Systems, Inc., dba Total Wine & More

("Plaintiff" or "Retail Services") and brings this action for a declaratory judgment based on the allegations set forth below.

PARTIES

1. Retail Services is organized under the laws of the State of Maryland and has its principal place of business in Potomac, Maryland.

2. Defendant South Carolina Department of Revenue ("DOR") is an administrative agency of the State of South Carolina, created by and existing under the authority of the Government of the State of South Carolina. The DOR administers and monitors South Carolina's laws which regulate the manufacture, sale, and retail of alcoholic liquors.

3. Upon information and belief, Defendant ABC Stores of South Carolina ("Defendant ABC Stores") is organized under the laws of the State of South Carolina; has its principal place of business in the State of South Carolina; and has as its principal

purpose the advocacy of legislative matters for its members who are owners and holders of retail liquor licenses.

JURISDICTION AND VENUE

4. This is an action for a declaratory judgment pursuant to S.C. Code Ann. section 15-33-10, *et seq.* for the purpose of determining a question of actual controversy regarding the constitutionality of S.C. Code Ann. sections 61-6-140 and -150, which are enforced by the DOR and which directly affect Retail Services and Defendant ABC Stores.

5. Retail Services has standing to bring this action because it has a substantial interest in the subject matter of this litigation due to the fact that it is directly and detrimentally affected by the enforcement of the statutes that it is challenging. The substantial interest arises by virtue of Retail Services' ownership of Columbia Fine Wine, Inc., Charleston Fine Wine, Inc., and Greenville Fine Wine, Inc., each of which has a license from the DOR for the retail sale of liquor. The DOR is prohibited by the language of S.C. Code Ann. sections 61-6-140 and -150 from issuing "[no] more than three" licenses to any corporation or entity in which Retail Services has any ownership interest.

6. This Court has subject matter and personal jurisdiction.

7. The South Carolina Attorney General ("Attorney General") is not a named party to this action; however, pursuant to S.C. Code Ann section 15-53-80, the undersigned counsel for Total Wine has served a copy of this Complaint on the Attorney General.

8. Venue is proper in this Court because Retail Services is prevented by the terms of S.C. Code Ann. sections 61-6-140 and -150 from applying for a retail dealer license to open a retail liquor store in Aiken County, South Carolina.

FACTS

9. Article VIII-A of the Constitution of the State of South Carolina (the "Constitution") provides that "[i]n the exercise of the police power the General Assembly has the right to prohibit and to regulate the manufacture, sale, and retail of alcoholic liquors or beverages within the State," thus limiting the authority of the General Assembly's power to regulate alcoholic liquor to the exercise of its "police power."

10. The power to administer and enforce statutes concerning the manufacture, sale, and retail of alcoholic liquors is vested in the DOR including the administration and enforcement of S.C. Code Ann. sections 61-6-140 and -150.

11. In its present day form, S.C. Code Ann. section 61-6-140 limits the number of retail dealer licenses that can be issued to a licensee or issued for the use of a corporation to "no more than three."

12. In its present day form, S.C. Code Ann. section 61-6-150 prohibits any person from directly or indirectly having "any interest whatsoever" in more than three retail liquor stores.

13. Prior to its amendment in 1978, the statutory law in South Carolina did not limit the number of licenses that could be issued for the use of a corporation and it did not place any limits on the number of retail liquor stores in which a person could have a direct or indirect interest.

14. S.C. Code Ann. section 61-6-150 continues to provide a grandfather provision stating that it does "not apply to a person having an interest in retail liquor stores on July 1, 1978."

15. S.C. Code Ann. sections 61-6-140 and -150 do not provide any explanation as to why the number of licenses that can be issued or the number of retail liquor stores that a person may have an interest in is limited to three.

16. Additionally, there is no rational basis for S.C. Code Ann. section 61-6-150 to treat people who had an interest in retail liquor stores on July 1, 1978 differently from those who acquired an interest in retail liquor stores after July 1, 1978.

17. Retail Services desires to open a retail liquor store in Aiken County, South Carolina.

18. The DOR's enforcement of S.C. Code Ann. sections 61-6-140 and -150, however, prevents Retail Services from applying for a license or opening a store in Aiken County, South Carolina because three retail dealer licenses have already been issued for Retail Services' use in South Carolina.

19. Upon information and belief, Defendant ABC Stores lobbies before the General Assembly on behalf of certain retail liquor stores that benefit financially and economically from the current versions of S.C. Code Ann. sections 61-6-140 and -150 and, therefore, has an interest in defending the economic protectionism created by those sections.

20. Because Defendant ABC Stores has an interest that would be affected by a declaration from this Court that S.C. Code Ann. sections 61-6-140 and -150 are

unconstitutional, Defendant ABC Stores is a proper party to this action pursuant to S.C. Code Ann. section 15-53-80.

FOR A FIRST CAUSE OF ACTION

**(Declaratory Judgment—S.C. Code Ann. Sections 61-6-140 and -150 are
not within the Scope of the General Assembly's Police Powers)**

21. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

22. Under Article VIII-A of the Constitution, the General Assembly must act within the scope of its police powers when it regulates the manufacture, sale, and retail of alcoholic liquors, which means any statute that regulates the manufacture, sale, and retail of alcoholic liquor must be for the purpose of protecting the health, safety, or morals of the State.

23. Any statute purporting to regulate the manufacture, sale, and retail of alcoholic liquor that is not a police measure is unconstitutional.

24. S.C. Code Ann. sections 61-6-140 and -150 have no relation to the morals, good health, or safety of South Carolina.

25. Instead, S.C. Code Ann. sections 61-6-140 and -150 are purely for the economic protection of the members of Defendant ABC Stores and Defendant ABC Stores has, in fact, defended these sections before the General Assembly as measures necessary to provide economic protectionism for its members.

26. Specifically, Defendant ABC Stores, by and through its members, testified on March 20th, 2013 before a South Carolina Senate Subcommittee in opposition to S. Bill 404, which was authored by Senator Chauncey K. Gregory and

Senator C. Bradley Hutto. Defendant ABC Stores also testified in support of retaining S.C. Code Ann. sections 61-6-140 and -150.

27. As originally introduced, S. Bill 404 would have amended S.C. Code Ann. section 61-6-140 by raising the number of retail dealer licenses that can be issued to a licensee or issued for the use of a corporation from three to ten, and would have amended S.C. Code Ann. section 61-6-150 to allow a person to have an interest in up to ten retail liquor stores.

28. Defendant ABC Stores' entire basis for opposing S. Bill 404 and retaining S.C. Code Ann. sections 61-6-140 and -150 was to preserve the economic protectionism that these statutes currently provide for its members.

29. The Constitution does not permit the General Assembly to engage in economic protectionism when it regulates the manufacture, sale, and retail of alcoholic liquors.

30. Because S.C. Code Ann. sections 61-6-140 and -150 are not within the scope of the General Assembly's police powers, they are unconstitutional.

31. Retail Services has been harmed by S.C. Code Ann. sections 61-6-140 and -150 by virtue of the fact that it cannot apply for a license nor open a retail liquor store in Aiken County, South Carolina since three retail dealer licenses have already been issued for its use in South Carolina.

32. Therefore, Retail Services is entitled to a judgment that S.C. Code Ann. sections 61-6-140 and -150 are unconstitutional.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment—S.C. Code Ann. Section 61-6-150
Violates the One Subject Rule)

33. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

34. Under Article III, section 17 of the Constitution, “[e]very Act or resolution having the force of law shall relate to but one subject and that shall be expressed in the title.”

35. S.C. Code Ann. section 61-6-150, which prohibits any person, directly or indirectly, from having any interest in any retail liquor store beyond the three store limit of S.C. Code Ann. section 6-6-140, was enacted as Section 35 of the permanent provisions of Act 644 of 1978, which was the General Appropriations Act of that year.

36. S.C. Code Ann. section 61-6-150 does not reasonably or inherently relate to the raising and spending of tax monies.

37. Therefore, S.C. Code Ann. section 61-6-150 violates the one subject rule set forth in Article III of the Constitution and is unconstitutional.

38. Retail Services has been harmed by S.C. Code Ann. section 61-6-150 by virtue of the fact that it cannot apply for a license nor open a retail liquor store in Aiken County, South Carolina since three retail dealer licenses have already been issued for its use in South Carolina.

39. Therefore, Retail Services is entitled to a judgment that S.C. Code Ann. section 61-6-150 is unconstitutional.

FOR A THIRD CAUSE OF ACTION
**(Declaratory Judgment—S.C. Code Ann. sections 61-6-140 and -150 Violate the
Equal Protection and Due Process Clauses Because They are Arbitrary)**

40. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

41. Article 1, section 3 of the Constitution states as follows: "The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

42. Amendment 14 of the United States Constitution provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

43. While the General Assembly has the power in passing legislation to make a classification of its citizens, the constitutional guaranty of equal protection of the law requires that all members of a class be treated alike under similar circumstances and conditions, and that any classification cannot be arbitrary but must bear a reasonable relation to the legislative purpose sought to be effected.

44. S.C. Code Ann. sections 61-6-140 and -150 treat large retail dealers differently from small retail dealers by arbitrarily limiting the number of licenses that can be issued to a person or for the use of a corporation to three and the number of retail liquor stores that a person may have an interest in to three.

45. The three license and three store limitations created by S.C. Code Ann. sections 61-6-140 and -150 have no reasonable relation to protecting the health, safety, or morals of this State, which must be the purpose of any legislation that regulates the manufacture, sale, and retail of alcoholic liquors, and there is no rational basis for treating similarly situated retail dealers differently.

46. S.C. Code Ann. section 61-6-150 also arbitrarily classifies and treats people who had an interest in retail liquor stores on July 1, 1978 differently from those who acquired an interest in retail liquor stores after July 1, 1978.

47. The classification created by S.C. Code Ann. section 61-6-150 does not bear a reasonable relation to the protection of the health, safety, or morals of the State.

48. Accordingly, S.C. Code Ann. sections 61-6-140 and -150 create arbitrary classes, treat people within the same class differently for no rational reason or basis, are arbitrary, and otherwise violate the equal protection and due process clauses of the South Carolina and United States Constitution.

49. As a result, Retail Services has been denied due process and equal protection of the law.

50. Retail Services has been harmed by S.C. Code Ann. sections 61-6-140 and -150 by virtue of the fact that it cannot apply for a license nor open a retail liquor store in Aiken County, South Carolina since three retail dealer licenses have already been issued for its use in South Carolina.

51. Therefore, Retail Services is entitled to a judgment that S.C. Code Ann. sections 61-6-140 and -150 are unconstitutional.

WHEREFORE, Retail Services requests that this Court inquire into this matter and issue a judgment declaring that S.C. Code Ann. sections 61-6-140 and -150 are unconstitutional and providing such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

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*Attorneys for Retail Services & Systems, Inc., dba
Total Wine & More*

Columbia, South Carolina

February 5, 2014

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Retail Services & Systems, Inc., dba
Total Wine & More

Plaintiff,

vs.

South Carolina Department of Revenue
and ABC Stores of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Case No. 2014-CP-02-00259

**ABC STORES OF SOUTH CAROLINA'S
ANSWER TO PLAINTIFF'S COMPLAINT**

Defendant, ABC Stores of South Carolina, by and through their undersigned attorneys, answer the Complaint of the Plaintiff, Retail Services & Systems, Inc., dba Total Wine & More, as follows:

FOR A FIRST DEFENSE

(General Denial)

1. Defendant admits paragraphs 1, 2, 6, 7, 10, 12, 15, 18, 20, 21, 26, 27, 33, 34, and 40-43.
2. Defendant admits that ABC Stores is organized and has its principal place of business in South Carolina but denies the remaining allegations of paragraph 3.
3. Defendant does not have knowledge or information sufficient to form a belief as to paragraph 17, but would deny the same and demand strict proof thereof.
4. Defendant admits that ABC Stores lobbies before the General Assembly but denies the remaining allegations of Paragraph 19.
5. Defendant denies paragraphs 4, 5, 8, 9, 13, 14, 16, 19, 22-25, 28-32, 35-39, and 44-51.

FOR A SECOND DEFENSE

(Failure to State a Claim)

6. The Complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action and should, therefore, be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

(No Case or Controversy)

7. Plaintiff has filed this case in Aiken County allegedly on the grounds that Plaintiff anticipates or desires to file an ABL Application with the South Carolina Department of Revenue to sell liquor in Aiken County. Plaintiff has not in fact filed an application with the Department of Revenue to sell liquor in Aiken County.

8. A threshold inquiry for any court in South Carolina is a determination of justiciability, i.e. whether the litigation presents an active case or controversy. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination as distinguished from a contingent, hypothetical or abstract dispute.

9. Typically, litigation over a license is not ripe until the application has been denied.

10. The DOR has not been presented with an application to sell liquor in Aiken County and by definition, therefore, has not denied it.

11. This lawsuit should be dismissed in that there is no ripe justiciable controversy.

FOR A FOURTH DEFENSE

(No Case or Controversy)

12. On information and belief, this litigation was filed for the purpose of pressuring or intimidating the Defendants to support, or take no position, or enter into a legislative compromise in the General Assembly on pending legislation, S.404.

13. S.404 was introduced on behalf of the Plaintiff. It increases the number of permissible licenses available to an eligible licensee from three to ten.

14. The litigation accordingly does not involve a justiciable controversy and should be dismissed.

FOR A FIFTH DEFENSE

(Failure to Exhaust Administrative Remedies)

15. Plaintiff's failure to exhaust its administrative remedies (including, without limitation, by applying for a retail dealer License in Aiken County) prior to filing this lawsuit, bars Plaintiff from pursuing or obtaining any of the relief sought in the Complaint.

FOR A SIXTH DEFENSE

(Improper Venue)

16. Pursuant to S.C. Code Ann. § 15-7-30(E) "a civil action tried...against a domestic corporation...must be brought and tried in the county in which the: (1) corporation...has its principal place of business at the time the cause of action arose; or (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred."

17. The principal place of business for this Defendant is Richland County and Lexington County for the Department of Revenue. The cause of action is based upon the Defendant Department of Revenue's failure to issue an ABL License to Plaintiff. Although no license has been applied for, if such application had been submitted, it would have been processed in Lexington County. Venue accordingly lies in Richland or Lexington, not Aiken County.

FOR A SEVENTH DEFENSE TO THE SECOND CAUSE OF ACTION

(No violation of the One Subject Rule)

18. Plaintiff's second cause of action alleges that section 61-6-150 was enacted as a part of section 35 of Act 644 of 1978, which was the General Appropriations Act of that year. Plaintiff's complaint alleges that this violated Art. III, Section 17 of the Constitution.

19. As the Code Commissioner's Notes to Section 61-6-140 and Section 61-6-150 plainly states, both Code sections were enacted in Senate Bill 1084, Act No. 415 of 1996.

20. Section 35 of Act 644 enacted Code Section 6-3-460. This Code section has long since been repealed.

FOR AN EIGHTH DEFENSE TO THE THIRD CAUSE OF ACTION
(21ST Amendment)

21. Under the Twenty-first Amendment to the United States Constitution, States are given particularly wide latitude in regulating the liquor industry.

22. Under the Twenty-first Amendment a state can constitutionally prohibit the sale of liquor altogether.

23. Given that South Carolina can under the Twenty-first Amendment constitutionally prohibit the sale of all liquor whatsoever, Plaintiff has no constitutional right to four or more licenses to sell liquor.

FOR A NINTH DEFENSE TO THE THIRD CAUSE OF ACTION
(Art. VIII – A of the South Carolina Constitution)

24. Article VIII-A of the South Carolina Constitution authorizes the General Assembly, "[i]n the exercise of the police power," to address the sale of alcoholic liquors and beverages in one of three ways: it may (1) absolutely prohibit the manufacture and sale of alcoholic liquors and beverages within the state, (2) license persons or corporations to manufacture and retail such liquors and beverages "under such rules and restrictions it deems proper," or (3) restrict the sale of liquor to sales by designated governmental entities.

25. Given that South Carolina under Art. VIII of the South Carolina Constitution can constitutionally prohibit the sale of liquor whatsoever, Plaintiff has no constitutional right to four or more licenses to sell liquor.

FOR A TENTH DEFENSE TO THE THIRD CAUSE OF ACTION
(No violation of Due Process)

26. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.

27. In *R.L. Jordan, Inc. v. Boardman Petroleum, Inc.*, the South Carolina Supreme Court adopted the modern test for substantive due process challenges to social and economic welfare legislation. Noting that modern rules give great deference to legislative judgment to promote public welfare, the Supreme Court adopted the modern standard for reviewing all substantive due process challenges to state statutes. Legislation will not be overturned unless the law has no rational relationship to any legitimate interest of government.

28. The state has a legitimate interest in limiting access to a product with high alcohol content, such as liquor.

29. The state has a legitimate interest in restricting the number and character of places selling liquor.

30. The state has a legitimate interest in maintaining a competitive retail liquor industry.

31. The state has many other legitimate reasons to have restrictions on the number of liquor licenses allowed any one business interest. Concentration of retailing in the hands of an economically powerful few has intensified the dangers of liquor sales stimulations, thereby threatening trade stability and promotion of temperance. Regulation of the number of licenses issued, therefore, controls the tendency toward concentration of power in the liquor industry; preventing monopolies; avoiding practices such as indiscriminate price cutting and excessive advertising; and preserving the right of small, independent liquor dealers to do business.

FOR AN ELEVENTH DEFENSE TO THE THIRD CAUSE OF ACTION

(No violation of Equal Protection)

32. Courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or, (3) strict scrutiny. If the classification (such as a restriction on the number of liquor licenses) does not implicate a suspect class or abridge a fundamental right, the rational basis test is used. *City of Cleburne, Tex. V. Cleburne Living Ctr.*, 473 U.S. 432, 439-40, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). "When social or economic legislation is at issue, the Equal Protection Clause allows the states wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes." *Id.*

33. Under the rational basis test, the requirements of equal protection are satisfied when: (1) the classification bears a reasonable relation to the legislative purpose sought to be affected; (2) the members of the class are treated alike under similar circumstances and conditions; and, (3) the classification rests on some reasonable basis.

34. According to the United States Supreme Court, unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, their decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest.

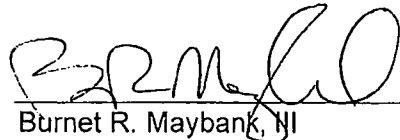
35. Sections 61-6-140 and 61-6-150 do not create arbitrary classes. No person can obtain a fourth license in South Carolina today.

36. As stated above, the state has a legitimate interest in limiting the number of retail liquor licenses one person may hold.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing for each and every claim for relief averred in the Complaint;

2. That judgment on the Complaint, and each and every claim for relief therein, be entered in favor of Defendant and against Plaintiff;
3. That Defendant be awarded its attorneys' fees and costs incurred herein; and
4. For such other and further relief as the Court deems just and proper.



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Attorneys for Defendant ABC Stores of South
Carolina

March 13, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Retail Services & Systems, Inc., dba
Total Wine & More

Plaintiff,

vs.

South Carolina Department of Revenue
and ABC Stores of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

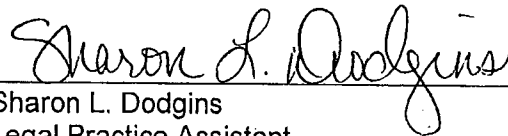
Case No. 2014-CP-02-00259

CERTIFICATE OF SERVICE

This is to certify that **DEFENDANT'S ANSWER TO THE COMPLAINT** has been served on Plaintiff's counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 13th day of March, 2014:

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Dwight Drake
Meridian/17th Floor
1320 Main Street
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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc.,)
d/b/a Total Wine & More,)

2014-CP-02-00259

Plaintiff,)

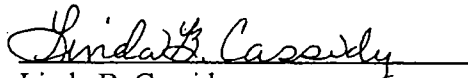
PROOF OF SERVICE

vs.)

South Carolina Department of)
Revenue and ABC Stores)
of South Carolina,)

Defendants.)

I, Linda B. Cassidy, an employee of the South Carolina Department of Revenue, hereby certify that I have caused to be filed, by U.S. Mail, postage prepaid, the Original Answer of the Department of Revenue in the above captioned action to: The Honorable Liz Godard, Clerk of Court, Second Judicial Circuit, P.O. Box 583, Aiken, South Carolina 29802, with copies of the same to each of the following attorneys of record: Dwight F. Drake, Esquire, Brian M. Barnwell, Nelson Mullins Riley & Scarborough LLP, Post Office Box 11070, Columbia, S.C. 29201, Baylen T. Moore, Esquire, 7001 Saint Andrews Rd., Ste. 316, Columbia, S.C. 29212 and Burnet R. Maybank, III, Esquire, Nexsen Pruet, LLC, PO Drawer 2426, Columbia, SC 29202, this 18th day of March, 2014.


Linda B. Cassidy

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc.,)
d/b/a Total Wine & More,)

2014-CP-02-00259

Plaintiff,)

ANSWER OF THE DEFENDANT

vs.)

SOUTH CAROLINA
DEPARTMENT OF REVENUE

South Carolina Department of)
Revenue and ABC Stores)
of South Carolina,)

Defendants.)

COMES NOW, the South Carolina Department of Revenue (Department or Defendant), hereby answering the allegations set forth in Plaintiff's Complaint as set forth below. Any allegation not herein admitted or qualified is denied.

FOR A FIRST DEFENSE

1. The Department is without sufficient information to admit or deny the allegations set forth in Paragraph 1, therefore denies same and demands strict proof thereof.
2. The Department denies the allegations set forth in Paragraph 2 as written. In further answering such allegations therein, the Department admits that it is an agency of the Executive Branch of the State of South Carolina. In further answering such allegations the Department avers that the General Assembly has provided that it, the Department, is the "sole and exclusive power to issue all licenses, permits, and certificates provided for" in South Carolina Code of Laws, Title 61 and "has the "sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors;" S.C. Code Ann. §§ 61-2-70 and 61-2-80 (2009).

3. On information and belief the Department admits the allegations of Paragraph 3 to the extent such allege that ABC Stores of South Carolina is organized under the laws of the State of South Carolina, has its principal place of business in the State of South Carolina. The Department is without sufficient information to admit or deny the remaining allegations therein as such it denies same and demands strict proof thereof.
4. The Department denies the allegations set forth in Paragraph 4. In further answering such allegations the Department denies venue is proper and also denies jurisdiction as there is no case or controversy for adjudication.
5. The Department denies the allegations of Paragraph 5 and demands strict proof thereof.
6. The Department denies the allegations of Paragraph 6 and demands strict proof thereof.
7. On information and belief the Department admits the allegations of Paragraph 7. In further answering such allegations the Department avers that S.C. Code Ann. § 15-53-80 (2005) also provides that "[i]f a statute . . . is alleged to be unconstitutional the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard."
8. The Department denies the allegations of Paragraph 8 and reiterates its response noted in Paragraph 4, supra, that venue is not proper in Aiken County. In further answering such allegations the Department avers that the statutory scheme for the issuance of retail dealer licenses prohibits the Department from "issuing" more

than three such licenses for the use of one corporation. S.C. Code Ann. § 61-6-140 (2009).

9. The Department admits the allegations of Paragraph 9 to the extent such recite verbatim the actual language of the South Carolina Constitution. In further answering such allegations the Department denies any other allegations set forth therein and demands strict proof of the same.
10. The Department admits the allegations set forth in Paragraph 10 to the extent such conform with the actual language of the South Carolina statutes. The Department denies any other allegations set forth therein and demands strict proof of same.
11. The Department admits the allegations of Paragraph 11 insofar as they conform with the text of South Carolina statutes. The Department denies any other allegations set forth therein and demands strict proof of the same.
12. The Department admits the allegations of Paragraph 12 insofar as such conform with the text of South Carolina statutes. The Department denies any other allegations set forth therein and demands strict proof of same.
13. The Department admits the allegations of Paragraph 13 to the extent such conform with the text of South Carolina statutes, both current and pre-1978. The Department denies any further allegations set forth therein and demands strict proof of the same.
14. The Department admits the allegations set forth in Paragraph 14 to the extent such conform with the text of South Carolina statutes. The Department denies any further allegations set forth therein and demands strict proof of the same.

15. The Department denies the allegations of Paragraph 15 and demands strict proof of the same.
16. The Department denies the allegations of paragraph 16 and demands strict proof of the same.
17. The Department is without sufficient information to admit or deny Paragraph 17; therefore it denies same and demands strict proof thereof.
18. The Department denies the allegations set forth in Paragraph 18, and demands strict proof thereof.
19. The Department is without sufficient information to admit or deny the allegations of Paragraph 19; therefore it denies same and demands strict proof thereof.
20. The Department denies the allegations of Paragraph 20 and demands strict proof thereof.
21. Paragraphs 1-20 are reiterated as if fully set forth herein verbatim.
22. The Department admits the allegations set forth in Paragraph 22 to the extent such conform with the text of the South Carolina Constitution and statutes. The Department denies any other allegations set forth therein and demands strict proof thereof.
23. The Department denies the allegations of Paragraph 23 and demands strict proof thereof.
24. The Department denies the allegations of Paragraph 24 and demands strict proof thereof.
25. The Department denies the allegations set forth in Paragraph 25 and demands strict proof thereof.

26. The Department is without sufficient information to admit or deny the allegations set forth in Paragraph 26; therefore it denies same, demands strict proof thereof and craves reference to the actual text of any such testimony to the extent such exists.
27. The Department is without sufficient information to admit or deny the allegations set forth in Paragraph 27, therefore it denies same, demands strict proof thereof and craves reference to the text of any such proposed legislation to the extent such exists.
28. The Department is without sufficient information to admit or deny the allegations set forth in Paragraph 28; therefore it denies same and demands strict proof thereof.
29. The Department is without sufficient information to admit or deny the allegations of Paragraph 29 therefore it denies same and demands strict proof thereof.
30. The Department denies the allegations set forth in Paragraph 30 and demands strict proof thereof.
31. The Department denies the allegations set forth in Paragraph 31 and demands strict proof thereof.
32. The Department denies the allegations set forth in Paragraph 32 and demands strict proof thereof.
33. Paragraphs 1-32 are reiterated as if fully set forth herein.
34. The Department admits the allegations of Paragraph 34, to the extent such conforms with the text of the South Carolina Constitution. The Department denies any other allegations set forth therein and demands strict proof thereof.

35. The Department is without sufficient information to admit or deny the allegations set forth in Paragraph 35; therefore it denies same and demands strict proof thereof. Further, the Department craves reference to the text of the specific Act noted in such Paragraph.
36. The Department denies the allegations set forth in Paragraph 36 and demands strict proof thereof.
37. The Department denies the allegations set forth in Paragraph 37 and demands strict proof thereof.
38. The Department denies the allegations set forth in Paragraph 38 and demands strict proof thereof.
39. The Department denies the allegations set forth in Paragraph 39 and demands strict proof thereof.
40. Paragraphs 1-39 are reiterated as if fully set forth herein verbatim.
41. The Department admits the allegations of Paragraph 41 to the extent such conform with the text of the United States and South Carolina Constitution. The Department denies any other allegations set forth therein and demands strict proof thereof.
42. The Department admits the allegations of Paragraph 42 to the extent such conforms with the text of the 14th Amendment to the United States Constitution. The Department denies any further allegations set forth therein and demands strict proof thereof.
43. The Department is without sufficient information to admit the allegations set forth in Paragraph 43 and therefore denies same and demands strict proof thereof. In

further answering such allegations the Department craves reference to the constitutional provisions and statutes alluded to therein.

44. The Department denies the allegations set forth in Paragraph 44 and demands strict proof thereof.
45. The Department denies the allegations set forth at Paragraph 45 and demands strict proof thereof.
46. The Department denies the allegations set forth at Paragraph 46 and demands strict proof thereof.
47. The Department denies the allegations of Paragraph 47 and demands strict proof thereof.
48. The Department denies the allegations at Paragraph 48 and demands strict proof thereof.
49. The Department denies the allegations at Paragraph 49 and demands strict proof thereof.
50. The Department denies the allegations of Paragraph 50 and demands strict proof thereof.
51. The Department denies the allegations of Paragraph 51 and demands strict proof thereof.

FOR A SECOND DEFENSE

52. Venue is not proper in Aiken County. Rather, venue is proper in Lexington or Richland County. S.C. Code Ann. § 15-77-50 (2005). Accordingly the Department moves pursuant to Rule 12(b) (3), SCRCP for a change of venue to Richland or Lexington County.

FOR A THIRD DEFENSE

53. The court is without subject matter jurisdiction to hear this case. There exists no case or controversy here, merely a hypothetical question. Accordingly the Department moves for dismissal of the matter pursuant to Rule 12(b) (1), SCRCF.

FOR A FOURTH DEFENSE

54. Plaintiff has failed to state facts sufficient to give rise to a cause of action. Accordingly the Department moves for dismissal of this matter pursuant to Rule 12(b) (6), SCRCF.

FOR A FIFTH DEFENSE

55. Plaintiff lacks standing to bring this action.

FOR A SIXTH DEFENSE

56. Section 61-6-140 and S.C Code Ann. 61-6-150 (2009) are constitutional and a valid exercise of the State's police power.

FOR A SEVENTH DEFENSE

57. The enacting legislation giving rise to §§ 61-6-140 and 61-6-150 do not violate the South Carolina Constitution's "one subject rule."

FOR AN EIGHTH DEFENSE

58. The "enrolled bill rule" mandates that §§ 61-6-140 and 61-6-150 do not violate the South Carolina Constitution's "one subject rule."

FOR A NINTH DEFENSE

59. Sections 61-6-140 and 61-6-150 are constitutional and do not violate the equal protection of the law.

FOR A TENTH DEFENSE

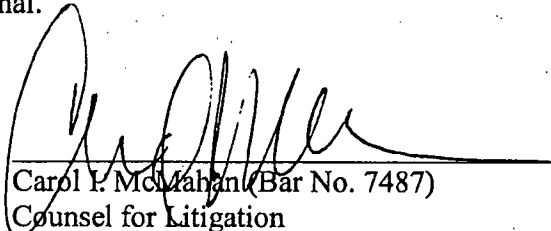
60. Plaintiff has not alleged that it has exhausted all administrative remedies under the Revenue Procedures Act (S.C. Code Ann. § 12-60-10) (2014) to the extent such provisions may be applicable to this matter.

FOR AN ELEVENTH DEFENSE

61. Plaintiff has not stated a claim for fees and costs in this matter and such are not appropriate and authorized in this case.

FOR A TWELFTH DEFENSE

62. Legislation is presumed constitutional and the party challenging the constitutionality of a statutory provision bears the heavy burden of proving such enactments are unconstitutional.



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Columbia, South Carolina
March 18, 2014

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

Retail Services & Systems, Inc. d/b/a Total Wine & More,
☒ Plaintiff,

vs.

SC Dept. of Revenue and ABC Stores of SC,
☐ Defendants.

Case No. 2014-CP-02-00259

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

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- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed 30-45 min. Court Reporter Needed: YES ☒ NO ☐

SECTION II: Motion Type

- ☐ Written order attached
☐ Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff ☒ Defendant ☐

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT:** \$ 25.00

- ☐ **EXEMPT:** (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instruction
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

**AIKEN COUNTY
CLERK OF COURT**

CLERK'S VERIFICATION

Collected by: _____
(print name)

DATE FILED

- ☐ **MOTION FEE COLLECTED:** _____
☐ **CONTESTED - AMOUNT DUE:** _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc., dba) Civil Action No. 2014-CP-02-00259
Total Wine & More)
)

Plaintiff,)

vs.)

South Carolina Department of Revenue)
and ABC Stores of South Carolina,)
)

Defendants.)
)

PLAINTIFF'S MOTION FOR C O P Y
SUMMARY JUDGMENT ORIGINAL FILED

APR 10 2014

AIKEN COUNTY
CLERK OF COURT

NOW COMES Plaintiff Retail Services & Systems, Inc. dba Total Wine & More ("Retail Services"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and respectfully moves this Court for an entry of summary judgment in favor of Retail Services. The grounds for this Motion are that the pleadings, exhibits, and affidavits submitted herewith, if any, show that there is no genuine issue as to any material fact and that Retail Services is entitled to judgment as a matter of law. The specific arguments in support of this Motion include the following:

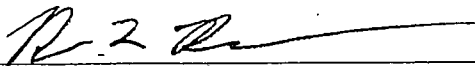
Section 61-6-140 and -150 of the South Carolina Code of Laws (the "Statutes") should be declared unconstitutional because:

1. The General Assembly did not act within the scope of its police powers when it enacted the Statutes, and therefore, the Statutes are unconstitutional pursuant to Article VIII-A of the Constitution of the State of South Carolina;
2. The Statutes arbitrarily treat Retail Services differently from others that are similarly situated, and therefore, they violate South Carolina's Equal Protection Clause; and
3. The Statutes arbitrarily deprive Retail Services of a cognizable property interest, and therefore, they violate South Carolina's Due Process Clause.

This Motion is further based on the South Carolina Rules of Civil Procedure, the applicable statutory and case law, and any supporting memorandum filed by Retail Services before, during, or after the hearing on this matter.

Respectfully submitted,

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April 9, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc., dba) Civil Action No. 2014-CP-02-00259
Total Wine & More)

Plaintiff,)

vs.)

South Carolina Department of Revenue)
and ABC Stores of South Carolina,)

Defendants.)

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

COPY
ORIGINAL FILED

APR 10 2014

AIKEN COUNTY
CLERK OF COURT

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiff Retail Services & Systems, Inc., dba Total Wine & More ("Retail Services") respectfully submits this Memorandum of law in Support of its Motion for Summary Judgment.

INTRODUCTION

Retail Services is seeking an Order from this Court declaring S.C. Code Ann. sections 61-6-140 and -150 (the "Statutes") unconstitutional. The Statutes are part of the Alcoholic Beverage Control Act (the "ABC Act"), and they limit the number of retail dealer licenses that the Defendant South Carolina Department of Revenue ("DOR") can issue to an individual or corporation. Under the Constitution of the State of South Carolina (the "Constitution"), the General Assembly must act within the scope of its police powers when it enacts laws, such as the Statutes, that regulate the manufacture, sale, and retail of alcoholic liquors.

As explained below, however, the Statutes do not promote the health, morals, or safety of South Carolina, and are, therefore, not within the scope of the General Assembly's police powers. Instead, the plain text and legislative history of the Statutes show they were enacted to

protect the economic interests of existing retail liquor stores, which Defendant ABC Stores of South Carolina ("Defendant ABC Stores") lobbies for in front of the General Assembly. Because the Statutes are not a valid exercise of the General Assembly's police powers, they are unconstitutional.

Furthermore, the Statutes violate South Carolina's Equal Protection and Due Process Clauses because they arbitrarily treat Retail Services differently from similarly situated individuals and deprive it of a cognizable property interest. Accordingly, Retail Services respectfully requests that the Court enter an Order declaring S.C. Code Ann. sections 61-6-140 and -150 unconstitutional.

STATEMENT OF FACTS

Retail Services has been detrimentally affected by the challenged statutes.

Retail Services owns the following three retail liquor stores in South Carolina: Columbia Fine Wine, Inc., Charleston Fine Wine, Inc., and Greenville Fine Wine, Inc. (Ex. A, Trone Aff. ¶¶ 5-6.) Pursuant to the ABC Act, each of Retail Services' stores has a retail dealer license issued by the DOR to sell alcoholic liquors. (Id. at ¶ 7.) Retail Services would like to expand its business in South Carolina by opening more retail liquor stores. (Id. at ¶¶ 8-9.) Based on its market research, Retail Services intends to open a store in Aiken County. (Id. at ¶¶ 8 & 12.) As discussed below, however, the Statutes prohibit Retail Services from obtaining another retail dealer license. Without another license, Retail Services cannot proceed with its plans to open a retail liquor store in Aiken County. (Id. at ¶ 11.)

History of S.C. Code Ann. Sections 61-6-140 and -150.

In its present day form, S.C. Code Ann. section 61-6-140 limits the number of retail liquor dealer licenses that can be issued to a licensee or issued for the use of a corporation to

"no more than three." Current day S.C. Code Ann. section 61-6-150 prohibits any person from directly or indirectly having "any interest whatsoever" in more than three retail liquor stores.

However, from 1946, when retail dealer licensing statutes first appeared, until 1978, South Carolina's statutory law did not limit the number of licenses that could be issued for the use of a corporation. See Ex. B, S.C. Code § 4-36 (1952) ("Only one license shall be issued to any one licensee."); Ex. C, 1956 S.C. Acts 1970, re-codified in the 1976 code as S.C. Code Ann. § 61-3-460 (raising license limit to three).

Specifically, in 1978, S.C. Code Ann. section 61-3-460 was amended by adding, subject to a grandfather provision, what is now the second paragraph of S.C. Code Ann. section 61-6-140, which limits to three the number of licenses that may be issued for a corporation's use. (Ex. D, 1978 Act No. 644 § 35.) In 1996, section 61-3-460 was re-codified as modern day section 61-6-140, and the grandfather provision was omitted. (Ex. E, 1996 Act No. 415.) Also in 1978, the General Assembly limited the number of retail liquor stores that a person could have a direct or indirect interest in after 1978. (Ex. F, 1978 Act No. 431 § 1.) In 1996, S.C. Code Ann. section 61-3-461 was re-codified as modern day S.C. Code Ann. section 61-6-150, which still retains a grandfather clause.

There is nothing in the 1978 and 1996 amendments or the text of modern day S.C. Code Ann. sections 61-6-140 and -150 that provides any explanation as to why the number of licenses that can be issued for the use of a corporation or the number of retail liquor stores that a person may have an interest in is limited to three. Additionally, the ABC Act does not place any restrictions on the number of licenses that other similarly situated sellers of alcoholic liquors, such as restaurants and bars, may obtain.

Defendants' interests in this litigation.

Under the ABC Act, the DOR is charged with the administration of South Carolina's statutes concerning the manufacturing, sale, and retail of alcoholic liquors. S.C. Code Ann. §§ 61-2-10 & 61-2-20. It is the DOR's enforcement of the Statutes that is preventing Retail Services from opening a retail liquor store in Aiken County. Therefore, the DOR is a proper party to this action.

Additionally, Defendant ABC Stores lobbies before the General Assembly on behalf of its members who are owners and holders of retail dealer licenses. (See Defendant ABC Store's Answer ¶ 4.) As demonstrated by the affirmative defenses raised in its Answer, and as explained further below, Defendant ABC Stores is interested in defending the economic protectionism created by the Statutes. Therefore, Defendant ABC Stores is also a proper party to this action.

SUMMARY JUDGMENT STANDARD

A motion for summary judgment should be granted where the Court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. A party opposing a motion for summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a *genuine issue for trial.*'" Hedgepath v. AT&T Co., 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (quoting Baughman v. AT&T Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)) (emphasis in original). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Id. at 355, 559

S.E.2d at 336. Reliance on allegations in a pleading is insufficient to overcome a motion for summary judgment. Rule 56(e), SCRPC.

ARGUMENT

I. Preliminary Matters Raised By Defendants.

In their responsive pleadings, both Defendants raised affirmative defenses claiming that Retail Services lacks standing, that there is no case and controversy, that Retail Services failed to exhaust its administrative remedies, and that venue in this Court is improper. Retail Services will briefly explain why each of these affirmative defenses fails as a matter of law before addressing the merits of the case.¹

A. Retail Services has standing.

Retail Services is seeking a declaratory judgment under South Carolina's Uniform Declaratory Judgments Act that certain provisions of the ABC Act are unconstitutional. See S.C. Code Ann. section 15-53-10, *et seq.* "[T]he determination of the constitutionality of a statute is a proper subject of judicial decision by declaratory judgment." Lee v. Clark, 224 S.C. 138, 143, 77 S.E.2d 485, 487 (1953). A party has standing to bring such an action if it has "a substantial interest in the subject matter of the litigation." Id. A party has a substantial interest if "[it] will be directly affected by the enforcement of the statute in question." Id.

The DOR's enforcement of the Statutes prevents Retail Services from obtaining another retail dealer license and opening a retail liquor store in Aiken County. (See Trone Aff. ¶¶ 10-12.) Therefore, Retail Services has been directly affected by the enforcement of the statutes it is challenging and has standing to assert this action.

¹ Retail Services reserves the right to file a more comprehensive memorandum in opposition to any motion to dismiss or for summary judgment that Defendants may file.

B. There is a justiciable controversy and Retail Services does not have any administrative remedies to exhaust.

Defendants claim that there is no case and controversy because Retail Services has not wasted the time and resources to apply for an additional retail dealer license so that the DOR can formally deny it. (DOR's Answer ¶ 53; Defendant ABC Stores' Answer ¶¶ 7-10.) Defendants' position is contrary to the purpose of the Declaratory Judgments Act and this State's standards for establishing ripeness.

As explained by the South Carolina Supreme Court, "[t]he Declaratory Judgment Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (holding that developer did not have to waste time and resources applying for extension of sewer line when city ordinance, on its face, stated that the extension would not be granted). "The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights." Id. "The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship." Id.

Importantly, parties are "not required under the Declaratory Judgments Act to spend time and money complying with what allegedly is an invalid or unconstitutional [law]." Id. at 424, 593 S.E.2d at 467; see also Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 455, 415 S.E.2d 801, 805 (1992) (finding a justiciable controversy in a pre-election review of a voter-initiated ordinance alleged to be facially defective because "it is wholly unjustified to allow voters to give their time, thought, and deliberation to the

question . . . and thereafter, . . . confront them with a judicial decree that their action was in vain”).

Here, there is no dispute that because Retail Services already has the use of three retail dealer licenses, the DOR cannot issue a license to another store that will also hold the license for Retail Services’ use. S.C. Code Ann. §§ 61-6-140 & 61-6-150; (see also DOR’s Answer ¶ 8 (admitting that the Statutes “prohibit[] the Department from ‘issuing’ more than three [retail dealer] licenses for the use of one corporation”).) Nevertheless, Defendants argue that Retail Services should be forced to spend substantial time and hundreds of thousands of dollars setting up a business and applying for a license that cannot be issued. For instance, Retail Services would have to, among other things, incorporate a new business, purchase real estate, run newspaper advertisements once a week for three consecutive weeks, post notice at the proposed business site for fifteen days, pay a \$200, non-refundable fee, and provide criminal background information. See S.C. Code Ann. § 61-6-180; Ex. G, Retail Liquor Store License Application Requirements, *available at* <http://www.sctax.org/Tax+Information/abl/prlMain.htm> (last visited April 9, 2014). In addition to all these costs, Defendants also contend that Retail Services must wait to have its rights violated before challenging the Statutes’ constitutionality.

Under Sunset Cay, LLC, Defendants’ arguments are without merit. Because the Statutes are preventing Retail Services from opening a retail liquor store in Aiken County there is a real controversy that will be resolved by this Court’s determination. Therefore, the case is ripe.

For the reasons set forth above, Retail Services also does not have any administrative remedies that it must exhaust. Under South Carolina law, “[a] commonly recognized

exception to the requirement of exhaustion of remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain and futile act.” Storm M.H. v. Charleston Cnty. Bd. of Trust., 400 S.C. 478, 488, 735 S.E.2d 492, 497 (2012) (applying futility exception where “it would have been futile for Parent to exhaust her administrative remedies as the Board’s decision was certain to be unfavorable”). Here, it is certain that the DOR would deny an application from any store seeking to hold an additional retail dealer license for Retail Services’ use. S.C. Code Ann. §§ 61-6-140 & 61-6-150; (see also DOR’s Answer ¶ 8.) Additionally, Retail Services would spend an enormous amount of time and money pursuing this futile remedy. Accordingly, Defendants’ defenses fail as a matter of law, and this case is properly before this Court.

C. Venue is proper in this Court.

Under South Carolina law, an action against the DOR is proper where the “question, action or controversy shall arise.” S.C. Code Ann. § 15-77-50. Likewise, an action against Defendant ABC Stores, which is a domestic corporation, may be brought in the county where (1) Defendant ABC Stores “has its principal place of business . . . or (2) [the] most substantial part of the alleged act or omission giving rise to the cause of action occurred.” S.C. Code Ann. § 15-7-30(E)(1-2) (emphasis added). Because there are two defendants, “the action may be tried in any county where the action properly may be maintained against one of the defendants.” S.C. Code Ann. § 15-7-30(B). Moreover, where a venue statute gives a plaintiff the choice to sue in the defendant’s resident county or in the county where the action arose, the plaintiff may properly file suit in either county. See Dove v. Gold Kist, Inc., 314 S.C. 235, 239, 442 S.E.2d 598, 600 (1994) (“Proper venue in one county . . . does not exclude proper venue in another county where equally authorized under the statute.”).

Under both of the applicable statutes, this Court is the proper venue because Aiken County is where the most substantial act giving rise to Retail Services' claims occurred. Retail Services' has incurred, and is continuing to incur, damages in Aiken County, which is where the Statutes are preventing it from opening a retail liquor store and deriving revenue. (See Trone Aff. ¶¶ 9-12.) Likewise, Aiken County itself is also being injured by the DOR's enforcement of the Statutes because it is losing the jobs and economic benefits that a Retail Services' store would create for the community. Additionally, Aiken County is where the ABC Act requires Retail Services to run newspaper advertisements once a week for three consecutive weeks and post notice at the proposed business site for fifteen days in order to apply for a retail dealer license. S.C. Code Ann. § 61-6-180. Because Aiken County is where the Statutes' impact is being felt and where Retail Services has been damaged, this Court is the proper venue. See S.C. Code Ann. §§ 15-77-30(E) & 15-77-50; see also McClure v. Manchin, 301 F.Supp.2d 564, 568-69 (N.D. W. Va. 2003) (rejecting secretary of state's claim that a state election law challenge must be brought in the district where the state government sits and operates; plaintiff could properly file its action in the district where the challenged law's impact was felt); Sanchez v. Pingree, 494 F. Supp. 68, 70 (S.D. Fla. 1980) ("Although the statute is administered in the Northern District [, which is where the state department of health resided and operated], the effect of the statute is felt by Plaintiffs in the Southern District and the injury to Plaintiffs occurs in the Southern District. Therefore, the claim arose [and venue is proper] in the Southern District.").

II. The Statutes Are Not Within The Scope Of The General Assembly's Police Power.

Under South Carolina law, the General Assembly must exercise its police powers when it regulates the manufacture, sale, and retail of alcoholic liquors. When it enacted S.C. Code

Ann. sections 61-6-140 and -150, however, the General Assembly did not act within the scope of its police powers. Rather, the plain language and legislative history of these statutes shows that they serve merely to provide economic protection for existing retail liquor stores, such as Defendant ABC Stores' members, and are, therefore, unconstitutional.

Article VIII-A of the Constitution, provides that "[i]n the exercise of the police power the General Assembly has the right to prohibit and to regulate the manufacture, sale, and retail of alcoholic liquors or beverages within the State."² Article VIII-A reflects the long standing common law of South Carolina, which even before the Constitution's adoption in 1895, held that the General Assembly must act within the scope of its police powers when passing laws that regulate, or prohibit, the manufacture, sale, and retail of alcoholic liquors. For instance, when it addressed the Dispensary Act of 1893, the South Carolina Supreme Court explained that "if the act is not a police measure, it is unconstitutional." State ex rel. George v. Aiken, 41 S.C. 220, 247, 19 S.E. 221, 230 (1894); see also McCullough v. Brown, 41 S.C. 220, 247-48 19 S.E. 458, 472-73 (1894), *overruled on other grounds by State ex rel. George*, 41 S.C. at 254, 20 S.E. at 233 (holding that if a statute regulating alcoholic liquors is enacted for economic purposes rather than "as a police regulation of the business of selling intoxicating liquors," it is unconstitutional).

The State ex rel. George court went on to hold that the Dispensary Act was a valid exercise of the police powers because:

² Defendants' argument that the General Assembly could prohibit the sale of alcoholic liquors completely is a red herring. Whether it prohibits or regulates the sale of alcoholic liquors, the General Assembly must do so for the purpose of promoting the health, morals, or safety of South Carolina. See S.C. Const. Art. VIII-A; see also State ex rel. George v. Aiken, 42 S.C. 222, 238, 20 S.E. 221, 227 (1894) ("If, therefore, a State deems the absolute prohibition of the manufacture and sale within her limits of intoxicating liquors . . . *to be necessary to the peace and security of society*, the courts cannot . . . overrule the will of the people as thus expressed by their chosen representatives." (emphasis added)). Because any liquor law must be within the General Assembly's police power, and because the Statutes are not, the fact that the General Assembly could prohibit the sale of alcohol altogether is irrelevant.

The act shows that the legislature had in view the protection of the "morals, good health, and safety of the state" in dealing with this question. Many safeguards are thrown around the sale of the liquor. The commissioner is to be an abstainer from intoxicants. The liquor is to be tested by the chemist and declared to be pure. The liquor is to be sold only by the package, which cannot be opened nor drunk where sold. The sales can only be made in daytime.

42 S.C. at 239, 20 S.E.2d at 227. At the same time, however, the Supreme Court cautioned that if the object of a statute is to impact commercial enterprises within the state, then it is "not a police measure [and] would be unconstitutional." Id. at 246-47, 20 S.E. at 230.

When considering constitutional challenges to alcoholic liquors statutes, the Court is "under a solemn duty to look at the substance of things [in determining] whether the legislature has transcended the limits of its authority." McCullough, 41 S.C. 243, 19 S.E. at 471 (quoting Mugler v. Kansas, 123 U.S. 623, at 661 (1887); see also State ex rel. George, 42 S.C. at 265, 20 S.E. at 237 (same). Importantly, "[s]tate laws that constitute mere economic protectionism are . . . not entitled to the same deference as laws enacted to combat the perceived evils of an unrestricted traffic in liquor." Bacchus Imports v. Dias, 468 U.S. 277, 276 (1984); see also State ex rel. George, 42 S.C. at 247, 20 S.E. at 230.

In State ex rel. George, the court was addressing a challenge to the entire Dispensary Act. 42 S.C. at 230, 20 S.E.2d at 224. The court was able to uphold the act only because the General Assembly included numerous provisions throughout it that explained how the act promoted the public welfare. See id. at 239, 20 S.E.2d at 227. In contrast, the issue before this Court is a narrow challenge to two provisions of the ABC Act that are completely devoid of any relationship to the "morals, good health, and safety" of South Carolina. Nowhere in the Statutes' text or in the acts that created them did the General Assembly even attempt to provide an explanation as to how limiting the number of licenses that can be issued, or the

number of liquor stores that a person may have an interest in, promotes the well-being of the State. Indeed, the Statutes do not place any limitations on the number or quality of stores that can exist in a given area. Rather, they merely limit the number of stores in which one businessman or company can have an interest. To the extent the General Assembly wanted to control the number of stores in a given area, it did so in S.C. Code Ann. section 61-6-170, which gives the DOR the discretion to "limit the further issuance of retail dealer licenses in a political subdivision if it determines that the citizens who desire to purchase alcoholic liquors therein are more than adequately served" based on a number of factors, including the number and location of stores in the area. Id.; see also S.C. Code 61-6-120 (placing restrictions on the proximity of retail liquor stores to churches, schools, and playgrounds).

Furthermore, the legislative history of the Statutes shows that their purpose is to provide economic protection for existing retail liquor store owners. As explained above, prior to 1978, the ABC Act did not place a limit on the number of retail dealer licenses that could be issued for the use of one corporation. Compare S.C. Code § 4-36 (1952), re-codified in the 1976 code as S.C. Code Ann. § 61-3-460 with 1978 S.C. Acts 644 (amending S.C. Code Ann. § 61-3-460 by adding a limitation on the number of licenses that could be issued for the use of a corporation). Additionally, before 1978, the ABC Act did not limit the number of liquor stores in which a person could have a financial interest. Ex. H, Chairman, 1970 S.C. Op. No. 2979 (Sept. 17, 1970) ("South Carolina law does not, as yet, prohibit a person from having a financial interest in more than three retail liquor stores."). The 1978 amendments do not provide any explanation as to why these limitations were needed after 1978 to promote the public welfare where they were not needed before it. Moreover, a grandfather clause still exists today in S.C. Code Ann. section 61-6-150, which is further proof that the licensing

limitations were intended to protect the financial interests of certain retail liquor store owners rather than promoting “health, safety, or morals.” See 1978 S.C. Acts 631; see also S.C. Code Ann. § 61-6-150 (“The prohibitions in this section do not apply to a person having an interest in retail liquor stores on July 1, 1978.”).

Finally, Defendant ABC Stores’ Answer underscores the fact that the purpose of the Statutes is to provide economic protection for existing retail liquor store owners. (Defendant ABC Stores’ Answer at ¶ 32 (arguing that the purpose of the challenged statutes is to “preserv[e] the right of small, independent liquor dealers to do business”). Because the Statutes promote economic protectionism rather than the morals, good health, and safety of the State, they are unconstitutional. See Dias, 468 U.S. at 276; see also State ex rel. George, 42 S.C. at 247, 20 S.E at 230.

III. The Statutes Violate The Equal Protection Clause.

South Carolina’s Equal Protection Clause requires that (1) “any classification [created by a statute] cannot be arbitrary but must bear a reasonable relation to the legislative purpose sought to be effected” and (2) “all members of a class [must] be treated alike under similar circumstances and conditions.” Bröome v. Truluck, 270 S.C. 227, 230, 241 S.E.2d 739, 740 (S.C. 1978); S.C. Const. Art. I, § 3 (“[N]o[] person shall be denied the equal protection of laws.”). “The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment.” Grant v. S.C. Coastal Council, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995).

To determine if a statute creates a classification, courts must look at the statute “both in form and in operation.” Cabiness v. Town of James Island, 393 S.C. 176, 189, 712 S.E.2d 416, 423 (2011); see also Thompson v. S.C. Comm’n on Alcohol & Drug Abuse, 267 S.C.

463, 471-473, 229 S.E.2d 718, 722-23 (1976) (holding that although Uniform Alcohol and Intoxication Treatment Act applied to everyone on its face, its application treated some alcoholics differently than others that were similarly situated, which violated the Equal Protect Clause).

The Broome case involved a statute of repose, which granted immunity to architects, engineers, and contractors "from suit for their torts after the lapse of ten years from the date of substantial completion of the improvement causing injury or damage." Id. at 230, 241 S.E.2d at 740. The Broome Court had to determine "whether there [wa]s a sound basis for regarding architects, engineers, and contractors engaged in the improvement of real property as a distinct and separate class for the purpose of granting immunity." Id. The Court stated in this regard that "[c]ertainly, such classification must fail if the benefits (immunity) granted to them is denied to others similarly situated." Id.

The Broome court concluded that architects, engineers, and contractors are similarly situated to others that are involved in the construction of a building, such as the property owner and manufacturer of component parts. Id. The court further found that while there are many distinctions "between architects, engineers, and contractors on the one hand, and owners and manufacturers, on the other," these distinctions were not sufficient "to justify granting immunity to one group and not to the other." Id. As such, there was "[n]o rational basis . . . for making such distinction," and the court struck the statute down. Id.

As in Broome, the statutes at issue here violate the Equal Protection Clause because they arbitrarily treat Retail Services differently from those that are similarly situated to it. Specifically, on their face, the Statutes treat retail liquor store owners who sell alcoholic liquors for "off-site consumption," differently from individuals that sell alcoholic liquors for

“on-site consumption,” such as restaurant and bar owners. Additionally, in their application, these statutes discriminate against retail liquor store owners that want to expand their business in order to provide economic protection for existing retail liquor store owners, which, as explained above, is not a “legislative purpose” that the General Assembly is authorized to pursue when regulating alcoholic liquors.

a. Off-site consumption vs. On-site consumption classification.

The General Assembly has not limited the number of licenses the DOR can issue to businesses that sell liquor for on-site consumption. Neither the challenged statutes nor the acts that created and amended them explain why people who own retail liquor stores should be treated differently from people who own other business that sell alcoholic liquors. Indeed, the General Assembly has provided no rationale as to why a retail liquor store owner should be limited to just three licenses while a restaurant owner can have an unlimited number of liquor licenses to sell the same product in the same area. While there may be superficial distinctions between retail liquor store owners and individuals that own on-site consumption businesses, there is no distinction that justifies limiting the number of licenses one can have while not limiting the other. Hence, there is no rational basis for this classification and the Statutes should be declared unconstitutional. Broome, 270 S.C. at 230, 241 S.E.2d at 740.

b. Expanding Retail Liquor Store Owner v. Existing Liquor Store Owners.

Defendants allege that the Statutes do not create any classifications because, on their face, they apply equally to everyone. (See Defendant ABC Stores’ Answer ¶ 35.) Defendants ignore, however, that in their application, the Statutes discriminate against expanding retail liquor store owners, who would like to own multiple stores across South Carolina, in order to protect existing retail liquor store owners. See Thompson, 267 S.C. at 471-473, 229 S.E.2d at

722-23 (looking at statutes application to identify classes). Indeed, Defendant ABC Stores concedes this fact by arguing that the Statutes are needed to “preserv[e] the right of small, independent liquor dealers to do business.” (Defendant ABC Stores’ Answer at ¶ 31.) Moreover, there is nothing in the Statutes that explains how the licensing limits they establish are supposed to promote the health, safety, or good morals of South Carolina. For instance, they do nothing to limit the number or quality of retail liquor stores that are actually in an area. They merely limit the number of retail dealer licenses that can be obtained by a single individual or corporation.

As explained above, it is unconstitutional for the General Assembly to enact liquor regulation laws that promote economic protectionism. Instead, it can only enact laws that are within the scope of its police powers. Because the Statutes do not promote a proper legislative purpose (i.e. one within the General Assembly’s police powers), the disparity that they create between retail liquor store owners that want to expand and existing retail liquor store owners is arbitrary. Therefore, these statutes should be declared unconstitutional.

IV. The Statutes Violate the Due Process Clause.

Under South Carolina’s Due Process Clause, no “person shall be deprived of life, liberty, or property without due process of law. S.C. Const. Art. I, § 3. “[T]o prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.” Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006). “[T]he standard for reviewing all substantive due process challenges to state statutes, including economic and social welfare legislation, is whether the statute bears a reasonable relationship to any legitimate interest of government.” Id. (citing Sunset Cay, 357 S.C. at 430, 593 S.E.2d at 470). “The purpose of

the substantive due process clause is to prohibit government from engaging in arbitrary or wrongful acts regardless of the fairness of the procedures used to implement them." Id.

Retail Services has a cognizable property interest in pursuing its chosen field of business in Aiken County. See e.g., Sloan, 370 S.C. at 483, 636 S.E.2d at 598 ("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 The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment."); see also City of Orangeburg v. Farmer, 181 S.C. 143, 186 S.E. 783, (1936) (holding ordinance that prohibited door-to-door solicitation, and thereby injuring plaintiff's business without promoting the public welfare, violated due process); Byrne's Admin. v. Stewart's Admin., 3 S.C. Eq. (3 Des. Eq.) 466, 479 (1812) ("It cannot be doubted that a man's trade or profession is his property."). Because it cannot obtain a license for an Aiken County store, however, Retail Services is being deprived of its right to participate in its field of business. (Trone Aff. at ¶¶ 8-12.)

As explained above, the General Assembly did not act within the scope of its police powers when it enacted the Statutes. Because these statutes promote economic protectionism rather than the health, morals, and safety of South Carolina, they are arbitrarily denying Retail Services of a cognizable property interest. See Sloan, 370 S.C. at 484, 636 S.E.2d at 615 (holding that a statute may only interfere with an individual's right to pursue his trade if it is within the legislature's police power and enhances the public welfare). As such, the Statutes violate the Due Process Clause and should be declared unconstitutional.

CONCLUSION

For the reasons set forth herein, S.C. Code Ann. sections 61-6-140 and -150 should be declared unconstitutional.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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*Attorneys for Retail Services & Systems, Inc., dba Total Wine
& More*

April 9, 2014
Columbia, South Carolina

Exhibit A

(Affidavit of David Trone)

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc., dba) Civil Action No. 2014-CP-02-00259
Total Wine & More)

Plaintiff,)

vs.)

South Carolina Department of Revenue)
and ABC Stores of South Carolina,)

Defendants.)

AFFIDAVIT OF DAVID TRONE

I, David Trone, after being duly sworn, depose and say:

1. I am a citizen of the State of Maryland, and I am of sound mind and am over the age of twenty-one years.

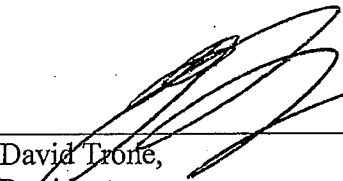
2. I am employed by Retail Services & Systems, Inc., dba Total Wine & More ("Retail Services") as a President.

3. In the regular performance of my job functions, I am familiar with Retail Services' business records, including its records concerning retail liquor sales business conducted in South Carolina. These records (which include data compilations, electronically imaged documents, and others) are made at or near the time by, or from information provided by, persons with knowledge of the activity and transactions reflected in such records, and are kept in the course of business activity conducted regularly by Retail Services. It is the regular practice of Retail Services to make these records. In connection with making this affidavit, I have personally examined these business records.

4. Based on my personal knowledge and review of Retail Services' business records, I am familiar with the retail liquor sales business that Retail Services conducts in South Carolina.

5. Retail Services owns three retail liquor stores in South Carolina.
6. These stores are Columbia Fine Wine, Inc., Charleston Fine Wine, Inc., and Greenville Fine Wine, Inc.
7. Each of these stores obtained a retail dealer license from the South Carolina Department of Revenue ("DOR") to sell alcoholic liquors in South Carolina, and they hold those licenses for Retail Services' use.
8. Retail Services would like to expand its business in South Carolina.
9. Retail Services has researched the market in South Carolina and has concluded that Aiken County, South Carolina is where it would like to open another retail liquor store.
10. Because three stores already hold retail dealer licenses for Retail Services' use, however, South Carolina's Alcoholic Beverage Control Act ("ABC Act") prohibits the DOR from issuing another license that would be held for Retail Services' use.
11. Due to the ABC Act's retail dealer license limitations, therefore, Retail Services cannot open a store in Aiken County.
12. If another retail dealer license could be issued for its use, Retail Services intends to open a retail liquor store in Aiken County.

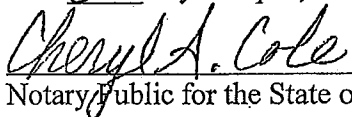
FURTHER AFFIANT SAYETH NOT.


David Trone,
President

4/8/2014
Date

SWORN to and subscribed before me.

This 8th day of April, 2014


Notary Public for the State of Maryland

My Commission Expires: 7-11-2015 Commission Expires 07/11/2015

CHERYL A. COLE
NOTARY PUBLIC

Exhibit B

(S.C. Code § 4-36 (1952))

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§ 4-33. Licenses to corporations.

No license shall be issued to a corporation or association as such and if any application is made for a corporation or association the license, if granted, shall be issued to an officer or officers thereof for its use and such officer or officers shall be held to assume all responsibility thereunder as individuals and shall be subject to all the provisions and penalties set forth in this chapter as applicable to individual licensees.

1945 (44) 337.

Quoted in *Romanus v. Biggs*, 214 S. C. 145, 51 S. E. (2d) 503 (1949).

§ 4-34. No retail licenses to Federal wholesale licensees.

No license shall be issued to any person or firm or for the use of any corporation to sell at retail intoxicating liquors in this State when such person, firm or corporation or any officer of such firm or corporation shall be licensed by the United States of America or any department or agency thereof as a wholesale liquor dealer.

1945 (44) 337.

§ 4-35. Only one license in a household.

No license shall be issued to more than one member of any household in this State.

1945 (44) 337.

Suit for accounting and dissolution of illegal partnership.—In an action brought for accounting and dissolution of an alleged partnership, the court overruled a demurrer to the defense that plaintiff sold a liquor store to defendant in order to operate a similar store in another city, for which latter store plaintiff procured licenses from the

State, on the ground that by this section the partnership alleged was illegal and unenforceable because this section prohibits ownership of any interest in any liquor business except the retail store which one operates under license. *Pendarvis v. Berry*, 214 S. C. 363, 52 S. E. (2d) 705 (1949).

§ 4-36. Only one license per licensee.

Only one license shall be issued to any one licensee.

1945 (44) 337.

Suit for accounting and dissolution of illegal partnership.—See note to § 4-35.

§ 4-37. Retail licenses in unincorporated communities.

The Commission may, in its discretion, after due investigation, license retail dealers in unincorporated towns and in county communities when, in the opinion of the Commission, it would be to the interest of such unincorporated town or community to have a licensed retailer therein. But the Commission shall not license a retail dealer in any locality unless the Commission is assured that such locality is under proper police protection.

1945 (44) 337.

§ 4-38. Limitation of number of retail outlets in a community.

If, in the judgment of the Commission, because of the number of retail out-

[1 SC Code]—16

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Exhibit C

*(1956 S.C. Acts 1970, re-codified in the 1976
code as S.C. Code Ann. § 61-3-460)*

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Certain pleas and forfeitures of bonds to constitute prior offenses:

Sub-Section 39. A conviction, plea of guilty, plea of nolo contendere or forfeiture of bond for the violation on or after the effective date of this Section, of any of the laws of this State, or of the United States, relating to alcoholic liquor, shall constitute a prior offense for the purpose of any prosecution, or for the purpose of imposition of sentence for any subsequent violation hereof.

Convictions to automatically revoke beer, wine or liquor licenses:

Sub-Section 40. A conviction under the provisions of this act shall automatically revoke any beer, wine or liquor license which the State of South Carolina may have at any time issued to the convicted party. This revocation shall be in effect for a period of two years. In the event of a second conviction such license or licenses shall be revoked for a period of five years. In event of a third conviction such license or licenses shall be revoked for life and the convicted party shall not be eligible to apply for issuance of any new license dealing with the sale of beer, wine or liquor.

If the convicted party does not possess a license to sell beer, wine or liquor in the event of a first conviction, he shall not be eligible for the issuance of such license for a period of two years. For a second conviction he shall not be eligible for the issuance of such license or licenses for a period of five years. In the event of a third conviction the convicted party loses all right for his entire lifetime to ever receive a beer, wine or liquor license.

In the event that the person charged with violation of this Section is married, the provisions of this Sub-Section shall apply with equal force and effect to the spouse of such person.

Section 4-36, 1952 Code, amended—licensee may obtain three licenses:

Sub-Section 41. Section 36, of Title 4, Code of Laws for South Carolina for 1952, is hereby amended by striking out all of the provisions of said Section and inserting in lieu thereof the following:

No more than three licenses shall be issued to any one licensee provided that said licensee is eligible for a license with respect to each store as prescribed by Section 32, of Title 4, Code of Laws for South Carolina for 1952, as amended.

Sections 65-1261, 65-1262 and 65-1263, 1952 Code, repealed—cost of license taxes:

Sub-Section 42. A. Sections 65-1261, 65-1262, and 65-1263, Code of Laws for South Carolina for 1952, are hereby repealed.

The license Chapter 1, of T which shall be follows:

1. For each (\$25,000.00);

2. For each w and.

3. For each re

Any person g June 30, of any prescribed.

Section 65-1281 salers:

B: Section 65 is hereby repeale

In addition to paid in respect be subject to the on each standard must be absorbed tax be computed made a part of t

Sections 65-128 tax on wholesa

C. Section 65 Carolina for 195

In addition to Section, every li dollars fifty cent sold. The tax l stamps to each affixed by the and before such Sub-Section sha from whom suc such tax be com shall it be made

Exhibit D

(1978 Acts No. 644 § 35)

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mutation of thirty years
of the lump sum amount
ion (1) of Section 9-11-
as if the deceased mem-
had named such person
under Section 9-11-150,
not to receive in lieu of
contributions, or a portion
the actuarial equivalent
deposit under the System.
r subsection (1) of this
who has received pay-
r item (a) of subsection
ment of such amount to
on provided for in sub-
option 1 to such person
of such amount to the

ie 1976 Code is amended

tire upon written appli-
e, not more than ninety
quent to the execution
if such member at the
longer be in the service
eral Assembly or other-
of sixty years or com-

of South Carolina, 1976,
rage Dealers, so as to
y be Stored in a Whole-

tended by adding after
coholic beverages". The

l, for the purpose of
r's license, maintain a

separate store or warehouse and no other goods, wares or mer-
chandise except nonalcoholic beverages shall be kept or stored therein.
No place of amusement shall be maintained within such place or in
the same building or in connection therewith.

SECTION 35

To Amend Section 61-3-460, Code of Laws of South Carolina, 1976,
Relating to the Limit of Three Retail Liquor Store Licenses
Per Licensee, so as to Make the Limitation Apply to Licenses
Issued for the Use of Any One Corporation, Association, Part-
nership or Limited Partnership.

A. Section 61-3-460 of the 1976 Code is amended by adding at
the end:

No more than three retail liquor licenses shall be issued for the
use of any one corporation, association, partnership or limited part-
nership. A corporation having the use of a retail liquor license that
is owned by another corporation shall be deemed to be holding the
retail liquor license for the use of the owning corporation.

B. The provisions of the second paragraph of Section 61-3-460,
added by A above, shall not apply to any person having an interest
in retail liquor stores which shall be prohibited by the provisions of
such paragraph on the effective date of this act.

SECTION 36

To Amend Act 219 of 1977 to Provide for Adoption of Revised
General Fund Revenue Estimates.

Amend Part II, Section 12, of Act 219 of 1977, by striking the
second paragraph and substituting therefore the following:

The Budget and Control Board, Ways and Means Committee and
Senate Finance Committee shall each year make and adopt the annual
official revenue estimates not later than November 15, upon which
the annual operating budget is proposed and approved. The revenue
estimates shall be made in accordance with accepted economic and
revenue forecasting methods and to the extent possible shall be accu-
rate and realistic. In the event of changes in economic conditions
that will alter General Fund Revenue estimates, a new General Fund
Revenue estimate may be adopted by the Board and the Committees
as provided herein.

Exhibit E

(1996 Acts No. 415)

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1996 South Carolina Laws Act 415 (S.B. 1084)

SOUTH CAROLINA 1996 SESSION LAWS
REGULAR SESSION
Copr. (C) West 1996. All rights reserved.Additions and deletions are not identified in this document.
Vetoed provisions within tabular material are not displayed.Act 415
S.B. No. 1084

ALCOHOLIC BEVERAGES—REGULATION AND TAXATION—GENERAL AMENDMENTS

AN ACT TO AMEND TITLE 61, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ALCOHOL AND ALCOHOLIC BEVERAGES, BEER AND WINE, BY ADDING CHAPTERS 2, 4, 6, 8, 10, AND 12 SO AS TO PROVIDE FOR THE REGULATION, TRANSPORTATION, POSSESSION, CONSUMPTION, LICENSING, SALE, AND PENALTIES REGARDING ALCOHOLIC BEVERAGES, BEER AND WINE, AND TO MAKE CERTAIN TECHNICAL CHANGES; BY ADDING SECTION 12-33-245 SO AS TO PROVIDE FOR THE RATE AT WHICH MINIBOTTLES MUST BE TAXED; BY ADDING SECTION 12-33-475 SO AS TO PROVIDE FOR THE TAX EXEMPTION OF ALCOHOLIC LIQUORS SOLD TO THE UNITED STATES GOVERNMENT INSTRUMENTALITY FOR MILITARY PURPOSES; TO AMEND SECTION 6-27-40, AS AMENDED, RELATING TO THE DISTRIBUTION OF MONIES APPROPRIATED TO THE LOCAL GOVERNMENT FUND, SO AS TO CHANGE A CODE REFERENCE; AND TO REPEAL CHAPTERS 1, 3, 5, 7, 9, 11, AND 13 OF TITLE 61 RELATING TO GENERAL PROVISIONS REGARDING ALCOHOLIC BEVERAGES, BEER AND WINE, AND LICENSES, ALCOHOLIC BEVERAGE CONTROL ACT, REGULATION OF THE TRANSPORTATION, POSSESSION, CONSUMPTION, AND SALE OF ALCOHOLIC BEVERAGES; IMPORTATION OF ALCOHOLIC BEVERAGES, BEER, WINE, ALE, PORTER, ALCOHOL; AND NUISANCES AND ENFORCEMENT.

Be it enacted by the General Assembly of the State of South Carolina:

Beer, wine, and alcohol

SECTION 1. Title 61 of the 1976 Code, as last amended by Acts 103, 143, 144, and 145 of 1995, is further amended by adding:

"CHAPTER 2
General Provisions

<< SC ST § 61-2-10 >>

Section 61-2-10. (A) As used in Title 61, unless the context clearly requires otherwise:

- (1) 'Department' means the South Carolina Department of Revenue and Taxation.
- (2) 'Director' means the director of the Department of Revenue and Taxation.
- (3) 'Division' means the South Carolina Law Enforcement Division.
- (4) 'Regulation', unless otherwise specified, means a regulation promulgated by the department or division pursuant to

Section 61-6-110. Unless the department in its discretion otherwise orders, no person is eligible for a license under this article or Article 7 of this chapter if he or the person who will have actual control and management of the business proposed to be operated:

- (1) is less than twenty-one years of age;
- (2) is not a legal resident of the United States and has not been a resident of South Carolina for at least thirty days before the date of application and has maintained his principal place of abode in South Carolina for at least thirty days before the date;
- (3) is not of good repute; or
- (4) has had a license under this or another statute regulating the manufacture or sale of alcoholic liquors which has been revoked within five years preceding the filing of the application.

<< SC ST § 61-6-120 >>

Section 61-6-120. The department must not issue a license provided for in this article or Article 7 of this chapter if the place of business is within three hundred feet of a church, school, or playground situated within a municipality or within five hundred feet of a church, school, or playground situated outside a municipality. The distance must be computed by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare from the nearest point of the grounds in use as part of the church, school, or playground, which are defined as follows:

- (1) 'Church' means an establishment, other than a private dwelling, where religious services are usually conducted;
- (2) 'School' means an establishment, other than a private dwelling, where the usual processes of education are usually conducted; and
- (3) 'Playground' means a place, other than grounds at a private dwelling, which is provided by the public or members of a community for recreation.

These restrictions do not apply to the renewal of licenses existing on July 10, 1960, or to locations existing on that date.

<< SC ST § 61-6-130 >>

Section 61-6-130. No license may be issued to more than one member of a household in this State.

<< SC ST § 61-6-140 >>

Section 61-6-140. No more than three retail dealer licenses may be issued to one licensee, and the licensee must be eligible for a license for each store pursuant to Section 61-6-110.

No more than three retail dealer licenses may be issued for the use of one corporation, association, partnership, or limited partnership. A corporation having the use of a retail dealer license that is owned by another corporation is considered to be holding the retail dealer license for the use of the owning corporation.

<< SC ST § 61-6-150 >>

Section 61-6-150. No person, directly or indirectly, individually or as a member of a partnership or an association, as a member or stockholder of a corporation, or as a relative to a person by blood or marriage within the second degree, may have any interest whatsoever in a retail liquor store licensed under this section except the three stores covered by his retail dealer's licenses, as provided for in Section 61-6-140. The prohibitions in this section do not apply to a person having an interest in retail liquor stores on July 1, 1978.

<< SC ST § 61-6-160 >>

Exhibit F

(1978 Act No. 431 § 1)

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inland buoy" and insert-
when amended shall read:
s of six o'clock p.m. and
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2 north to the State Sec-
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of each year. Any person
all be deemed guilty of a
e fined for a first offense
one hundred dollars, and
e of one hundred dollars."

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Governor.

on 9-1-10 And Item (14)
outh Carolina, 1976, Re-
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etermining The Average
ls.

e State of South Carolina:

-10 of the 1976 Code is
final compensation for an
average annual earnable
ive months prior to the
when amended shall read:
respect to those members
the average annual earn-
e three consecutive fiscal
the highest such average.

Average final compensation for an elected official may be calculated as the average annual earnable compensation for the thirty-six consecutive months prior to the expiration of his term of office."

Further

SECTION 2. Item (14) of Section 9-11-10 of the 1976 Code is amended by adding at the end: "Average final compensation for an elected official may be calculated as the average annual earnable compensation for the thirty-six consecutive months prior to the expiration of his term of office." The item when amended shall read:

"(14) 'Average final compensation' shall mean the average annual compensation of a member during the three consecutive fiscal years of his credited service producing the highest such average. Average final compensation for an elected official may be calculated as the average annual earnable compensation for the thirty-six consecutive months prior to the expiration of his term of office."

Time effective

SECTION 3. This act shall take effect upon approval by the Governor.

Approved the 14th day of March, 1978.

(R469, S425)

No. 431

An Act To Amend The Code Of Laws Of South Carolina, 1976, By Adding Section 61-3-461, So As To Further Restrict Interest In Retail Liquor Stores And To Make Exceptions.

Be it enacted by the General Assembly of the State of South Carolina:

Interest in number of retail liquor stores restricted

SECTION 1. The 1976 Code is amended by adding Section 61-3-461:

"Section 61-3-461. No person, directly or indirectly, individually or as a member of a partnership or an association, as a member or stockholder of a corporation or as a relative to any person by blood or marriage within the second degree, shall have any interest whatsoever in any retail liquor store licensed under this section except the three stores covered by his retail dealer's licenses, as provided for in Section 61-3-460."

Exceptions

SECTION 2. The provisions of Section 61-3-461 of the 1976 Code shall not apply to any person having interest in stores which will be prohibited by the provisions of such section on the effective date of this act.

Time effective

SECTION 3. This act shall take effect July 1, 1978.

Approved the 14th day of March, 1978.

(R472, H2459)

No. 432

An Act To Amend Section 7-11-50, Code Of Laws Of South Carolina, 1976, Relating To Substitute Candidates, So As To Limit Substitutions For Nominees To Specific Circumstances And Require Election Commission Approval To Authorize Substitutions.

Whereas, it is the intent of the General Assembly to prohibit substitute candidates for those who qualify without the intention of pursuing an office; and the desired effect is to eliminate those persons commonly known as "ghost candidates". Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina :

Substitute candidates—restrictions on

SECTION 1. Section 7-11-50 of the 1976 Code is amended to read :
"Section 7-11-50. If a party nominee dies, becomes disqualified after his nomination or resigns his candidacy for a legitimate non-political reason as defined in this section and sufficient time does not remain to hold a convention or primary to fill the vacancy or to nominate a nominee to enter a special election, the respective state or county party executive committee may nominate a nominee for such office, who shall be duly certified by the respective county or state chairman.

'Legitimate nonpolitical reason' as used in this section shall be limited to the following:

(a) Reasons of health, which shall include any health condition which, in the written opinion of a medical doctor, would be harmful to the health of the candidate if he continued.

Exhibit G

*(Retail Liquor Store License Application
Requirements)*

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Retail Liquor Store License –

Authorizes the sale of liquor "to-go" only. These locations are issued to retail locations for the sale of alcoholic liquors and/or wines containing up to 21% alcohol by volume.

Application Requirements

- Completed application (ABL-901), signed, dated and notarized
- Submit nonrefundable filing fees - \$ 200.00
LICENSE FEES SHOULD NOT BE SUBMITTED UNTIL LICENSE IS APPROVED
- Submit an Affidavit of Publication from the newspaper running you ad. The affidavit must include a copy of your ad. If you just started you ad in the newspaper and have not received the ad and affidavit, you **MUST** include the receipt from the newspaper with your application. Forward the ad and affidavit from the newspaper as soon as the newspaper provides it to you. Your license/permit cannot be issued until this is received.
- Must complete the ABL-946 (Consent and Waiver)
- Must attach copy of Articles of Incorporation, if applying as a corporation
- Must attach a copy of Articles of Organization and Operating Agreement, or LLC Supplemental Information Form (ABL-919), if applying as a Limited Liability Corporation (LLC)
- Must attach copy of partnership agreement, if applying as a partnership or Limited Liability Partnership (LLP)
- **All principals** must attach a criminal records check (CRC), not more than 90 days old. If the principal has lived in SC for more than 2 years, obtain the CRC from SLED at www.sled.state.sc.us or SLED Headquarters, Criminal Records Department, 4400 Broad River Rd., P.O. Box 21398, Columbia, SC 29221. If the principal has lived in SC less than 2 years, obtain a CRC from previous state of residency AND a CRC from SLED. If principal is not a SC resident, obtain a CRC from current state of residency.
- Must attach a copy of your lease, deed or tax bill for the location for which you are seeking a license. The lease, deed, or tax bill must be in the applicant's name and list the physical address of the business location.
- Must attach a Certificate of Authority to do Business in South Carolina, obtained from the Secretary of State's office, if applying as a foreign corporation
- **EFFECTIVE JULY 1, 2008:** Must attach completed appropriate residency status verification affidavit. Use Verification of Lawful Presence in the US (ABL-577) for owners of sole proprietorships. Use Verification of Lawful Background for Applicant's Principals (ABL-920) for each principal, if other than a sole proprietor. Each principal, officer, owner, member, and/or partner **MUST** sign the appropriate form. If applicable, include his/her non-citizen alien registration number and attach a copy of all appropriate immigration documents

Exhibit H

(1970 S.C. Op. No. 2979)

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1970 S.C. Op. Atty. Gen. 250, 1970 S.C. Op. Atty. Gen. No. 2979, 1970 WL 12255 (S.C.A.G.)

Office of the Attorney General
State of South Carolina

Opinion No. 2979

September 17, 1970

- (1) Under Alcoholic Beverage Control Act, a 'licensee' is 'one who holds a license.'
- (2) A president of a corporation may have issued to him alone a retail liquor license for the use of the corporation where he singly or jointly holds only two such licenses notwithstanding that the Secretary-Treasurer of the corporation singly or jointly holds three of them.
- (3) There is no statute prohibiting a person from having a financial interest in more than three retail liquor stores.

Chairman
Alcohol Beverage Control Commission

The Alcohol Beverage Control Commission now has pending before it from C. R. Young, President of Westgate Package Shops, Inc., a South Carolina corporation, an application for a retail liquor license for a proposed liquor store that would, if the license is granted, be located at 203 South Gregory Street in Lancaster, South Carolina. At the present time, Westgate owns two other retail outlets in Lancaster. The licenses for those stores are held for the corporation's use by the applicant and by J. C. Nicholson, Westgate's Secretary-Treasurer. It appears, however, that the latter also possesses a retail liquor license for a store that is not owned by Westgate. A question has arisen, therefore, as to whether or not the Commission may issue a retail liquor license to Young for Westgate's use since the Secretary-Treasurer of that corporation has three such licenses in his name.

Statute prohibits the Commission from issuing a retail liquor license directly to a corporation; nonetheless, it may grant one to an officer or officers of a corporation for its use. CODE OF LAWS OF SOUTH CAROLINA Section 4-33 (1962). In South Carolina, a licensee cannot be issued more than three retail liquor licenses. CODE OF LAWS OF SOUTH CAROLINA Section 4-36. In construing licensing statutes, words in liquor laws are generally to be interpreted according to their commonly accepted definition. 45 Am. Jur. (2d) *Intoxicating Liquors* Section 123 at 573. DPA1 A 'licensee' is 'a person licensed, one who holds a license.' 53 C.J.S. *Licensee* at 441; see also, *Texas-Louisiana Power Co. v. Webster*, 127 Tex. 126, 91 S.W. (2d) 302. It is 'a person to whom a license is given.' THORNDIKE-BARNHART DICTIONARY, *Licensee* at 458. As was noted above, a corporation in South Carolina cannot be issued a retail liquor license; therefore, a corporation cannot, in this State, be a 'licensee.' Only an individual can be. Nicholson is a 'licensee' for three retail liquor stores because he holds three retail liquor licenses, one singly and two jointly; and Young is a 'licensee' for only two retail liquor stores because he holds two retail liquor licenses, both jointly. Westgate is not a 'licensee' at all since it does not and cannot possess a license.

With respect to Westgate's third license, since Nicholson would not be either singly or jointly a licensee for the

benefit and use of the corporation, it is immaterial that he has been issued three licenses heretofore. That Nicholson will have an interest in four retail liquor stores is also immaterial. South Carolina law does not, as yet, prohibit a person from having a financial interest in more than three retail liquor outlets.

*2 In our opinion, therefore, the Commission may issue one more license to Young which may be for the use of Westgate Package Shops, Inc.

C. Tolbert Goolsby, Jr.
Assistant Attorney General

1970 S.C. Op. Att. Gen. 250, 1970 S.C. Op. Att. Gen. No. 2979, 1970 WL 12255 (S.C.A.G.)

END OF DOCUMENT

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Counsel Served:

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The Honorable Alan Wilson
South Carolina Attorney General
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Columbia, SC 29201



Roxanne E. Daniel
Administrative Assistant

April 9, 2014

COPY
ORIGINAL FILED

APR 10 2014

AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN)

CASE NO.: 2014-CP-02-00259

Retail Services & Systems, Inc., dba Total
Wine & More,

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

South Carolina Department of Revenue and
ABC Stores of South Carolina,

Defendant.)

Plaintiff's Attorney:

Brian M. Barnwell, Bar No. 78249

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Columbia, SC 29201

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Columbia, SC 29202

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E-mail: bmaybank@nexsenpruet.com Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant Date submitted _____

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Retail Services & Systems, Inc., dba
Total Wine & More

Plaintiff,

vs.

South Carolina Department of Revenue and
ABC Stores of South Carolina,

DefendantS.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Case No. 2014-CP-02-00259

**DEFENDANT ABC STORES OF SOUTH
CAROLINA'S MOTION FOR SUMMARY
JUDGMENT**

NOW COMES the Defendant ABC Stores of South Carolina ("ABC Stores"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and respectfully moves this Court for an entry of summary judgment in favor of ABC Stores. The grounds for this Motion are that the pleadings, exhibits, and affidavits submitted herewith, if any, show that there is no genuine issue as to any material fact and that ABC Stores is entitled to judgment as a matter of law. The specific arguments in support of this Motion include the following:

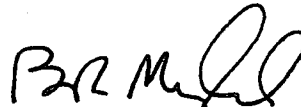
Section 61-6-140 and -150 of the South Carolina Code of Laws (the "Statutes") should be declared constitutional because:

1. The General Assembly acted within the scope of its police powers when it enacted the Statutes, and therefore, the Statutes are not unconstitutional pursuant to Article VIII-A of the Constitution of the State of South Carolina;
2. The Statutes do not treat Retail Services differently from others that are similarly situated, and therefore, they do not violate South Carolina's Equal Protection Clause; and

3. The Statutes do not deprive Retail Services of a cognizable property interest, and therefore, they do not violate South Carolina's Due Process Clause.

This Motion is further based on the South Carolina Rules of Civil Procedure, the applicable statutory and case law, and any supporting memorandum filed by Retail Services before, during, or after the hearing on this matter.

RESPECTFULLY SUBMITTED,



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Jim Rourke
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1230 Main Street, Suite 700 (29201)
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Attorneys for Defendant
ABC Stores of South Carolina

May 28, 2014
Columbia, South Carolina

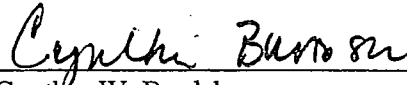
CERTIFICATE OF SERVICE

This is to certify that a copy of the following **Defendants' Motion to Change Venue** has been served upon the following counsel of record by U.S. Mail, first class postage prepaid, addressed to the following as shown below this 28th day of May, 2014:

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Retail Services & Systems, Inc., dba
Total Wine & More

Plaintiff,

vs.

South Carolina Department of Revenue and
ABC Stores of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Case No. 2014-CP-02-00259

**DEFENDANT ABC STORES OF SOUTH
CAROLINA'S MEMORANDUM IN
SUPPORT OF CROSS-MOTION FOR
SUMMARY JUDGMENT**

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant ABC Stores of South Carolina ("ABC Stores") respectfully submits this Memorandum of law in Support of its Cross-Motion for Summary Judgment.

INTRODUCTION

Retail Services is seeking an Order from this Court declaring S.C. Code Ann. Sections 61-6-140 and -150 (the "Statutes") unconstitutional, principally because they violate the Due Process and Equal Protection Clauses of the US and SC Constitution.

ABC Stores contend the statutes are clearly constitutional. Plaintiff and this Defendant agree – few facts are in dispute and the legal issue is ripe for a Summary Judgment declaration.

Sections 61-6-140 and -150 are part of the Alcoholic Beverage Control Act (the "ABC Act"), and they limit to three the number of retail dealer licenses that the Defendant South Carolina Department of Revenue ("DOR") can issue to an individual or corporation.

A. ABC Constitution and Statutes

Article VIII–A of the South Carolina Constitution provides:

In the exercise of the police power, the General Assembly has the right to prohibit and to regulate the manufacture, sale, and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture, sell, and retail alcoholic liquors or beverages within the State under the rules and restrictions as it considers proper. The General Assembly may prohibit the manufacture, sale, and retail of alcoholic liquors and beverages within the State, and may authorize and empower state, county, and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities, under such rules and regulations, as it considers expedient.

Pursuant to the police power referenced above, the General Assembly in Section 61-6-140 provided that "No more than three retail dealer licenses may be issued to one licensee...."

In Hon. John D. Geathers, *The Regulation of Alcoholic Beverages in South Carolina* (S.C. Bar) at page 135, the authors describe the regulation of the sale of alcoholic Liquors as follows:

In South Carolina, the retail sale of alcoholic liquors for off-premises consumption may only be made from stand-alone liquor stores. That is, bottles of liquor may not be sold from grocery stores, convenience stores, or other retail food and beverage outlets, but may only be sold from specialized liquor stores. And, perhaps somewhat unfairly, these liquor stores are subject to the most stringent regulations of South Carolina's alcoholic beverage laws.

The authors at pages 137-38 describe the no more than three license statutes as follows:

The ABC Act also places strict restrictions on how many liquor stores a single licensee may own and operate. Specifically, a single retail liquor licensee, whether an individual or a corporation, may not be issued more than three retail dealer licenses, and these retail licenses may only be issued to one member of a single household. Beyond these restrictions upon formal licensure, the Act also prohibits a retail liquor license from holding a financial interest, either directly or indirectly, in more than three liquors stores. This type of regulation of the number of licenses that may be issued to one person is aimed at "controlling the tendency toward concentration of power in the liquor industry[,] preventing monopolies[,] avoiding practices such as indiscriminate price

cutting and excessive advertising[,] and preserving the right of small, independent liquor dealers to do business,” and *these restrictions have been held not to violate the due process or equal protection rights of liquor licensees.*

The authors at page 7 also note:

Laws regulating the manufacture, sale, and consumption of alcoholic beverages have been with South Carolina for as long as the states have had laws. Within the first four recorded acts of the colonial government, enacted on May 26, 1682, was “An Act for the suppression of Idle, Drunken and Swearing Persons, inhabiting within this Province,” and, just over one year later, on September 25, 1683, South Carolina would enact its first law directly regulating the sale of alcoholic beverages in an act requiring licenses for taverns and “punch houses.”

B. Due Process Standard of Review

Plaintiff’s argue the statutory three store maximum violates their due process rights. In *R.L Jordan Company, Inc. v. Boardman Petroleum, Inc.*, 338 S.C. 475, 527 S.E.2d 763 (2000) the South Carolina Supreme Court adopted the current due process standard. The Court stated:

Until today, we have adhered to the traditional substantive due process analysis developed by the United States Supreme Court during the first third of the 20th century. Under this “Lochner Era” approach, statutes regulating private economic relationships, such as this price control statute, are subject to a unique constitutional test, which most fail to pass. 527 S.E.2d at 764.

The Court then declared the new due process standard as follows:

Only South Carolina and Georgia have continued to adhere to this traditional approach.

The modern rule gives great deference to legislative judgment on what is reasonable to promote the public welfare when reviewing economic and social welfare legislation. 2 Rotunda & Nowak, *Treatise on Constitutional Law*, § 15.4 (1992). *Legislation is not “overturned unless the law has no rational relationship to any legitimate interest of government.”* Id. At p. 407. This is the same standard we apply when reviewing substantive due process challenges to other types of statutes. E.g., *State v. Kiser*, 288 S.C. 441, 343 S.E.2d 292 (1986). (Emp. added.)

Accordingly, we overrule our cases which apply the traditional approach, and adopt this standard for reviewing all substantive due process challenges to state statutes: "*Whether it bears a reasonable relationship to any legitimate interest of government.*" Id at 765. (Emp added).

In *Treatment and Care of Luckabaugh*, 351 S.C. 122, 568 S.E.2d 338 (2002) the Supreme Court further refined the test:

When an act is challenged under the due process clause, this "Court only requires the act to be reasonably designed to accomplish its purposes, unless some fundamental right or suspect class is implicated." *State v. Hornsby*, 326 S.C. 121, 125-26, 484 S.E.2d 869, 872 (1997). Legislation restricting or impairing a fundamental right "is subject to 'strict scrutiny' in determining its constitutionality." *Hamilton v. Board of Trustees*, 282 S.C. 519, 523, 319 S.E.2d 717, 720 (Ct. App.1984). *Legislation that does not infringe on fundamental rights is subject only to a rational basis test.* 19 S.C. Juris. *Constitutional Law* § 74 (1993). Under either type of analysis, the one who attacks the law bears the burden of showing it is unconstitutional. See *State v. Hornsby*, *supra*. 568 S.E.2d at 347. (Emp added).

Obviously the right to own a fourth liquor store in South Carolina is not a fundamental right. Accordingly, the rational basis test is used. The rational basis looks at whether the three store limit bears a reasonable relationship to any legitimate interest of government. And the burden is on the Plaintiff to show it does not.

C. Equal Protection Standard of Review

Plaintiff's Complaint alleges that the statutes violate the Equal Protection clauses found in the South Carolina and United States Constitutions, S.C. Const. Art. I, § 3, U.S. Const. Amend. XIV.

In *Fraternal Order of Police v. S.C. Department of Revenue*, 352 S.C. 420, 574 S.E.2d 717 (2002) the Supreme Court declared the Equal Protection test as follows:

The requirements of equal protection are satisfied as long as (1) the classification bears a reasonable relation to the legislative purpose

sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis. *Id.* According to the United States Supreme Court, [u]nless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. 574 S.E.2d at 722.

In *American Service Corp. of S.C. v. Hickle*, 312 S.C. 520, 435 S.E.2d 870 (1993) the Court similarly stated:

“In determining whether a statute violates the equal protection clauses of state and federal constitutions, we must give great deference to the classification passed by the legislature, and the classification will be sustained against constitutional attack if it is not plainly arbitrary and there is ‘any reasonable hypothesis’ to support it.” *Smith v. Smith*, 291 S.C. 420, 424, 354 S.E.2d 36, 39 (1987) [citing *Gary Concrete Products, Inc., v. Riley*, 285 S.C. 498, 331 S.E.2d 335 (1985)]. Equal protection is satisfied if: “(1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis.” *Samson v. Greenville Hospital System*, 295 S.C. 359, 364, 368 S.E. 2d 665, 667 (1988).

A statute enacted pursuant to the legislature’s powers is presumptively constitutional. 435 S.E.2d at 871.

In *Ed Robinson Laundry and Dry Cleaning, Inc. v. SC Department of Revenue*, 356 S.C. 120, 588 S.E. 2d 97, 99 (2003) the Court noted that the Plaintiff “must overcome this Court’s mandate to sustain a legislative enactment if there is ‘any reasonable hypothesis to support it.’”

Accordingly, for Plaintiff to prevail, this Court is going to have to find that (1) the three store limit does not bear a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are not treated alike; and (3) the classification does not rest on some reasonable basis.

D. Due Process and Equal Protection Challenges to ABC Licensing Statutes

In 48 C.J.S. Intoxicating Liquors §62, the authors state, "A state legislature may provide for a licensing system for the granting or revocation of licenses for the sale of liquor and may limit the number of licenses which may be granted.... *The licensing of persons to sell liquor is not an exercise of the taxing power of the state to raise revenue, but rather of the police power.*" (Emp. added.)

The authors go on to state that "The legislature may limit the number of licenses, or the number of licenses for a particular species of liquor business which may be owned by the same person, group or organization, where the statutes are reasonable and not unduly discriminatory."

Id.

45 Am.Jur. 2d Intoxicating Liquor §102 similarly states:

As a general rule, a state may, without impairing constitutional rights, limit the number of liquor licenses that may be issued within a given area or political subdivision when the public good seems to so require. Placing a limitation on the number of licenses which will be issued for the sale of intoxicants within a municipality or within a given area is not in itself prohibitory, and is recognized as a legitimate regulation tending to promote public health, safety, and welfare within the police power, at least as long as the limitation is not carried to such an extreme as to amount to an absolute or practical prohibition. Such statutes have been upheld against attack on the grounds that they deny equal protection of the laws, create an illegal monopoly, discriminate in favor of a limited number of licensees, and amount to class legislation. They work no unlawful discrimination, since all have an equal right to apply for one until the maximum number of licenses are issued, and when the maximum is reached, all are equally excluded from applying. The regulation of the number of licenses issued having as its aim controlling the tendency towards concentration of power in the liquor industry, preventing monopolies, avoiding practices such as indiscriminate price cutting and excessive advertising, and preserving the right of small, independent liquor dealers to do business is not discriminatory and does not violate equal protection principles.

Virtually every court which has examined limitations on the number of licenses against

due process and equal protection claims has upheld them. See *Parks v. Allen*, 426 F.2d 610 (5th Cir. 1970) (2 licenses per family); *Peoples Super Liquor Stores, Inc. v. Jenkins*, 432 F.Supp.2nd 200 (2006) (3 licenses); *Johnson v. Martignetti*, 374 Mass. 784, 375 N.E.2d 290 (1978) (3 licenses); *Granite State Grocers Assoc. v. State Liquor Commission*, 112 N.H. 62, 289 A.2d 399 (1972) (2 licenses); and *The Grand Union Co. v. Sills*, 43 N.J. 390, 204 A.2d 853 (1964) (2 licenses). See also, *Maxwell's Pic-Pac, Inc. v. Dehner*, F.3d. 936 (Sixth Cir. 2013) (Kentucky statute which barred grocery and convenience stores from selling liquor while permitting drug stores and others from doing so did not violate due process); *Manuel v. State of Louisiana*, 982 So.2d 316 (2008) (three tier system didn't violate Sherman Act); *Massachusetts Food Assoc. v. Massachusetts Alcoholic Beverages Control Commission*, 197 F.3d. 560 (1st Cir. 1999) (3 License limitation does not violate Sherman Act.)

Several of the cases cite the public policy reasons for limiting the number of licenses which a person may hold. In *Johnson v. Martignetti, supra*, the Massachusetts Supreme Court stated:

First, many sound reasons have been advanced to support restrictions on the number of liquor licenses allowed any one business interest. Concentration of retailing in the hands of an economically powerful few has been thought to intensify the dangers of liquor sales stimulations, thereby threatening trade stability and promotion of temperance. Regulation of the number of licenses issued, therefore, aims at controlling the tendency toward concentration of power in the liquor industry; preventing monopolies; avoiding practices such as indiscriminate price cutting and excessive advertising; and preserving the right of small, independent liquor dealers to do business.

In *Granite State Grocers Assoc. v. State Liquor Commission, supra*, the New Hampshire Supreme Court stated:

The obvious purpose of this well-rounded regulatory system is to supervise and to fractionalize the beverage industry....

The belief that concentration of control within the alcoholic beverage industry should be avoided is not unique to New Hampshire. At least twenty states similarly restrict the number of alcoholic beverage permits. Such statutes have been held constitutional as serving a public purpose in the two states where the question has been considered.

The issue here is whether the limitation confers a public benefit, not whether it also incidentally confers a private benefit.

Regulations against concentration in the alcoholic beverage business necessarily discriminate against chain stores.

Moreover, the only evidence suggesting that the limitation was intended as class legislation is that the smaller grocers were pleased with it. That a law is popular is insufficient to make it unconstitutional. 289 A.2d at 402.

In *The Grand Union Company v. Sills, supra*, the New Jersey Supreme Court stated:

In fixing its policy, the Legislature accepted widely held views as to sound liquor control. These include beliefs that the consumption of liquor is elastic rather than inelastic, that price cuttings and their advertisement, along with comparable practices, are undesirable in the liquor field as tending to stimulate consumption, and that absentee ownership or domination of retail establishments by distillers or other economically powerful interests, or the concentration of retaining in the hands of an economically powerful few, would intensify the dangers of sales stimulations and other abuses and would be inimical to temperance and trade stability. 204 A.2d at 859.

The court also stated:

Similarly, it may not be said as a matter of law that the New Jersey Legislature's conclusion, that restricting multiple retail holdings would serve the interests and purposes of sound and effective liquor control, had no connection with the public health, safety, morals or general welfare. It may be that the acknowledged sales stimulating abilities and tendencies of the chain liquor store operation have thus far not been as inimical as in the tied house system. But the Legislature, being aware of the threatened growth of chain liquor stores, including those associated with well-known supermarkets and discount establishments, need not wait until the evils have become flagrant and the State's liquor control policy has been impaired. *Id.* at 862.

In *Parks v. Allen, supra*, the Fifth Circuit Court of Appeals adopted the District Court's Order upholding against due process and equal protection grounds an ordinance limiting two licenses per family. The District Court Order described the rationale for the limitation as follows:

Evidence produced at the hearing shows that there is no city regulation governing discrimination in pricing and/or brand preferences. But, in spite of state-prohibitions on the subject, there exist preferential pricing in favor of large retailers usually in the form of discounts or 'extras,' i.e. a 13th bottle to the case, etc. Also, scarce preferred brands are often 'paired' with volume purchases of common brands. Moreover, again in spite of state prohibitions to the contrary, 'split deliveries' exist wherein a discount is granted for large purchases delivered to two or more locations. Small single-location licensees have found it difficult to survive under such circumstances and, in some instances, have been driven out of business.

While 'bigness' itself can produce such abuses, the concentration of numbers of licenses in one family can and does create additional opportunities to nullify competition. Thus, volume could be built up by combined purchases between family licensees and 'split deliveries' could easily be arranged under such circumstances. Moreover, such concentration of licenses in one geographical area could itself facilitate retail price-fixing, even under a competitive system. 426 F.2d at 613.

The Court found the ordinance valid, stating:

Tested on the above principles, there is no hesitancy in concluding that the ordinance in question reasonably relates to the problem

sought to be controlled....Certainly, it cannot be said as a matter of law that the ordinances have no rational basis on which to rest. Their enforcement tends to increase competition and lessen the evils described of price discrimination and split deliveries.

Over and beyond such factual determination, however, the plaintiff contends that the ordinances per se are unconstitutional in that they penalize him unjustly. Thus, 'the condition of a man's birth or a matter over which he has no control cannot be made the basis of a rule restricting him from a license unless his condition is something that would make him unfit.' This claim that the ordinances are facially unconstitutional is likewise rejected. The argument presupposes that the sale of liquor is a right, rather than a privilege. And the test is the reasonableness of the ordinance as relates to the business licensed and not the reasonableness as it relates to a particular applicant. As seen, the ordinance is reasonably related to the control of abuses in the industry and plaintiff is on prior notice of its requirements. The mere fact that he does not qualify by virtue of birth is no bar, even though it might create a personal hardship. *Id.* at 614.

E. Valid Exercise of Police Power

Plaintiff contends that the 3 store limit statute is not a valid exercise of police power. In *The Regulation of Alcoholic Beverages in South Carolina, supra*, current Court of Appeals Judge Geathers states:

The regulation of alcoholic beverages in South Carolina is principally a matter reserved to state government, under the licensing system imposed by state law and administered by the South Carolina Department of Revenue. This licensing system has been characterized as a "typical exercise of the police power of the State...designed for the comprehensive system of regulation that closely polices the commerce in alcoholic beverages. *Id.* at pg 11.

See *Davis v. Query*, 209 S.C. 41, 56, 39 S.E.2d 117, 124 (1946) (recognizing the "fundamental fact" that a liquor retailer "is not engaged in an ordinary business and has no vested right to operate, despite his license, in any manner other than that dictated by the state; his is a perilous business; there is probably no field in which legislative bodies, and the people themselves in referenda, have been more fickle").

Judge Geathers also states:

By constitutional provision and by statute, the state holds nearly exclusive power over the regulation of the manufacture and sale of alcoholic beverages in South Carolina. Article VIII-A of the South Carolina Constitution authorizes the General Assembly, "[i]n the exercise of the police power," to address the sale of alcoholic liquors and beverages in one of three ways: it may (1) absolutely prohibit the manufacture and sale of alcoholic liquors and beverages within the state, (2) license persons or corporations to manufacture and retail such liquors and beverages "under such rules and restrictions it deems proper," or (3) restrict the sale of liquor to sales by designated governmental entities, as under the Dispensary system of the late-nineteenth and early-twentieth centuries. This Article further makes it clear that however this police power is exercised, licensing authority must remain with the state and may not be delegated to municipal governments. *Id at* 25.

The statutes in question were clearly enacted as part of the General Assembly's police power. The South Carolina Supreme Court has addressed a predecessor statute in *Pendarvis v. Berry*, 214 S.C. 363, 52 S.E.2d 705 (1949). At issue was the enforceability of a contract designed to circumvent or violate subsection (c)(9) of Section 4 of the ABC Act of 1945, which limited ownership to a single license. The action was brought for an accounting of a claimed partnership which was formed for the operation of a second liquor store. The Supreme Court held that the contract was unenforceable as it was designed to violate the single license requirement. The Court noted the Appellant's argument that the contract was nevertheless enforceable as follows:

The excellent brief of appellant is principally upon the contention that in view of the fact that the Act of 1945 contains no declaration that a contract in evasion of its terms is void and unenforceable and the Act is not designed to protect the public health and morals or to protect the public from imposition and fraud, a contract of evasion is not void but is enforceable in such a case as this. 52 S.E.2d at 706.

The Court rejected the argument stating:

A further obstacle to appellant's attempted distinction is that it overlooks or ignores the consideration that the Alcoholic Beverage Control Act of 1945 *is a typical exercise of the police power of the State* and is designed for the protection of the morals and welfare of the public. The universality of this conception of legislation looking to control of the liquor traffic was pointed out in *Davis v. Query*, 209 S.C. 41, 39 S.E.2d 117. It cannot be gainsaid that, while the Act of 1945 is also a revenue law, its principal purpose is the protection of the public health and morals. Liquor control legislation is generally of such purpose.

Id. (Emp. added).

F. Conclusion

As the U.S. Supreme Court has repeatedly stated, "The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." *Grenholm v. Heald*, 544 U.S. 460, 488 (2005).

"Because of its inherent evils, liquor has always been dealt with as a subject apart. ...Its sale may be prohibited entirely or permitted under severe restrictions." *The Grand Union Co. v. Sills*, *supra*, 204 A.2d at 857.

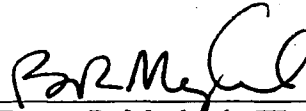
"The belief that concentration of control within the alcoholic beverage control industry should be avoided is not unique to New Hampshire. At least twenty states similarly restrict the number of alcoholic beverage permits." *Granite State Grocers Association v. State Liquor Commission*, *supra*, 289 A.2d at 402.

As stated above, many sound reasons have been advanced to support restrictions on the number of liquor licenses allowed any one business interest. Such restrictions have been upheld

in virtually every case considering the issue.

The three store limitation bears a reasonable relationship to any legitimate interest of government.

RESPECTFULLY SUBMITTED,



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May²⁵, 2014
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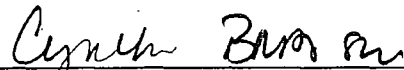
CERTIFICATE OF SERVICE

This is to certify that a copy of the following **Defendants' Memorandum in Support of Cross-Motion for Summary Judgment** has been served upon the following counsel of record by U.S. Mail, first class postage prepaid, addressed to the following as shown below this 28th day of May, 2014:

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc.,)
d/b/a Total Wine & More,)

2014-CP-02-00259

Plaintiff,)

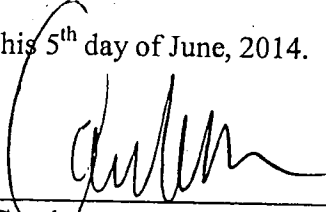
CERTIFICATE OF SERVICE

vs.)

South Carolina Department of)
Revenue and ABC Stores)
of South Carolina,)

Defendants.)

I, Carol I. McMahan, an employee of the South Carolina Department of Revenue, hereby certify that I have caused to be served, by U.S. Mail, postage prepaid, Cross-Motion for Summary Judgment and Memorandum In Support and Affidavits and Documents, to each of the following attorneys of record: Dwight F. Drake, Esquire, Brian M. Barnwell, Nelson Mullins Riley & Scarborough LLP, Post Office Box 11070, Columbia, S.C. 29201, Baylen T. Moore, Esquire, 7001 Saint Andrews Rd., Ste. 316, Columbia, S.C. 29212 and Burnet R. Maybank, III, Esquire, Nexsen Pruet, LLC, PO Drawer 2426, Columbia, SC 29202, this 5th day of June, 2014.



Carol I. McMahan

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT

Retail Services & Systems, Inc.,
d/b/a Total Wine & More,

SOUTH CAROLINA
DEPARTMENT OF REVENUE'S
CROSS-MOTION FOR
SUMMARY JUDGMENT

V.

South Carolina Department of
Revenue and ABC Stores
of South Carolina,

Defendants.

PLEASE TAKE NOTICE that the undersigned, as attorneys for the Respondent, South Carolina Department of Revenue (Department), will not sooner than ten days from the date of service of this Motion, or as soon thereafter as counsel may be heard, move for an order for summary judgment pursuant to Rule 56(c), SCRPC. As more fully discussed in the accompanying Memorandum in Support of this Motion, the undersigned submit that it is entitled to judgment as a matter of law on the issues delineated therein.

Carol Ann

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Attorneys for Defendant South Carolina
Department of Revenue

Columbia, South Carolina
June 5, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
	)	2014-CP-02-00259
Retail Services & Systems, Inc.,	)	
d/b/a Total Wine & More,	)	
	)	
Plaintiff,	)	SOUTH CAROLINA
	)	DEPARTMENT OF REVENUE'S
v.	)	MEMORANDUM IN SUPPORT
	)	OF DEFENDANT'S CROSS-
South Carolina Department of	)	MOTION FOR SUMMARY
Revenue and ABC Stores	)	JUDGMENT
of South Carolina,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 56, SCRCP, Defendant, South Carolina Department of Revenue (Department) respectfully submits this Memorandum of Law in Support of its Cross-Motion for Summary Judgment. The Department asserts that its Cross-Motion for Summary Judgment should be granted as there is no justiciable controversy regarding the Plaintiff, the Plaintiff does not have standing to bring suit against the Department,¹ and, given the facts in this case, S.C. Code Ann. §§ 61-6-140 and 61-6-150 (2009) are not facially unconstitutional and are well within the South Carolina General Assembly's police power to enact such provisions.

¹The Department previously moved to dismiss Plaintiff's Complaint because of the lack of standing and lack of a justiciable controversy, and in the alternative, to change venue. Although the Court heard the venue motion, at that hearing the Court requested that the parties address venue only and not the Rule 12(b) motions. However, on May 29, 2014, the Court issued its Order denying the Department's request for change of venue as well as denying its motions to dismiss. The Court's order does not fully address the issues of lack of standing and the absence of a justiciable issue such that the Department respectfully raises these issues herein.

FACTUAL BACKGROUND

In this action for declaratory judgment, Plaintiff, Retail Services & Systems, Inc., doing business as Total Wine & More (Retail Services or Plaintiff) challenges the constitutionality of §§ 61-6-140 and 61-6-150 and the limits contained therein on the number of retail dealer licenses (also referred to herein as retail liquor licenses) for the sale of liquor that may be held by one entity at any one time. Plaintiff argues that these statutes are facially invalid. The Department, an agency of the State of South Carolina with its principal offices in Lexington County, is a named defendant because of its exclusive role in the administration of "South Carolina laws regulating the manufacture, sale and retail of alcoholic liquors." S.C. Code Ann. § 61-2-80 (2009). The Department receives applications for licensure at its Lexington County location where such are reviewed and either granted or denied. ABC Stores – a trade group – is also named as a defendant. ABC Stores has its principal place of business in Richland County. Retail Services alleges in its Complaint that it holds three retail liquor dealer licenses in South Carolina – for store locations in Columbia, Greenville and Charleston, South Carolina.²

²The three retail liquor licenses in South Carolina are held by Charleston Fine Wine, Inc. (Charleston), Greenville Fine Wine, Inc. (Greenville) and Columbia Fine Wine, Inc. (Columbia) (Exhibit 1, p. 2, Affidavit of Sylvia Osborne and Copies of Applications for Retail Liquor Licenses/Renewals for these entities.) Greenville is owned 50% by David Trone and 50% by Robert Trone, residents of Maryland. Retail Services was neither listed on the application as the entity seeking the Greenville license nor as a principal of the entity that currently holds the Greenville retail liquor dealer license. Charleston is owned 50% by Robert Trone and 50% by David Trone. Again, Retail Services is not a listed applicant, licensee, or principal of Charleston. Based on the documentation provided to the Department in its most recent renewal, Columbia is owned 100% by Retail Services (Exhibit 1, p. 52). In Columbia's application dated March 27, 2003, Robert and David Trone appeared to own some stock in Retail Services – however, that information has not been provided to the Department in Columbia Fine Wine, Inc.'s most recent license renewal application. In summary, Retail Services is the

However, as a preliminary matter, the Department brings to the Court's attention that Retail Services is the "holder" of one retail liquor dealer license – Columbia Fine Wines, Inc. (Exhibit 1, p. 41).

Nevertheless, according to its Complaint and Summary Judgment Motion, the Plaintiff desires to open a fourth retail liquor store somewhere in Aiken County, South Carolina. At the time Retail Services filed its Complaint and through April 16, 2014 (See Exhibit 1), the Department had not received any application for a retail liquor license from Retail Services for a location in Aiken County or any other location in South Carolina.³

In response to Plaintiff's economic protectionism argument, the Department has also searched for any persons granted more than three licenses under the statute's "grandfather clause."⁴ At the time of the filing of this Cross-Motion for Summary Judgment by the Department, only one entity holds four retail liquor dealer licenses in the State of South Carolina (Affidavit of Tammy Young Exhibit 1, p. 1; "Grandfather Clause").

"holder" of one Retail Liquor Dealer license, but the Trones may have what appears to be a "financial interest" in three retail liquor dealer licenses. This potentially raises concerns about the real party in interest under Rule 17(a), SCRCp.

³Pursuant to S.C. Code Ann. § 61-2-90 (2009) a prospective holder of a retail liquor license in South Carolina must file an application with the Department. No other state agency is empowered to issue retail liquor licenses (See S.C. Code Ann. §§ 61-2-70 and 61-2-80 (2009)). Furthermore, each principal of the applicant must be identified in the application, Pendarvis v. Berry, 214 S.C. 363, 525 S.E. 2d 705 (1949); S.C. Code Ann. § 61-6-150 (Supp. 2013).

⁴Section 61-6-150 provides in relevant part: [t]he prohibitions in this section do not apply to a person having an interest in retail liquor stores on July 1, 1978."

DISCUSSION

“If the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law” a court may grant a party’s Motion for Summary Judgment. Rule 56(c), SCRPC. “Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.” Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E. 2d 161 (2013). However, “summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Worthy v. BPS Inc., 362 S.C. 319, 608 S.E. 2d 155 (Ct. App. 2005).

Here, the identity of the potential licensee and its relationship to the corporation seeking a declaratory judgment remain unclear. Plaintiff has failed to file any information with the Department, detailing the location or owner of any Aiken store. Plaintiff is requesting this Court give an advisory opinion on an issue not yet ripe for review. To that end, this Court should grant Department’s Motion for Summary Judgment as no facts indicate a controversy exists in this case. Furthermore, even if the Court finds a controversy exists as between this Plaintiff and the Defendants, Plaintiff has failed to meet its extremely high burden to prove that the statutes here are unconstitutional.

I. THE DEPARTMENT’S MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 12(b)(6), SCRPC, FOR LACK OF A JUSTICIABLE CONTROVERSY SHOULD BE GRANTED.

To fall within the intended purpose and scope of the Declaratory Judgments Act, the parties must seek adjudication of a justiciable controversy. Sunset Cay, LLC v. City

of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). See also Tourism Expenditure Review Committee v. City of Myrtle Beach, 403 S.C. 76, 742 S.E.2d 371 (2013) (noting that where adjudication of a question “would settle no legal rights of the parties,” it would be “only advisory and, therefore, beyond the intended purpose and scope of a declaratory judgment”) (citing Power v. McNair, 255 S.C. 150, 177 S.E.2d 551 (1970)). ““Questions of statutory interpretation, by themselves, do not rise to the level of actual controversy.”” Id. (quoting Entergy Nuclear Generation Co. v. Dep’t of Envtl. Prot., 944 N.E.2d 1027, 1034 (Mass. 2011) (internal quotations omitted)). “A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). See also Thrifty Rent-A-Car Sys., Inc. v. Thrifty Auto Sales of Charleston, Inc., 849 F. Supp. 1083 (D.S.C. 1991) (stating that a “court should not decide a controversy grounded in uncertain and contingent events that **may not occur as anticipated or may not occur at all.**”) (emphasis added).

Further, the Court has made clear “the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment.” Power, 255 S.C. at 153-54, 177 S.E.2d at 552. “The Uniform Declaratory Judgment Act . . . ‘does not require the Court to give a purely advisory opinion which the parties might . . . put on ice to be used if and when the occasion might arise,’ or ‘license litigants to fish in judicial ponds for legal advice.’” City of Columbia v. Sanders, 231 S.C. 61, 68, 97 S.E.2d 210, 213 (1957) (citations omitted).

The Department continues to assert that the holding in Tourism Expenditure Review Committee v. City of Myrtle Beach, 403 S.C. 76, 742 S.E.2d 371 (2013) compels this Court to find that no justiciable issue exists.

At issue in Tourism Expenditure was the interpretation of the statutes providing for the proper use of local accommodations taxes by municipalities and how any alleged nonconforming use of said tax money was to be addressed. Significantly, the governing statutes created a procedure whereby an administrative board referred to as the Tourism Expenditure Review Committee “certified” a municipality’s purported noncompliant use of tax money to the State Treasurer. Upon the receipt of a certification of noncompliant use, the Treasurer in turn offset the disputed amount of tax from the municipality’s subsequent local accommodations tax distributions. A municipality could appeal the tax offset by filing a contested case hearing with the Administrative Law Court (ALC).

After an action filed at the ALC involving this issue was dismissed for lack of subject matter jurisdiction as no purported noncompliant use had been certified by the Tourism Expenditure Review Committee, the City of Myrtle Beach filed a declaratory judgment action in circuit court in an effort to obtain guidance on the proper construction of the applicable statute as to proper use of funds. The circuit court adopted the City’s construction of the statute and the Tourism Expenditure Review Committee appealed. Confronted with the review of a declaratory judgment action where the statutory prerequisites for judicial review were absent, the Supreme Court observed that “no particular expenditure or allocation [of accommodations tax] is at issue here, nor are there any A-Tax [accommodations] revenues being held by the State Treasurer in connection with this appeal.” Tourism Expenditure, 403 S.C. 76, 79, 742 S.E.2d 371, 373 (2013).

Furthermore, the Tourism Expenditure Review Committee, while suggesting it might certify a City expenditure as noncompliant, had not actually issued any certification decision regarding improper use of any tax funds.

The Supreme Court held that no justiciable controversy existed. "Here, the legislature has provided an exclusive statutory procedure for challenging the expenditure of A-Tax funds. . . . No case or controversy exists outside this statutory process. The Declaratory Judgments Act may not be invoked to avoid or circumvent the legislature's exclusive method for challenging A-Tax funds expenditures." Tourism Expenditure, 403 S.C at 82, 742 S.E.2d at 374. The factual predicate here is remarkably similar to the circumstances present in Tourism Expenditure. The Plaintiff has not filed any application for a fourth retail liquor license with the Department for a location in Aiken County or any other location in South Carolina. The Department has not actually denied any application for a retail liquor license submitted by the Plaintiff.⁵ While Retail Services states its intention to apply for a retail liquor license, in the absence of an actual application filing and subsequent agency denial of the same, no real case or controversy

⁵There are numerous reasons a retail liquor license can be denied. See S.C. Code Ann. §§ 61-6-110; 120; 61-6-900 *et seq.* Without knowing the proposed location of the Aiken business, and the owner of record for that proposed business, the Department cannot determine if the applicant would qualify for a license and whether the location is appropriate, i.e. it must not be "within three hundred feet of any church, school or playground situated within a municipality or within five hundred feet of any church, school, or playground situated outside of the municipality." S.C. Code Ann. § 61-6-120 (2014). Furthermore, the license could be denied because the Department determines that the applicant, when determined, is "not a suitable person to be so licensed." While Retail Services currently holds one license for a Columbia location, it appears Retail Services has not disclosed its shareholders since 2003. This may be a violation of the ABC Act with a penalty up to and including revocation of that license. S.C. Code Ann. §61-2-100(J)(2009). Revocation of a license is grounds for denial of any subsequent application for five years. S.C. Code Ann. § 61-2-140(E)(2009).

exists upon which a ruling by this Court will have any effect. “[Plaintiff] has not applied for a [license], nor is there any indication it ever will.” Waters v. S.C. Land Resources Conservation Comm’n, 321 S.C. 219, 227, 467 S.E.2d 913, 918 (1996). Instead, any ruling by this Court in the context of the present circumstances would be purely advisory and invariably be “put on ice to be used if and when the occasion might arise,” or never used at all. Following Tourism Expenditure, the instant action must be dismissed because there is no justiciable controversy which in turn deprives the Court of subject matter jurisdiction.

Plaintiff argues that its failure to apply for a liquor license should be excused as it should not be required to perform a futile act. See Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 593 S.E.2d 414 (2004). Plaintiff’s reliance on Sunset Cay is misplaced, however. In Sunset Cay, a developer who purchased seven acres of land within the City of Folly Beach for the development of a housing complex filed a declaratory judgment action against the City of Folly Beach challenging a city ordinance which prohibited further extension of city-provided sewer services. The city ordinance effectively prohibited sewer services from being extended to the developer’s property, thus, directly affecting the developer’s ability to build residential housing units on his seven acre tract.⁶ The Supreme Court rejected the City of Folly Beach’s argument that because the developer had not actually applied to the City for a sewer line extension, the case was not yet ripe for review:

⁶“Developer proposed to build eight residential duplexes on the property, but needs sewer service to do so. Without sewer service, Develop may be limited to building fewer duplexes with septic tanks.” Tourism Expenditure, 403 S.C at 82, 742 S.E.2d at 374.

A justiciable controversy exists in the present case. City has enacted an ordinance limiting the expansion of its sewer system. Developer, a city resident, **has purchased property** within the City and wishes to build houses on it. Developer's plans are directly affected by the ordinance at issue. Developer has challenged the validity of the ordinance on statutory and constitutional grounds. The controversy is real and substantial; it is not contingent, abstract, or hypothetical. The validity of the ordinance and the parties' rights under it as they presently exist will be resolved by our decision.

Sunset Cay, 357 S.C. at 424, 593 S.E.2d at 467 (emphasis added).

Rather than supporting the Plaintiff's position, this excerpt from the Court's opinion underscores the fundamental difference between the instant case and the situation confronting the Court in Sunset Cay. The developer in Sunset Cay purchased a tract of property whose value and use was directly impacted by the interpretation of the city ordinance to extend or not to extend sewer services. Here, the Plaintiff has filed no application to locate a fourth retail liquor store in Aiken County or anywhere else in South Carolina; has not purchased real estate for a proposed location in South Carolina; and has not given any evidence of any affirmative actions taken in furtherance of their "plan to locate in Aiken County." The Plaintiff has neither demonstrated that it is directly affected by the existence of the statutory prohibition against an entity having more than three retail liquor licenses nor that its future behavior will be impacted by a decision rendered by the Court in this case. The Plaintiff presents no real and substantial present controversy such that this case is not justiciable. Accordingly, the instant action should be dismissed as there is no case or controversy giving rise to a declaration by the court.

II. THE PLAINTIFF'S CHALLENGE IS FORECLOSED DUE TO A LACK OF STANDING.

Retail Services' failure to file an application for a retail liquor license also deprives it of standing to challenge the constitutionality of the statutes at issue. "Standing may be acquired: (1) by statute; (2) through the rubric of 'constitutional standing;' or (3) under the 'public importance' exception". ATC South, Inc. v. Charleston County, 380 S.C. 191, 194, 669 S.E.2d 337, 339 (2008). Regardless of the source, the requisite elements of standing are well settled law: "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Allen v. Wright, 468 U.S. 737, 751, 104 S.Ct. 3315 (1984). Retail Services has not alleged any cognizable injury sufficient to confer standing. Plaintiff has not filed an application for a fourth license, and, as it stands today, Retail Services is listed as the "holder" of only one retail liquor license – Columbia. See Fn. 3. Moreover it has not filed an application for any proposed location in Aiken County, as such there has not been a denial of any application.⁷ The fact that Retail Services would have to run newspaper advertisements in Aiken County and post a public notice at the proposed location does not grant standing as none of these steps constitute an unreasonable burden on the Plaintiff. Further, any potential economic harm does not confer standing on Retail Services. Clearly, Plaintiff has suffered no injury that supports standing in this instance.

Furthermore, Plaintiff cannot fairly trace its supposed "injury" directly to the statutes complained of in their action. There are other possible avenues by which a

⁷See Fn 5.

license could be denied the Plaintiff in this case. Even if the Court finds the statutes unconstitutional, as previously noted, upon filing an application with the Department, Plaintiff will not automatically be granted a license to operate a location in Aiken County. Without causality, there can be no standing by which a Plaintiff can challenge a statute. See Michael P. v. Greenville Cnty. Dep't of Soc. Servs., 385, S.C. 407, 415-16, 684 S.E.2d 211, 215 (Ct. App. 2009) ("the injury and the conduct complained of the defendant must be causally connected.")

III. THE DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE THE STATUTES COMPLAINED OF ARE NOT VIOLATIVE OF THE SOUTH CAROLINA CONSTITUTION

As more fully discussed below, the statutes complained of, §§ 61-6-140 and 61-6-150, are not unconstitutional but valid and enforceable exercises of the General Assembly's authority under its police power to enact legislation for the regulation and enforcement of the sale, delivery, manufacture and transportation of alcoholic liquors. Moreover, the State Supreme Court has made clear that it is reluctant to declare a statute unconstitutional." In re Treatment and Care of Luckabaugh, 351 S.C. 122, 134, 568 S.E.2d 338, 344(2002). In rebuffing a constitutional challenge to a state statute, our Court recently observed:

Hence, we will make every presumption in favor of finding it constitutional. [Luckabaugh, 351 S.C. at 134]. Moreover, if possible, we must construe a statute so that it is valid. *State v. Neuman*, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009). The party challenging the statute bears the heavy burden of proving that "its repugnance to the constitution is clear and beyond a reasonable doubt." *Luckabaugh*, 351 S.C. at 134-35, 568 S.E.2d at 344.

Bodman v. State, 403 S.C. 60, 742 S.E.2d 363 (2012). Furthermore, "[i]n the exercise of the police power the General Assembly has the right to prohibit and to regulate the

manufacture, sale, and retail of alcoholic liquors or beverages within the State.” S.C. Const. art. VIII-A, § 1.⁸

Sections 61-6-140 and 61-6-150 were enacted by the General Assembly by way of 1996 Act No. 415, effective January 1, 1997,⁹ as a part of the recodification of the State’s Alcoholic Beverages Act (Act) with the intent to “provide for the regulation, transportation, possession, consumption, licensing, sale and penalties regarding alcoholic beverages, beer and wine, and to make certain technical changes.” Sections 61-6-140 and 61-6-150 provide that one person may not hold, or have a financial interest in more than three licenses. Many states throughout the country restrict liquor licenses in the same or similar ways. The courts of sister states have determined that these statutes are within their Legislatures’ police powers because they seek to secure the general welfare of their citizens. “Many sound reasons have been advanced to support restrictions on the number of liquor licenses allowed any one business interest.” Johnson v. Martignetti, 375 N.E.2d 290, 297 (Mass. 1978). For instance, in New Jersey, the Supreme Court found that “the concentration of retailing in the hands of an economically powerful few, would intensify the dangers of sales stimulations and other abuses and would be inimical to temperance and trade stability.” Grand Union Co.

⁸The comprehensive alcoholic beverage regulatory scheme set forth in Title 61 constitutes the “state’s exercise of its powers under the Twenty-first Amendment.” The Regulation of Alcoholic Beverages in South Carolina, John D. Geathers (Judge of the S.C. Court of Appeals), Justin Werner (2007); p. 21.

⁹Plaintiff’s Complaint outlines a cause of action that has not been included in its Motion for Summary Judgment. If Plaintiff continues to assert that the challenged statutes violate the “one subject rule” the Department moves for Summary Judgment on this point as well. The 1996 recodification was a stand-alone bill that dealt with one subject - alcohol control in South Carolina. To that end, the statutes do not violate the “one subject rule” and Summary Judgment should be ordered in favor of the Defendant and against Plaintiff.

v. Sills, 204 A.2d 853, 859 (1964). In Massachusetts, the Court was concerned with "indiscriminate price cutting and excessive advertising." Johnson, 375 N.E.2d at 297. See also FN13, *infra*. The Department asserts that all of these reasons are rational justifications to limit liquor licenses under the State's police power in advancing the goals of temperance and crime prevention that is likely to infiltrate an area inundated with alcohol.

The Plaintiff argues that the statutes in question "serve merely to provide economic protection for existing retail liquor stores" rather than a valid regulation of the State's police power. However, such assertion is unavailing. "[T]he issue here is whether the limitation confers a public benefit, not whether it also incidentally confers a private benefit." Granite State Grocers Ass'n v. State Liquor Comm'n, 289 A.2d 399, 402 (N.H. 1972). The Department asserts that the goals of temperance, trade stability and fears of excessive advertising leading to increased consumption are directly within the State's power to regulate the alcohol industry.

To the extent that the Plaintiff argues that there is a heightened scrutiny for alcohol control laws, such is incorrect. Plaintiff cites State ex rel. George for the proposition that "the court is 'under a solemn duty to look at the substance of things [in determining] whether the legislature has transcended the limits of authority.'" Pl's Mot. S.J. at 10. Although the Court in McCullough v. Brown, 41 S.C. 220, 19 S.E. 458 (1894), did use language to that effect, McCullough was overruled by State ex rel. George.¹⁰ Plaintiff

¹⁰ Plaintiff also cites Bacchus Imports v. Diaz, 468 U.S. 277 (1984) for the proposition that "[s]tate laws that constitute mere economic protectionism are . . . not entitled to the same deference as laws enacted to combat the perceived evils of an unrestricted traffic in liquor." However, in Bacchus, the Plaintiffs alleged violations of the Commerce Clause for a sales tax on liquors sold by out of state wholesalers. Plaintiff alleges Due Process and Equal Protection actions, not Commerce Clause Actions.

attempts to use the words of Chief Justice McIver in his State ex rel. George dissent to further his point. However, the Court's majority decision makes clear that "[t]he constitutionality of a law must be presumed until the violation of the constitution is proved beyond all reasonable doubt, and a reasonable doubt must be solved in favor of legislative action." State ex rel. George, 42 S.C. 222, 20 S.E. 221, 224 (1894). Furthermore, current cases agree that "[s]o long as the statute 'does not implicate a suspect class or abridge a fundamental right, the rational basis test is used. . . .'" Bodman v. State, 403 S.C. 60, 69, 742 S.E.2d 363, 368 (2013). Based on the plain language of the Act, within the authority of the police power granted by S.C. Const. Article VIII-A, section 1, the General Assembly provides for the sale of alcoholic liquor at retail by the provisions of §§ 61-6-140 and 61-6-150 as part of the ABC Act.¹¹ Because the purposes of the Act are to control the proliferation of alcoholic beverages, and that goal is within the State's police powers, the General Assembly's judgment as to how to control alcohol sales should not be disturbed.

1. Equal Protection of the Law

Sections 61-6-140 and 61-6-150 provide equal protection of the law. "The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." S.C. Const. Article I, § 3. "The constitutional guaranty of equal protection

Furthermore, in the instant case, there is no such discrimination. All retailers in South Carolina are subject to the same 3 license maximum.

¹¹Other states have found such limitations to be a valid exercise of the police power to control temperance, excessive advertising, concentration of power over the sale of liquor in a particular segment of the population, among others. See The Regulation of Alcoholic Beverages in South Carolina at p. 138 Fn. 148.

of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed” Thompson v. S.C. Comm’n on Alcohol and Drug Abuse, 267 S.C. 463, 472, 229 S.E.2d 718, 722 (1976). However, “[t]he equal protection clause only forbids ‘irrational and unjustified classifications.’” Luckabaugh, 351 S.C. 122, 148, 568 S.E.2d 338, 351(2002) (quoting S.C. Pub. Serv. Auth. v. Citizens & So. Nat’l Bank, 300 S.C. 142, 164, 386 S.E.2d 775, 786 (1989)). Accordingly, “the Legislature is not barred by the Constitution from classifying persons.” Id.

“In determining whether a statute violates equal protection, [the] Court accords ‘great deference to a legislatively created classification and the classification will be sustained if it is not plainly arbitrary and there is any reasonable hypothesis to support it.’” Davis v. Cnty. Of Greenville, 303 S.C. 459, 443 S.E.2d 383 (1994) (quoting Cerny v. Salter, 311 S.C. 430, 429 S.E.2d 809 (1993)). “The requirements of equal protection are satisfied when: (1) the classification bears a reasonable relation to the legislative purpose sought to be affected; (2) the members of the class are treated alike under similar circumstances and conditions; and, (3) the classification rests on some reasonable basis.” Fraternal Order of Police v. South Carolina Dep’t of Rev., 352 S.C. 420, 430, 574 S.E.2d 717, 722 (2002). Further, the rational basis test is appropriate where the classification does not implicate a suspect class or abridge a fundamental right. Such is the case here. “[L]iquor licenses are neither contracts nor rights of property. They are mere permits, issued or granted in the exercise of the police power of the State to do what otherwise would be unlawful to do.” Wall v. S.C. Alcoholic Beverage Control Comm., 269 S.C. 13, 15, 235 S.E.2d 806, 808 (1977) (citing Feldman v. S.C. Tax Comm., 203 S.C. 49, 26

S.E.2d 22 (1943)). Moreover the class consisting of retail liquor license holders is not suspect as all similarly situated retail liquor license holder are treated the same.¹²

First, the General Assembly had a rational basis in enacting the statutes at issue to achieve legitimate ends, including, but not limited to, temperance, limitations on advertising, prohibiting the licenses at issue from being controlled by a few.¹³ Here too, the second prong of the test is satisfied as all members of the class – retail liquor license holders – are treated similarly. With the exception of one grandfathered entity, all retail liquor license holders in this State are subject to the provisions of §§ 61-6-140 and 61-6-150. Finally, the classification rests on a reasonable basis –that is, retail liquor license holders sell large bottles of liquor that are then taken off-premises for consumption. The General Assembly's reasonable basis was to regulate, to the extent possible, this consumption and foster temperance though the limitations at issue.

¹² It is true that in the State of South Carolina, one entity holds four retail liquor licenses instead of three by virtue of the grandfather clause contained in S.C. Code Ann. §61-6-150.. However a grandfather clause, permitting one entity to hold more than three licenses does not equate to a violation of equal protection. See Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (the fact that a classification may result in some inequity does not render it unconstitutional under the equal protection clause). Moreover, this one entity may well sell its business(es) over time negating any claim of disparate treatment.

¹³Plaintiff asserts that the General Assembly did not “even attempt to provide an explanation as to how limiting the number of licenses that can be issued, or the number of liquor stores that a person may have an interest in, promotes the well-being of the state.” However, the Constitutional test is not whether the state can prove the rational basis the General Assembly used to pass a given statute, but the Plaintiff must “negate every conceivable basis which might support it.” Lee v. S.C. Dep’t of Natural Res., 339 S.C. 463, 470, 530 S.E.2d 112, 115 n.4 (2000). “Furthermore, ‘it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.’” Bodman v. State, 403 S.C. 60, 70, 742 S.E.2d 363, 368 (2013) (quoting Lee, 339 S.C. at 470, 530 S.E.2d at 115). Accordingly, the burden is on the Plaintiff to prove unreasonableness, such burden is not on the State to prove the Legislative purpose in passing the statute.

It is important here to note that the Plaintiff's assertions that other businesses are similarly situated to it for the purpose of equal protection analysis are without foundation. In South Carolina, liquor licenses for on-premises consumption may only be granted to businesses which operate as restaurants primarily and substantially engaging in the service of food and hotels that must furnish lodging. Each of these types of businesses is subject to a vast array of regulations that do not impact retail liquor license holders such that these other businesses are not similarly situated to the Plaintiff.

Similar provisions in other states' statutes regulating financial interest and/or number of alcohol licenses have been found constitutional in the face of equal protection challenges. See Johnson v. Martignetti, 375 N.E. 2d 290 (Mass. 1978) (three license limitation is not a violation of equal protection); Granite State Grocers Ass'n. v. State Liquor Comm'n., 112 N. H. 62, 289 A. 2d 399 (N.H. 1972) ("The belief that concentration of control within the alcoholic beverage industry should be avoided is not unique to New Hampshire. At least twenty states similarly restrict the number of alcoholic beverage permits. These statutes have been held constitutional as serving a public purpose in the two states where the question has been considered"). See also Safeway Stores, Inc. v. Nebraska Liquor Control Comm'n., 140 N.W.2d 668 (Neb. 1966); Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control, 420 P.2d 735, 744 (Cal. 1966); Grand Union Co. v. Sills, 204 A. 2d 853 (N.J. 1964) (two retail liquor license limitation provided by statute was not entirely without rational basis and did not infringe constitutional guarantees of due process and equal protection.").

2. Due Process of the Law

“The privileges and immunities of citizens of this State . . . shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law . . .” S.C. Const. art. 1, § 3. “In reviewing a statute on Equal Protection grounds . . . the classification will be sustained if it is not plainly arbitrary and there is any reasonable hypothesis to support it.” Foster v. S.C. Dept. of Highways and Pub. Transp., 306 S.C. 519, 526, 413 S.E.2d 31, 36 (1992).

“The scope and extent of [alcohol] regulations depend solely upon the judgment of the lawmakers, with the wisdom of which the judiciary has no concern. . . .” Winter v. Pratt, 258 S.C. 397, 405, 189 S.E. 2d 7, 10 (1972). “The doctrine . . . that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely . . . has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies.” Id. at 406, 189 S.E.2d 11 (quoting Joseph E. Seagram & Sons, Inc. v. Hostetter, 384 U.S. 35, 86 S.Ct. 1254 (1966)).

To prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. Grimsley v. S.C. Law Enforcement Div., 396 S.C. 276, 721 S.E. 2d 423 (2012). A retail liquor license is not a property right such that the Plaintiff’s arguments in this regard must fail. “Liquor licenses are neither contracts nor rights of property.” Feldman, 203 S.C. at 49, 26 S.E.2d at 25 (1943). See also, Mibbs v. S.C. Dept. of Revenue, 337 S.C. 601, 524 S.E.2d 626 (1999) (involving a “Takings Clause” analysis, where in the Court

held "an interest that depends totally upon regulatory licensing is not a property interest that is compensable under the takings clause."¹⁴

There has been no denial of substantive due process in this case as no "property interest" has been taken. See Feldman, *supra*. Rather the Legislature, in its unquestionable wisdom, has provided that no further privilege is to be granted because the statutes place limitations on the number of, and financial interest in, retail liquor licenses an individual may have in this State.

CONCLUSION

Based on the foregoing the Department respectfully requests the Court grant the Department's Motion for Summary Judgment as Plaintiff has no standing to bring this action, there is no justiciable controversy and the Plaintiff has failed to exhaust its administrative remedies under the Revenue Procedure Act¹⁵.

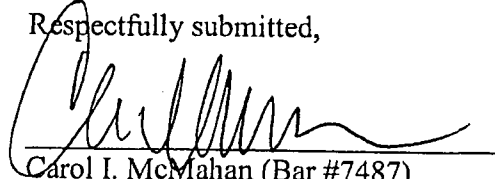
However, should the Court find an adjudication on the merits appropriate in the instant case, the Department respectfully submits that such should be granted in its favor, based on the South Carolina General Assembly's authority pursuant to the police power to enact legislation for the manufacture, sale, and transportation of alcohol liquors in this State. As provided in the foregoing, §§ 61-6-140 and 61-6-150 are reasonable limitations

¹⁴Plaintiff argues that the cognizable property interest it is being deprived of is 'pursuing its chose field of business in Aiken County.' However, when its chosen field of business involves alcohol, it has no right except that right as given by the legislature through a license. Feldman, 203 S.C. 49, 26 S.E.2d 22, 26 (1949) ("Liquor licenses are neither contracts nor rights in property. They are mere permits, issued or granted in the exercise of the police power of the state to do what otherwise would be unlawful to do.").

¹⁵By failing to file an application for licensure, Retail Services has failed to exhaust its available administrative remedies under the Revenue Procedures Act, S.C. Code Ann. § 12-60-10, et al. (2014).

on licensure to achieve the legitimate end of temperance, control of advertising, etc. and apply equally to all of those similarly situated.

Respectfully submitted,



Carol I. McMahan (Bar #7487)

Counsel for Litigation

Milton G. Kimpson (Bar #7917)

Chief Counsel for Litigation

Joe S. Dusenbury, Jr. (Bar #11791)

General Counsel for Litigation, Tax, and
Regulatory Services

PO Box 12265

Columbia, SC 29211

Phone: 803-898-5130

Fax: 803-896-0171

Attorneys for Defendant South Carolina
Department of Revenue

Columbia, South Carolina
June 5, 2014

Exhibit 1

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

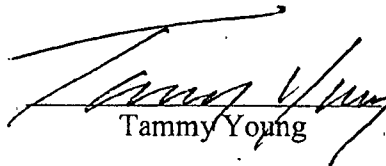
AFFIDAVIT OF
Tammy Young

In Re: Retail Services and Systems Inc.,)
_____)

COMES NOW, Tammy Young, Supervisor, Alcohol Licensing and Regulations, South Carolina Department of Revenue (Department) who PERSONALLY appeared before me, being duly sworn, deposes that she makes the following statement freely and voluntarily, without threats or promises of reward, based on her own personal knowledge:

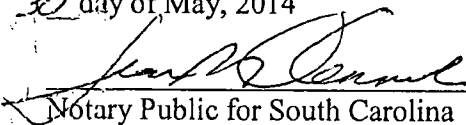
1. I am an employee of the Department. My duties include the oversight of alcohol licensing applications filed with the Department.
2. I have reviewed retail liquor licenses issued by the Department throughout the State. As of the date of this Affidavit, only one entity holds more than three retail liquor dealer licenses in the State.

Further Affiant sayeth not.


Tammy Young

Sworn to before me this

30th day of May, 2014


Notary Public for South Carolina

My commission expires: ~~My Commission Expires~~ January 10, 2018

000001

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

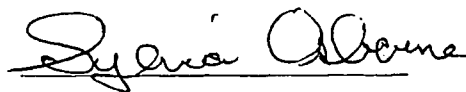
In Re: Retail Services and
Systems Inc.,)

AFFIDAVIT OF
Sylvia Osborne

COMES NOW, Sylvia Osborne, Administrative Assistant, South Carolina Department of Revenue (Department) who **PERSONALLY** appeared before me, being duly sworn, deposes that she makes the following statement freely and voluntarily, without threats or promises of reward, based on her own personal knowledge of said facts:

1. I am an employee of the Department. My duties include access and review of Department alcohol and liquor license/permit applications and records.
2. Attached are true certified copies of alcohol license/permit applications submitted to the Department for the following applicants/licensees: Charleston Fine Wine, Inc., Greenville Fine Wine Inc. and Columbia Fine Wine Inc.
3. I have reviewed retail liquor license applications filed with the Department for locations in Aiken County as well as all of South Carolina up to and including those received on May 28, 2014 at the Department.
4. Retail Services and Systems, Inc., directly nor indirectly has not filed an application for a retail liquor license for any location in Aiken County.

Further Affiant sayeth not.



Sylvia Osborne

SWORN to before me this

30th day of May, 2014.



Notary Public for South Carolina

My commission expires: 6-10-2018



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR RETAIL BEER,
WINE, AND LIQUOR

ABL-901

(Rev. 7/3/03)
4280

Mail to: SC Department of Revenue, ABL Section, Columbia, SC 29214-0908
Telephone: (803) 898-5864 DOR Website: www.sctax.org

File Number: 32033121-7

License Type	Nonrefundable Filing Fee	License Fee
☐ On premises beer & wine	\$ 300.00	\$ 600.00 biennially
☒ Off premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Brewpub	\$ 300.00	\$ 2,200.00 biennially
☒ 1-day off-premises beer & wine	\$ 300.00	\$ 2,200.00 biennially
☐ Sunday/Sabbath beer & wine	\$ 300.00	\$ 700.00 biennially
☐ Business (restaurant/hotel/motel) minibottle	\$ 200.00	\$ 1,700.00 biennially
☐ Nonprofit private club minibottle	\$ 200.00	\$ 1,700.00 biennially
☐ Retail liquor store	\$ 200.00	\$ 1,400.00 biennially
☐ Alcoholic liqueurs (cooking license)	\$ -0-	\$ 250.00 biennially
☐ *Certification fee	\$ 5.00	
☐ 120 day temporary beer & wine	\$ -0-	\$ 25.00
☐ 120 day temporary mini bottle	\$ -0-	\$ 25.00
☐ 120 day temporary retail liquor	\$ -0-	\$ 25.00

KENNETH E. ALLEN
ATTORNEY AT LAW
1201 MAIN STREET, SUITE 1880
COLUMBIA, SC 29201

*(Certification fee is required, in addition to filing fees, if you are applying for a license at a location that is currently licensed to sell minibottles or retail liquor. 61-6-120)

PLEASE PRINT OR TYPE ALL INFORMATION	
1. OWNER, PARTNERSHIP, OR CORPORATE CHARTER NAME <u>Charleston Fine Wine, Inc</u>	5. TRADE NAME (DOING BUSINESS AS) <u>Total Wine & More</u>
2. PHYSICAL LOCATION OF BUSINESS REQUIRED (NO P.O. BOX) <u>1820 Ashley River Road</u> STREET <u>Charleston Charleston SC 29407</u> CITY COUNTY (REQUIRED) STATE ZIP	6. BUSINESS PHONE NUMBER DAYTIME PHONE NUMBER <u>301-795-1080 x 300</u>
3. MAILING ADDRESS (FOR ALL CORRESPONDENCE) <u>11325 Seven Locks Road, Ste 214</u> STREET <u>Potomac Montgomery MD 20854</u> CITY COUNTY STATE ZIP	7. FEDERAL IDENTIFICATION NUMBER AND/OR SOCIAL SECURITY NO. [REDACTED]
4. TYPE OF OWNERSHIP ☐ SOLE PROPRIETOR (one owner) ☐ PARTNERSHIP (two or more owners) ☐ LLC/LLP ☒ SC CORPORATION DATE INC <u>1-22-04</u> ☐ FOREIGN CORPORATION (ATTACH COPY OF ARTICLES OF CERTIFICATE OF AUTHORITY) ☐ NON-PROFIT ORGANIZATION ☐ OTHER (EXPLAIN) _____	8. DESCRIBE THE NATURE OF YOUR BUSINESS (RESTAURANT, CONVENIENCE STORE, ETC.) <u>Retail</u>
	9. IS BUSINESS WITHIN SC MUNICIPAL LIMITS? ☒ YES ☐ NO WHICH CITY? <u>Charleston</u>
	10. WHAT IS YOUR RETAIL SALES TAX NUMBER? <u>010-72142-7</u>
11. HAS THIS LOCATION BEEN PREVIOUSLY LICENSED TO SELL BEER, WINE AND/OR ALCOHOLIC LIQUEURS? ☒ YES ☐ NO IF YES PRINT NAME OF BUSINESS AND BEER, WINE AND LICENSE PERMIT NUMBER: A. PREVIOUS OPERATORS BEER & WINE LICENSE NUMBER: <u>41K</u> B. NAME OF BUSINESS: _____ (Full organization name including trade name)	

COMPLETE REVERSE SIDE OF THIS FORM

(1)

000003

DESIGNATED AGENT

- A. (1) Give the name of the person you are appointing as the designated agent under § 61-2-100(F) for service of all

notices concerning the permit or license: Michael L. Branch

The designated agent can be an owner, partner, officer, or any other person that the applicant wishes to receive notices from the Department. No person may act as agent for more than one business entity unless that person has an ownership interest in the entities. I understand that the Department will give me notice by mailing it to this person listed above at the address shown, on line three on the front of this form and that it is my responsibility to inform the Department if this person or mailing address changes. Must be 21 years of age and a resident of South Carolina.

- B. ~~Must be completed for publicly traded corporations only.~~

~~You must designate an officer or other employee of good moral character, over the age of twenty-one and a resident of South Carolina in whose name the permit or license will be held on behalf of your corporation. See § 61-2-100(H)(2)(I).~~

1. Designated officer or other employee: _____
2. Has the designated officer or other employee been convicted of a crime in South Carolina or any other state?
☐ Yes ☐ No (You must reveal any convictions whether the designated officer or other employee went to jail or not. The S.C. State Law Enforcement Division will check this person's record for convictions, and your application may be denied if you do not correctly answer this question).

- C. Contact person for SLED investigation purposes:

Name Michael L. Branch
Telephone Number 843-577-9600

Important Notice to be signed for all types of licenses and permits.

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premises consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit. I have read the instructions to this application and to the best of my knowledge, all information provided with this application is true and accurate.

SWORN to before me this

2 day of Feb. 04.
[Signature]

Notary Public for South Carolina

My commission expires: 8-7-11

[Signature]
Applicant (owner, partner, or corporate officer)

Processing of this application may take six to eight weeks. If the application is denied by the department or protested by a member of the public or law enforcement. It may take up to six months for a public hearing to be held, and a decision made on the application.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this form. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration. SC Regulation 117-1 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

Charles Tea Fine Wine Inc
Name of Corporation, Partnership, LLC, etc.

File Number: 32033121-7

CONSENT AND WAIVER

S.C. Code Section 61-2-160 prohibits the issuance of any permits or license under Title 61 if the applicant or any principal owes delinquent taxes, penalties, or interest to the S.C. Department of Revenue or to the I.R.S. By signing below, a person authorizes the I.R.S. to release to the S.C. Department of Revenue information concerning that person owing delinquent taxes, penalties, or interest as of the date of the signing of this document, plus the next five years. This consent may be withdrawn at any time by writing to the Internal Revenue Service Disclosure Officer, 1835 Assembly Street, MDP15, Columbia, SC 29201. The signature below also authorizes the S.C. Department of Revenue to release to the applicant, or to the applicant's agent, attorney, information concerning delinquent taxes, penalties, or interest that is causing the denial of this application.

1 - 12 is a list of principals. Each principal must complete and sign a box below. If a required person does not sign, this application will be denied:

Type of Principals:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.).
11. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name: <u>David Trone</u>	Principal/Type: (use above number) <u>2</u>
Home Address: Street <u>11417 Skipwith Lane</u>	
City <u>Potomac</u>	State <u>MD</u> Zip <u>20854</u>
Social Security No: <u>[REDACTED]</u>	Sex: <u>M</u> Race: <u>White</u> Date of Birth: <u>[REDACTED]</u>
Yr/Date of SC Residency: <u>0</u>	Signature <u>[Signature]</u>
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, give details in Schedule A.	
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A	

Name: <u>Robert Trone</u>	Principal/Type: (use above number) <u>2</u>
Home Address: Street <u>9814 Potomac Manors Drive</u>	
City <u>Potomac</u>	State <u>MD</u> Zip <u>20854</u>
Social Security No: <u>[REDACTED]</u>	Sex: <u>M</u> Race: <u>White</u> Date of Birth: <u>[REDACTED]</u>
Yr/Date of SC Residency: <u>0</u>	Signature <u>[Signature]</u>
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, give details in Schedule A.	
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A	

Additional Space on Back.

(3)

000005

804180-002

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
ABL RENEWAL FORM

ABL-565
(Rev. 10/20/09)
4278

Renew and pay online. Go to www.scbos.sc.gov
Mail to: SCDOR, ABL Section, Columbia, SC 29214-0907

Renewal Due Date: 31-JAN-2012 **Renewal Fee 2,200.00

License Type 2237494-P7B

1. Mailing Name and Address
Any change of address should be noted to the right of the old address

ACABL 2704173008
RETAIL SERVICES & SYSTEMS, INC
TOTAL WINE & MORE
103 YOST BLVD STE 101
PITTSBURGH PA 15221-4865

For Office Use Only

▶ File Number 320331217
▶ License Period Ending 02/28/2014
▶ DLN
▶ DLN
▶ 1040039610006 2,000.00
▶ 3040039739000 200.00

2. A. Owner/Corporate Name CHARLESTON FINE WINE INC Federal ID # ***
(If Liquor Producer Rep., indicate the company you represent)
B. Licensee Social Security #
(If Sole Proprietor)
C. Retail Sales Tax License # 010721427

(REQUIRED)

RECEIVED

JAN 24 2012

SCDOR ALCOHOLIC
BEVERAGE LICENSING

3. Trade Name (If Applicable) TOTAL WINE & MORE

4. Business Address 1820A ASHLEY RIVER RD

CHARLESTON, SC 294074750

Ownership Type DC County CHARLESTON

5. If there is a change in your location's address, check why: () U.S. Postal Service changed address () Moved location of business () Other - Explain: _____

N/A

6. YOU MUST COMPLETE THE CONSENT AND WAIVER SECTION ON THE BACK OF THIS FORM, AND THE ATTACHED ABL-577, IF SOLE PROP.; IF OTHER THAN SOLE PROP., COMPLETE ATTACHED ABL-920 FOR ALL PRINCIPALS.

7. Have you, any partner, any principal, or any employee with day-to-day management responsibilities ever been convicted of a crime? ☐ Yes ☒ No If "yes", give details: _____

8. Review and sign this application. Return it with the appropriate renewal fee. If this application with the appropriate fee is not received by the S.C. Department of Revenue prior to the expiration date shown above, you must pay a filing fee along with the license fee. If your renewal is late, you may be required to file an application for a new license, publish a newspaper notice of your application, and wait on a SLED investigation. You must cease all sales of beer, wine, or liquor upon the expiration of your license, and may not resume sales until you receive your new license. Therefore, file your renewal application promptly.
*Note: For faster processing renew online. (See information sheet attached for instructions for online renewing www.SCBOS.SC.GOV).

By signing this application, I certify that all the information listed above is correct.

(Signature of applicant)

Date

1-18-2012 412-825-0579

Telephone number from 8 am to 5 pm

**61-6-1208: An applicant for license renewal or for a new license at an existing location shall pay a five dollar certification fee to determine if the exemptions provided for in subsection (A) apply. Subsection A refers to the distance requirements for retail liquor stores, business liquor by the drink and nonprofit private club liquor by the drink licenses.

42781021

000006

CONSENT AND WAIVER ABL-946 Rev. 11/19/09

CHARLESTON FINE WINE INC

File
Number: 32033121-7

Name of Corporation, Partnership, LLC, etc.

FEI

S.C. Code Ann. Section 61-2-160 prohibits the issuance of any permit or license under Title 61 unless the Department determines that the applicant does not owe the State any delinquent taxes, penalties or interest. The signature(s) below authorizes the S.C. Department of Revenue, pursuant to the provisions of S.C. Code Ann. Section 12-54-240 and 30-2-10, et seq., to release to any party, person or entity, law enforcement request(s) for purposes of processing this application or responding to questions related thereto, including but not limited to an information related to problems with the application, reasons for denial, delinquent taxes, outstanding liabilities, failure to file returns, penalties and interest. The signature below also authorizes S.C. Law Enforcement Division (SLED) to check, examine and release to the Department of Revenue the criminal history record of the person(s) having signed below. If an application is made for a license or permit by a person other than an individual, all principals are deemed to be the applicant. S.C. Code Ann. Section 61-2-100(C). All principals of the applicant are therefore required to be disclosed to the Department of Revenue.

SOCIAL SECURITY DISCLOSURE

"In compliance with the Federal Privacy Act of 1974, the disclosure of an individual's social security number on this form is mandatory". SC regulation 117-201 provides that any person required to make a return, statement or document to the Department must include identifying numbers on such return, statement or document if the Department requests such information. Social security numbers are primarily used for the purposes of identifying taxpayers and monitoring tax compliance and/or fraud"

1 - 12 is a list of principal types. Each principal type must complete and sign a box below. If a required principal does not sign, this application will be denied.

Principal Types:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Members and Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.);
11. All other principals must be listed also. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name David J. TroneHome Address 10204 Iron Gate RoadCity Potomac State MD Zip 20854Yr/Mo/Date of SC Residency N/A Sex M Race Cauc Date of Birth [REDACTED]Social Security No. [REDACTED] Federal Employer Identification No. [REDACTED]Principal/Type: (use above #1-12) 12 % of ownership 50 Signature [Signature]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

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SOUTH CAROLINA
ALCOHOLIC
BEVERAGE LICENSING

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File Number: 32033121-7

Name Robert L. Trone

Home Address 9829 Avenel Farm Drive

City Potomac State MD Zip 20854

Yr/Mo/Date of SC Residency N/A Sex M Race Cauc Date of Birth [REDACTED]

Social Security No. [REDACTED] Federal Employer Identification No. [REDACTED]

Principal/Type: (use above #1-12) #2 % of ownership 50 Signature [REDACTED]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR RETAIL BEER,
WINE, AND LIQUOR

ABL-9C

(Rev. 7/3/03)
4280

Mail to: SO Department of Revenue, ABL Section, Columbia, SC 29214-0908
Telephone: (803) 898-5864 DOR Website: www.sctax.org

File Number: 3203322-

License Type	Nonrefundable Filing Fee	License Fee
☐ On premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Off premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Brewpub	\$ 300.00	\$ 2,200.00 biennially
☐ 7-day off-premises beer & wine	\$ 300.00	\$ 2,200.00 biennially
☐ Sunday/Sabbath beer & wine	\$ 300.00	\$ 700.00 biennially
☐ Business (restaurant/hotel/motel) minibottle	\$ 200.00	\$ 1,700.00 biennially
☐ Nonprofit private club minibottle	\$ 200.00	\$ 1,700.00 biennially
☒ Retail liquor store	\$ 200.00	\$ 1,400.00 biennially
☐ Alcoholic liquors (cooking license)	\$ -0-	\$ 250.00 biennially
☐ *Certification fee	\$ 5.00	
☐ 120 day temporary beer & wine	\$ -0-	\$ 25.00
☐ 120 day temporary mini bottle	\$ -0-	\$ 25.00
☐ 120 day temporary retail liquor	\$ -0-	\$ 25.00

KENNETH E. ALLEN
ATTORNEY AT LAW
1201 MAIN STREET, SUITE 1880
COLUMBIA, SC 29201

*(Certification fee is required, in addition to filing fees, if you are applying for a license at a location that is currently licensed to sell minibottles or retail liquor. 61-6-120)

PLEASE PRINT OR TYPE ALL INFORMATION	
1. OWNER, PARTNERSHIP, OR CORPORATE CHARTER NAME <u>Charleston Fine Wine, Inc</u>	5. TRADE NAME (DOING BUSINESS AS) <u>Total Wine & More</u>
2. PHYSICAL LOCATION OF BUSINESS REQUIRED (NO P.O. BOX) <u>1820^B Ashley River Road</u> STREET <u>Charleston Charleston SC 29407</u> CITY COUNTY (REQUIRED) STATE ZIP	6. BUSINESS PHONE NUMBER DAYTIME PHONE NUMBER <u>301-795-1880</u> x 300
3. MAILING ADDRESS (FOR ALL CORRESPONDENCE) <u>11325 Seven Locks Road, Ste 214</u> STREET <u>Potomac Montgomery MD 20854</u> CITY COUNTY STATE ZIP	7. FEDERAL TAX ID NUMBER OR SOCIAL SECURITY NO. [REDACTED]
4. TYPE OF OWNERSHIP ☐ SOLE PROPRIETOR (one owner) ☐ PARTNERSHIP (two or more owners) ☐ LLC/LLP ☒ SC CORPORATION DATE INC. <u>1-22-04</u> ☐ FOREIGN CORPORATION (ATTACH COPY OF ARTICLES OF CERTIFICATE OF AUTHORITY) ☐ NON-PROFIT ORGANIZATION ☐ OTHER (EXPLAIN) _____	8. TYPE OF YOUR BUSINESS (RESTAURANT, CATERING STORE, ETC.) <u>Retail</u>
	9. IS BUSINESS WITHIN SC MUNICIPAL LIMITS? ☒ YES ☐ NO WHICH CITY? <u>Charleston</u>
	10. WHAT IS YOUR RETAIL SALES TAX NUMBER? <u>305</u> <u>Order #2073257930</u>
11. HAS THIS LOCATION BEEN PREVIOUSLY LICENSED TO SELL BEER, WINE AND/OR ALCOHOLIC LIQUEURS? ☒ YES ☐ NO IF YES PRINT NAME OF BUSINESS AND BEER, WINE AND LICENSE PERMIT NUMBER: A. PREVIOUS OPERATORS BEER & WINE LICENSE NUMBER: <u>41K</u> B. NAME OF BUSINESS: _____ (Full organization name including trade name)	

COMPLETE REVERSE SIDE OF THIS FORM

(1)

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DESIGNATED AGENT

- A. (1) Give the name of the person you are appointing as the designated agent under § 61-2-100(F) for service of all

notices concerning the permit or license:

Michael L. Branch

The designated agent can be an owner, partner, officer, or any other person that the applicant wishes to receive notices from the Department. No person may act as agent for more than one business entity unless that person has an ownership interest in the entities. I understand that the Department will give me notice by mailing it to this person listed above at the address shown, on line three on the front of this form and that it is my responsibility to inform the Department if this person or mailing address changes. Must be 21 years of age and a resident of South Carolina.

- B. Must be completed for *publicly traded corporations only*.

You must designate an officer or other employee of good moral character, over the age of twenty-one and a resident of South Carolina in whose name the permit or license will be held on behalf of your corporation. See § 61-2-100(H)(2)(i).

1. Designated officer or other employee: _____

2. Has the designated officer or other employee been convicted of a crime in South Carolina or any other state?
☐ Yes ☐ No (You must reveal any convictions whether the designated officer or other employee went to jail or not. The S.C. State Law Enforcement Division will check this person's record for convictions, and your application may be denied if you do not correctly answer this question).

- C. Contact person for SLED investigation purposes:

Name Michael L. Branch

Telephone Number 843-577-9600

Important Notice to be signed for all types of licenses and permits.

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premises consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit. I have read the instructions to this application and to the best of my knowledge, all information provided with this application is true and accurate.

SWORN to before me this

2 day of Feb, 04.
[Signature]

Notary Public for South Carolina

My commission expires: 8-7-11

[Signature]
Applicant (owner, partner, or corporate officer)

Processing of this application may take six to eight weeks. If the application is denied by the department or protested by a member of the public or law enforcement. It may take up to six months for a public hearing to be held, and a decision made on the application.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this form. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration. SC Regulation 117-1 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

Charleston Fine wine Inc. [REDACTED] 3
Name of Corporation, Partnership, LLC, etc. FEI

File Number: 32033122-6

CONSENT AND WAIVER

S.C. Code Section 61-2-160 prohibits the issuance of any permits or license under Title 61 if the applicant or any principal owes delinquent taxes, penalties, or interest to the S.C. Department of Revenue or to the I.R.S. By signing below, a person authorizes the I.R.S. to release to the S.C. Department of Revenue information concerning that person owing delinquent taxes, penalties, or interest as of the date of the signing of this document, plus the next five years. This consent may be withdrawn at any time by writing to the Internal Revenue Service Disclosure Officer, 1835 Assembly Street, MDP15, Columbia, SC 29201. The signature below also authorizes the S.C. Department of Revenue to release to the applicant, or to the applicant's agent, attorney, information concerning delinquent taxes, penalties, or interest that is causing the denial of this application.

1 - 12 is a list of principals. Each principal must complete and sign a box below. If a required person does not sign, this application will be denied:

Type of Principals:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.).
11. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name: <u>David Trone</u>	Principal/Type: (use above number) <u>2</u>
Home Address: Street <u>11417 Skipwith Lane</u>	
City <u>Potomac</u>	State <u>MD</u> Zip <u>20854</u>
Social Security No: <u>[REDACTED]</u>	Sex: <u>M</u> Race: <u>White</u> Date of Birth: <u>[REDACTED]</u>
Yr/Date of SC Residency: <u>0</u>	Signature <u>[Signature]</u>
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, give details in Schedule A.	
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A	

Name: <u>Robert Trone</u>	Principal/Type: (use above number) <u>2</u>
Home Address: Street <u>9814 Potomac Manors Drive</u>	
City <u>Potomac</u>	State <u>MD</u> Zip <u>20854</u>
Social Security No: <u>[REDACTED]</u>	Sex: <u>M</u> Race: <u>White</u> Date of Birth: <u>[REDACTED]</u>
Yr/Date of SC Residency: <u>0</u>	Signature <u>[Signature]</u>
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, give details in Schedule A.	
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A	

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
ABL RENEWAL FORM

ABL-565
(Rev. 10/20/09)
4278

Renew and pay online. Go to www.scbos.sc.gov
Mail to: SCDOR, ABL Section, Columbia, SC 29214-0907

Renewal Due Date: 31-JAN-2012 **Renewal Fee 1,405.00

License Type 2237494-PRL

1. Mailing Name and Address

Any change of address should be noted to the right of the old address.

ACABL 2704174008 
RETAIL SERVICES & SYSTEMS
TOTAL WINE & MORE
103 YOST BLVD
PITTSBURGH PA 15221-4864

For Office Use Only

▶ File Number 320331226

▶ License Period Ending 02/28/2014

▶ DLN

▶ DLN

▶ 1040039510003 1,205.00

▶ 3040039739100 200.00

2. A. Owner/Corporate Name CHARLESTON FINE WINE INC Federal ID # ****
(If Liquor Producer Rep., indicate the company you represent)

B. Licensee
(If Sole Proprietor)

Social Security # _____

C. Retail Sales Tax License # 010721846

(REQUIRED)

3. Trade Name (If Applicable) TOTAL WINE & MORE

4. Business Address 1820B ASHLEY RIVER RD

CHARLESTON, SC 294074750

Ownership Type DC

County CHARLESTON

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SCDOR ALCOHOLIC
BEVERAGE LICENSING

5. If there is a change in your location's address, check why: () U.S. Postal Service changed address () Moved location of business () Other - Explain: _____

N/A

6. YOU MUST COMPLETE THE CONSENT AND WAIVER SECTION ON THE BACK OF THIS FORM, AND THE ATTACHED ABL-577, IF SOLE PROP.; IF OTHER THAN SOLE PROP., COMPLETE ATTACHED ABL-920 FOR ALL PRINCIPALS.

7. Have you, any partner, any principal, or any employee with day-to-day management responsibilities ever been convicted of a crime? ☐ Yes ☒ No If "yes", give details: _____

8. Review and sign this application. Return it with the appropriate renewal fee. If this application with the appropriate fee is not received by the S.C. Department of Revenue prior to the expiration date shown above, you must pay a filing fee along with the license fee. If your renewal is late, you may be required to file an application for a new license, publish a newspaper notice of your application, and wait on a SLED investigation. You must cease all sales of beer, wine, or liquor upon the expiration of your license, and may not resume sales until you receive your new license. Therefore, file your renewal application promptly.
*Note: For faster processing renew online. (See information sheet attached for instructions for online renewing www.SCBOS.SC.GOV).

By signing this application, I certify that all the information listed above is correct.

(Signature of Applicant)

Date

1-18-2012 412-825-0579
Telephone number from 8 am to 5 pm

**61-6-1205: An applicant for license renewal or for a new license at an existing location shall pay a five dollar certification fee to determine if the exemptions provided for in subsection (A) apply. Subsection A refers to the distance requirements for retail liquor stores, business liquor by the drink and nonprofit private club liquor by the drink licenses.

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CONSENT AND WAIVER

ABL-946 Rev. 11/19/09

CHARLESTON FINE WINE INC

File

Number: 32033122-6

Name of Corporation, Partnership, LLC, etc.

FEI

S.C. Code Ann. Section 61-2-160 prohibits the issuance of any permit or license under Title 61 unless the Department determines that the applicant does not owe the State any delinquent taxes, penalties or interest. The signature(s) below authorizes the S.C. Department of Revenue, pursuant to the provisions of S.C. Code Ann. Section 12-54-240 and 30-2-10, et seq., to release to any party, person or entity, law enforcement request(s) for purposes of processing this application or responding to questions related thereto, including but not limited to an information related to problems with the application, reasons for denial, delinquent taxes, outstanding liabilities, failure to file returns, penalties and interest. The signature below also authorizes S.C. Law Enforcement Division (SLED) to check, examine and release to the Department of Revenue the criminal history record of the person(s) having signed below. If an application is made for a license or permit by a person other than an individual, all principals are deemed to be the applicant. S.C. Code Ann. Section 61-2-100(C). All principals of the applicant are therefore required to be disclosed to the Department of Revenue.

SOCIAL SECURITY DISCLOSURE

"In compliance with the Federal Privacy Act of 1974, the disclosure of an individual's social security number on this form is mandatory". SC regulation 117-201 provides that any person required to make a return, statement or document to the Department must include identifying numbers on such return, statement or document if the Department requests such information. Social security numbers are primarily used for the purposes of identifying taxpayers and monitoring tax compliance and/or fraud."

1 - 12 is a list of principal types. Each principal type must complete and sign a box below. If a required principal does not sign, this application will be denied.

Principal Types:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Members and Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.);
11. All other principals must be listed also. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name David J. TroneHome Address 10204 Iron Gate RoadCity Potomac State MD Zip 20854Yr/Mo/Date of SC Residency N/A Sex M Race Cauc Date of Birth [REDACTED]Social Security No. [REDACTED] Federal Employer Identification No. [REDACTED]Principal/Type: (use above #1-12) #2 % of ownership 50 Signature [Signature]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation

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SCDOR ALCOHOLIC
BEVERAGE LICENSING

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File Number: 32033122-6

Name Robert L. TroneHome Address 9829 Avenel Farm DriveCity Potomac State MD Zip 20854Yr/Mo/Date of SC Residency N/A Sex M Race Cauc Date of Birth [REDACTED]Social Security No. [REDACTED] Federal Employer Identification No. [REDACTED]Principal/Type: (use above #1-12) #2 % of ownership 50 Signature [REDACTED]Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

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804181-003



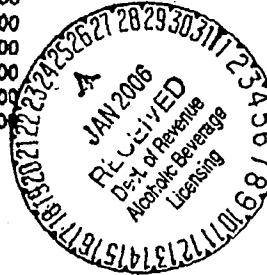
STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**APPLICATION FOR RETAIL BEER,
WINE, AND LIQUOR**

ABL-901(Rev. 8/20/05)
4280

Mail to: SC Department of Revenue, ABL Section, Columbia, SC 29214-0908
Telephone: (803) 898-5884 DOR Website: www.sctax.org

File Number: 3203-8993-1

License Type	Nonrefundable Filing Fee	License Fee
☐ On premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Off premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Brewpub	\$ 300.00	\$ 2,200.00 biennially
☐ 7-day off-premises beer & wine	\$ 300.00	\$ 2,200.00 biennially
☐ Sunday/Sabbath beer & wine	\$ 300.00	\$ 700.00 biennially
☐ Business (restaurant/hotel/motel) minibottle	\$ 200.00	\$ 1,700.00 biennially
☐ Nonprofit private club minibottle	\$ 200.00	\$ 1,700.00 biennially
☒ Retail liquor store	\$ 200.00	\$ 1,400.00 biennially
☐ Alcoholic liquors (cooking license)	\$ -0-	\$ 250.00 biennially
☐ *Certification fee	\$ -0-	\$ 5.00
☐ 120 day temporary beer & wine	\$ -0-	\$ 25.00
☐ 120 day temporary mini bottle	\$ -0-	\$ 25.00
☐ 120 day temporary retail liquor	\$ -0-	\$ 25.00



* (Certification fee is required, in addition to filing fees, if you are applying for a license at a location that is currently licensed to sell minibottles or retail liquor, 81-8-120)

PLEASE PRINT OR TYPE ALL INFORMATION	
1. OWNER, PARTNERSHIP, OR CORPORATE CHARTER NAME GREENVILLE FINE WINE INC	2. TRADE NAME (DOING BUSINESS AS) - TOTAL WINE & MORE
3. PHYSICAL LOCATION OF BUSINESS REQUIRED (NO P.O. BOX) 1125 WOODRUFF Rd Suite 300B STREET GREENVILLE SC 29609 CITY COUNTY (REQUIRED) STATE ZIP	4. BUSINESS PHONE NUMBER DAYTIME PHONE NUMBER 864-288-1575 412-825-0579
5. MAILING ADDRESS (FOR ALL CORRESPONDENCE) 103 VOST BLVD Suite 101 STREET PITTSBURGH, ALA. PA 15221 CITY COUNTY STATE ZIP	6. DESCRIBE THE NATURE OF YOUR BUSINESS (RESTAURANT, CONVENIENCE STORE, ETC.) RETAIL LIQUOR
7. TYPE OF OWNERSHIP ☐ SOLE PROPRIETOR (one owner) ☐ PARTNERSHIP (two or more owners) ☐ LLC/LLP ☒ SO CORPORATION DATE INC. MAY 25, 04 ☐ FOREIGN CORPORATION (ATTACH COPY OF ARTICLES OR CERTIFICATE OF AUTHORITY) ☐ NON-PROFIT ORGANIZATION ☐ OTHER (EXPLAIN) _____	8. IS BUSINESS WITHIN SC MUNICIPAL LIMITS? ☒ YES ☐ NO WHICH CITY? GREENVILLE
9. WHAT IS YOUR RETAIL SALES TAX NUMBER? 023 77195 5	
11. HAS THIS LOCATION BEEN PREVIOUSLY LICENSED TO SELL BEER, WINE AND/OR ALCOHOLIC LIQUORS? ☒ YES ☐ NO IF YES PRINT NAME OF BUSINESS AND BEER, WINE AND LICENSE PERMIT NUMBER.	
A. PREVIOUS OPERATORS LICENSE NUMBER. 3203-4163	B. NAME OF BUSINESS: TOTAL WINE & MORE (Full organization name including trade name)

COMPLETE REVERSE SIDE OF THIS FORM

(1)

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DESIGNATED AGENT

A. (1) Give the name of the person you are appointing as the designated agent under § 61-2-100(F) for service of all

notices concerning the permit or license: DON G. THODE

The designated agent can be an owner, partner, officer, or any other person that the applicant wishes to receive notices from the Department. No person may act as agent for more than one business entity unless that person has an ownership interest in the entities. I understand that the Department will give me notice by mailing it to this person listed above at the address shown on line three on the front of this form, and that it is my responsibility to inform the Department if this person or mailing address changes. Must be 21 years of age and a resident of South Carolina.

B. Must be completed for publicly traded corporations only.

You must designate an officer or other employee of good moral character, over the age of twenty-one and a resident of South Carolina in whose name the permit or license will be held on behalf of your corporation. See § 61-2-100(H)(2)(i).

1. Designated officer or other employee: _____

2. Has the designated officer or other employee been convicted of a crime in South Carolina or any other state?

☐ Yes ☐ No (You must reveal any convictions whether the designated officer or other employee went to jail or not. The S.C. State Law Enforcement Division will check this person's record for convictions, and your application may be denied if you do not correctly answer this question).

C. Contact person for SLED investigation purposes: Name DON G. THODE

Telephone Number 864-288-4575

Processing of this application may take six to eight weeks. If the application is denied by the department or protested by a member of the public or law enforcement, it could take up to six months for a hearing to be held and a decision made on the application by the Administrative Law Court.

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premises consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit.

I understand that a misstatement or concealment of fact in an application is sufficient ground for the revocation of the license or permit. I consent to the inspection of the premises covered by this license or permit by any agent of the SC Department of Revenue or any law enforcement officer.

I have read the instructions to this application and to the best of my knowledge, all information provided with this application is true and accurate.

SWORN to before me this

25th day of January 2006

Cheryl A. Cole

Notary Public for South Carolina Maryland

CHERYL A. COLE
NOTARY PUBLIC STATE OF MARYLAND

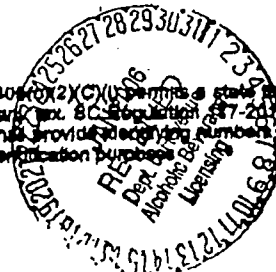
My commission expires: My Commission Expires July 11, 2007

Applicant (owner, partner, or corporate officer)

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form. 42 U.S.C. 40505(a)(2)(C) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-20 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying number as prescribed, for securing proper identification. Your social security number is used for identification purposes.

(2)



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GREENVILLE FINE WINE INC

Name of Corporation, Partnership, LLC, etc.

FBI

File Number: _____

CONSENT AND WAIVER

S.C. Code Section 61-2-160 prohibits the issuance of any permits or licenses under Title 61 if the applicant or any principal owes delinquent taxes, penalties, or interest to the S.C. Department of Revenue. The signature below authorizes the S.C. Department of Revenue to release to the applicant, or to the applicant's agent, attorney, information concerning delinquent taxes, penalties, or interest that is causing the denial of this application. The signature below also authorizes SLED to check, examine and release to the Department person's signed below criminal record for convictions.

1 - 12 is a list of principals. Each principal must complete and sign a box below. If a required person does not sign, this application will be denied:

Principals:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated licensee holder (designated agent) (must be over 21 and a resident of S.C.);
11. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name: DAVID J. TRONE Principal/Type: (use above number) 5

Home Address: Street 11417 SKIPWITH LANE

City POTOMAC State MD Zip 20854

Social Security No: [REDACTED] Sex M Race CAUC Date of Birth: [REDACTED]

Yr/Mo/Date of SC Residency: N/A Signature [Signature]

Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors?
☐ Yes ☒ No If yes, give details in Schedule A

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A

Name: ROBERT L. TRONE Principal/Type: (use above number) 5

Home Address: Street 9814 POTOMAC MANORS DR

City POTOMAC State MD Zip 20854

Social Security No: [REDACTED] Sex M Race CAUC Date of Birth: [REDACTED]

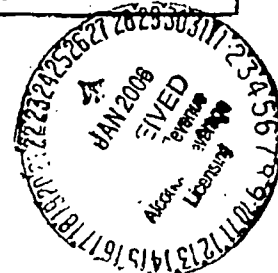
Yr/Mo/Date of SC Residency: N/A Signature [Signature]

Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors?
☐ Yes ☒ No If yes, give details in Schedule A

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A

Additional Space on Back.

(3)

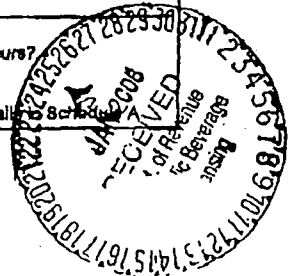


000017

Name: <u>DON G. THODE</u>		Principal/Type: (use above number) <u>9</u>	
Home Address: Street <u>207 E. CRANBERRY LANE</u>			
City <u>GREENVILLE</u>		State <u>SC</u>	Zip <u>29816</u>
Social Security No: <u>[REDACTED]</u>		Sex: <u>M</u>	Race: <u>CAUC</u> Date of Birth: <u>[REDACTED]</u>
Yr/Mo/Date of SC Residency: <u>9/1996</u>		Signature <u>Don Thode</u>	
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, give details in Schedule A			
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A			
Name: _____		Principal/Type: (use above number) _____	
Home Address: Street _____			
City _____		State _____	Zip _____
Social Security No: _____		Sex: _____	Race: _____ Date of Birth: _____
Yr/Mo/Date of SC Residency: _____		Signature _____	
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, give details in Schedule A			
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, give details in Schedule A			
Name: _____		Principal/Type: (use above number) _____	
Home Address: Street _____			
City _____		State _____	Zip _____
Social Security No: _____		Sex: _____	Race: _____ Date of Birth: _____
Yr/Mo/Date of SC Residency: _____		Signature _____	
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, give details in Schedule A			
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, give details in Schedule A			
Name: _____		Principal/Type: (use above number) _____	
Home Address: Street _____			
City _____		State _____	Zip _____
Social Security No: _____		Sex: _____	Race: _____ Date of Birth: _____
Yr/Mo/Date of SC Residency: _____		Signature _____	
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, give details in Schedule A			
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, give details in Schedule A			

If more space is needed, copy this page and attach to ASL-901

(4)



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804172-002

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
ABL RENEWAL FORM

ABL-565
(Rev. 2/23/12)
4278

Renew and pay online. Go to www.scbos.sc.gov
Mail to: SCDOR, ABL Section, Columbia, SC 29214-0907

Renewal Due Date: 31-OCT-2013 **Renewal Fee 1,405.00

For Office Use Only

► File Number 320389931

► License Period Ending 11/30/2015

License Type 2255482-PRL

1. Mailing Name and Address

Any change of address should be noted to the right of the old address.

ACABL 4538113008

RETAIL SER & SYS INC

TOTAL WINE & MORE

103 YOST BLVD STE 101

PITTSBURGH PA 15221-4865

2. A. Owner/Corporate Name GREENVILLE FINE WINE INC
(If Liquor Producer Rep., indicate the company you represent)

Federal ID # ***

B. Licensee

(If Sole Proprietor)

Social Security #

C. Retail Sales Tax License # 023771955

(REQUIRED)

3. Trade Name (If Applicable) TOTAL WINE & MORE

4. Business Address 1125 WOODRUFF RD STE 300B

GREENVILLE, SC 296074111

Ownership Type DC

County GREENVILLE

5. If there is a change in your location's address, check why: () U.S. Postal Service changed address () Moved location of business () Other - Explain: _____

N/A

6. Have you, any partner, any principal, or any employee with day-to-day management responsibilities ever been convicted of a crime? ☐ Yes ☒ No If "yes", give details: _____

7. Review and sign this application. Return it with the appropriate renewal fee. If this application with the appropriate fee is not received by the S.C. Department of Revenue prior to the expiration date shown above, you must pay a filing fee along with the license fee. If your renewal is late, you may be required to file an application for a new license, publish a newspaper notice of your application, and wait on a SLED investigation. You must cease all sales of beer, wine, or liquor upon the expiration of your license, and may not resume sales until you receive your new license. Therefore, file your renewal application promptly.

*Note: For faster processing renew online. (See information sheet attached for instructions for online renewing www.SCBOS.SC.GOV).

By signing this application, I certify that all the information listed above is correct.

(Signature of applicant)

Date

1029-13 412-825-0579

Telephone number from 8 am to 5 pm

**61-6-120B: An applicant for license renewal or for a new license at an existing location shall pay a five-dollar certification fee to determine if the exemptions provided for in subsection (A) apply. Subsection A refers to the distance requirements for retail liquor stores, business liquor by the drink and nonprofit private club liquor by the drink licenses.

RECEIVED

NOV 04 2013

SCDOR ALCOHOLIC
BEVERAGE LICENSING

42781021

000019

CONSENT AND WAIVER

ABL-946 Rev. 12/16/11

GREENVILLE FINE WINE INC

Name of Corporation, Partnership, LLC, etc.

FEI

File

Number: 32038993-1

S.C. Code Ann. Section 61-2-160 prohibits the issuance of any permit or license under Title 61 unless the Department determines that the applicant does not owe the State any delinquent taxes, penalties or interest. The signature(s) below authorizes the S.C. Department of Revenue, pursuant to the provisions of S.C. Code Ann. Section 12-54-240 and 30-2-10, et seq., to release to any party, person or entity, law enforcement request(s) for purposes of processing this application or responding to questions related thereto, including but not limited to an information related to problems with the application, reasons for denial, delinquent taxes, outstanding liabilities, failure to file returns, penalties and interest. The signature below also authorizes S.C. Law Enforcement Division (SLED) to check, examine and release to the Department of Revenue the criminal history record of the person(s) having signed below. If an application is made for a license or permit by a person other than an individual, all principals are deemed to be the applicant. S.C. Code Ann. Section 61-2-100(C). All principals of the applicant are therefore required to be disclosed to the Department of Revenue.

SOCIAL SECURITY DISCLOSURE

"In compliance with the Federal Privacy Act of 1974, the disclosure of an individual's social security number on this form is mandatory". SC regulation 117-201 provides that any person required to make a return, statement or document to the Department must include identifying numbers on such return, statement or document if the Department requests such information. Social security numbers are primarily used for the purposes of identifying taxpayers and monitoring tax compliance and/or fraud."

1 - 12 is a list of principal types. Each principal type must complete and sign a box below. If a required principal does not sign, this application will be denied.

Principal Types:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.).
11. All other principals must be listed also. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name David TroneHome Address 11417 Skipwith LaneCity Potomac State MD Zip 20854Yr/Mo/Date of SC Residency N/A Sex M Race Cauc Date of Birth [REDACTED]Social Security No. [REDACTED] Federal Employer Identification No. [REDACTED]Principal/Type: (use above #1-12) #2 % of ownership 50 Signature [Signature]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

RECEIVED

NOV 04 2011

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44221018

SCDOR ALCOHOLIC
BEVERAGE LICENSING

000020

File Number: 32038993-1

Name Robert Trone

Home Address 9829 Avenel Farm Drive

City Potomac State MD Zip 20854

Yr/Mo/Date of SC Residency N/A Sex M Race Cauc Date of Birth [REDACTED]

Social Security No. [REDACTED] Federal Employer Identification No. [REDACTED]

Principal/Type: (use above #1-12) #2 % of ownership 50 Signature [REDACTED]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

44222016

000021

804172-003



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR RETAIL BEER,
WINE, AND LIQUOR

ABL-901

(Rev. 7/3/03)
4280

Mail to: SO Department of Revenue, ABL Section, Columbia, SC 29214-0908
Telephone: (803) 898-5864 DOR Website: www.sctax.org

File Number:

32034163-4

License Type	Nonrefundable Filing Fee	License Fee
☐ On premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Off premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Brewpub	\$ 300.00	\$ 2,200.00 biennially
☐ 7-day off-premises beer & wine	\$ 300.00	\$ 2,200.00 biennially
☐ Sunday/Sabbath beer & wine	\$ 300.00	\$ 700.00 biennially
☐ Business (restaurant/hotel/motel) minibottle	\$ 200.00	\$ 1,700.00 biennially
☐ Nonprofit private club minibottle	\$ 200.00	\$ 1,700.00 biennially
☒ Retail liquor store	\$ 200.00	\$ 1,400.00 biennially
☐ Alcoholic liqueurs (cooking license)	\$ -0-	\$ 250.00 biennially
☐ Certification fee	\$ 5.00	
☐ 120 day temporary beer & wine	\$ -0-	\$ 25.00
☐ 120 day temporary mini bottle	\$ -0-	\$ 25.00
☐ 120 day temporary retail liquor	\$ -0-	\$ 25.00

KENNETH E. ALLEN
ATTORNEY AT LAW
1201 MAIN STREET, SUITE 1000
COLUMBIA, SC 29201

*(Certification fee is required, in addition to filing fees, if you are applying for a license at a location that is currently licensed to sell minibottles or retail liquor. 61-6-120)

PLEASE PRINT OR TYPE ALL INFORMATION	
1. OWNER, PARTNERSHIP, OR CORPORATE CHARTER NAME <u>Greenville Fine Wine Inc</u>	5. TRADE NAME (DOING BUSINESS AS) <u>Total Wine</u>
2. PHYSICAL LOCATION OF BUSINESS REQUIRED (NO P.O. BOX) <u>1125 Woodruff Rd, Suite 300B</u> STREET <u>Greenville</u> <u>SC</u> <u>29609</u> CITY COUNTY (REQUIRED) STATE ZIP	6. BUSINESS PHONE NUMBER <u>301-795-1080</u> DAYTIME PHONE NUMBER
3. MAILING ADDRESS (FOR ALL CORRESPONDENCE) <u>Retail Services</u> STREET <u>11325 Seven Locks Rd, Suite 214</u> CITY COUNTY STATE ZIP <u>Potomac, Md 20854</u>	7. FEDERAL IDENTIFICATION NUMBER SOCIAL SECURITY NO. [REDACTED]
4. TYPE OF OWNERSHIP ☐ SOLE PROPRIETOR (one owner) ☐ PARTNERSHIP (two or more owners) ☐ LLC/LLP ☒ SC CORPORATION DATE INC. _____ ☐ FOREIGN CORPORATION (ATTACH COPY OF ARTICLES OF CERTIFICATE OF AUTHORITY). ☐ NON-PROFIT ORGANIZATION ☐ OTHER (EXPLAIN) _____	8. DESCRIBE THE NATURE OF YOUR BUSINESS (RESTAURANT, CONVENIENCE STORE, ETC.) <u>Retail Liquor</u>
	9. IS BUSINESS WITHIN SC MUNICIPAL LIMITS? ☒ YES ☐ NO WHICH CITY?
	10. WHAT IS YOUR RETAIL SALES TAX NUMBER? <u>BOS 1826185454</u>
11. HAS THIS LOCATION BEEN PREVIOUSLY LICENSED TO SELL BEER, WINE AND/OR ALCOHOLIC LIQUEURS? ☐ YES ☒ NO IF YES PRINT NAME OF BUSINESS AND BEER, WINE AND LICENSE PERMIT NUMBER.	
A. PREVIOUS OPERATORS BEER & WINE LICENSE NUMBER:	B. NAME OF BUSINESS:
	(Full organization name including trade name)

COMPLETE REVERSE SIDE OF THIS FORM

(1)

000022

DESIGNATED AGENT

A. (1) Give the name of the person you are appointing as the designated agent under § 61-2-100(F) for service of all notices concerning the permit or license: Ken Allen

The designated agent can be an owner, partner, officer, or any other person that the applicant wishes to receive notices from the Department. No person may act as agent for more than one business entity unless that person has an ownership interest in the entities. I understand that the Department will give me notice by mailing it to this person listed above at the address shown, on line three on the front of this form and that it is my responsibility to inform the Department if this person or mailing address changes. Must be 21 years of age and a resident of South Carolina.

B. Must be completed for publicly traded corporations only.

You must designate an officer or other employee of good moral character, over the age of twenty-one and a resident of South Carolina in whose name the permit or license will be held on behalf of your corporation. See § 61-2-100(H)(2)(i).

1. Designated officer or other employee: _____

2. Has the designated officer or other employee been convicted of a crime in South Carolina or any other state?
☐ Yes ☐ No (You must reveal any convictions whether the designated officer or other employee went to jail or not. The S.C. State Law Enforcement Division will check this person's record for convictions, and your application may be denied if you do not correctly answer this question). Nancy Moussioux

C. Contact person for SLED investigation purposes: Name Ken Allen

Telephone Number 803-748-1335

(804) 987-0158

(804) 787-0429

Important Notice to be signed for all types of licenses and permits.

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premises consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit. I have read the instructions to this application and to the best of my knowledge, all information provided with this application is true and accurate.

SWORN to before me this

20th day of May, 2004

Cheryl A. Cole

Notary Public for South Carolina Maryland

My commission expires

CHERYL A. COLE
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 11, 2007

[Signature]
Applicant (owner, partner, or corporate officer)

Processing of this application may take six to eight weeks. If the application is denied by the department or protested by a member of the public or law enforcement. It may take up to six months for a public hearing to be held, and a decision made on the application.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this form. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration. SC Regulation 117-1 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

Name of Corporation, Partnership, LLC, etc.

FEI

File Number

32034163-4

CONSENT AND WAIVER

S.C. Code Section 81-2-160 prohibits the issuance of any permits or license under Title 61 if the applicant or any principal owes delinquent taxes, penalties, or interest to the S.C. Department of Revenue or to the I.R.S. By signing below, a person authorizes the I.R.S. to release to the S.C. Department of Revenue information concerning that person owing delinquent taxes, penalties, or interest as of the date of the signing of this document, plus the next five years. This consent may be withdrawn at any time by writing to the Internal Revenue Service Disclosure Officer, 1835 Assembly Street, MDP16, Columbia, SC 29201. The signature below also authorizes the S.C. Department of Revenue to release to the applicant, or to the applicant's agent, attorney, information concerning delinquent taxes, penalties, or interest that is causing the denial of this application.

1 - 12 is a list of principals. Each principal must complete and sign a box below. If a required person does not sign, this application will be denied:

Type of Principals:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.).
11. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name:	David Trone	Principal/Type: (use above number)	2
Home Address: Street	11417 Skipwith Lane		
City	Potomac	State	Maryland zip 20854
Social Security No.	[REDACTED]	Sex:	M Race: White Date of Birth: [REDACTED]
Yr/Date of SC Residency:	N/A	Signature	[Signature]
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, give details in Schedule A.			
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A			

Name:	Robert Trone	Principal/Type: (use above number)	2
Home Address: Street	9814 Potomac Manors Drive		
City	Potomac	State	Maryland zip 20854
Social Security No.	[REDACTED]	Sex:	M Race: White Date of Birth: [REDACTED]
Yr/Date of SC Residency:	N/A	Signature	[Signature]
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, give details in Schedule A.			
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A			

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR RETAIL BEER,
WINE, AND LIQUOR

ABL-901

(Rev. 7/3/03)
4280

Mail to: SO Department of Revenue, ABL Section, Columbia, SC 29214-0908
Telephone: (803) 898-5864 DOR Website: www.sctax.org

File Number: 32034162-5

License Type	Nonrefundable Filing Fee	License Fee
☐ On premises beer & wine	\$ 300.00	\$ 600.00 biennially
☒ Off premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Brewpub	\$ 300.00	\$ 2,200.00 biennially
☐ 7-day off-premises beer & wine	\$ 300.00	\$ 2,200.00 biennially
☐ Sunday/Sabbath beer & wine	\$ 300.00	\$ 700.00 biennially
☐ Business (restaurant/hotel/motel) minibottle	\$ 200.00	\$ 1,700.00 biennially
☐ Nonprofit private club minibottle	\$ 200.00	\$ 1,700.00 biennially
☐ Retail liquor store	\$ 200.00	\$ 1,400.00 biennially
☐ Alcoholic liquors (cooking license)	\$ -0-	\$ 250.00 biennially
☐ *Certification fee	\$ 5.00	
☐ 120 day temporary beer & wine	\$ -0-	\$ 25.00
☐ 120 day temporary mini bottle	\$ -0-	\$ 25.00
☐ 120 day temporary retail liquor	\$ -0-	\$ 25.00

KENNETH E. ALLEN
ATTORNEY AT LAW
1201 MAIN STREET, SUITE 1880
COLUMBIA, SC 29201

*(Certification fee is required, in addition to filing fees, if you are applying for a license at a location that is currently licensed to sell minibottles or retail liquor. 61-6-120)

PLEASE PRINT OR TYPE ALL INFORMATION	
1. OWNER, PARTNERSHIP, OR CORPORATE CHARTER NAME <u>Greenville Fine Wine Inc</u>	2. TRADE NAME (DOING BUSINESS AS) <u>Total Wine</u>
2. PHYSICAL LOCATION OF BUSINESS REQUIRED (NO P.O. BOX) <u>1125 Woodruff Rd, Suite 300A</u> STREET <u>Greenville</u> SC <u>29609</u> CITY COUNTY (REQUIRED) STATE ZIP	3. BUSINESS PHONE NUMBER DAYTIME PHONE NUMBER <u>301-795-1080</u>
3. MAILING ADDRESS (FOR ALL CORRESPONDENCE) <u>Retail Services</u> STREET <u>11325 Seven Locks Rd, Suite 214</u> CITY COUNTY STATE ZIP <u>Potomac, Md 20854</u>	4. DESCRIBE THE NATURE OF YOUR BUSINESS (RESTAURANT, CONVENIENCE STORE, ETC.) <u>Beer & Wine Store</u>
4. TYPE OF OWNERSHIP ☐ SOLE PROPRIETOR (one owner) ☐ PARTNERSHIP (two or more owners) ☐ LLC/LLP ☒ SC CORPORATION DATE INC. _____ ☐ FOREIGN CORPORATION (ATTACH COPY OF ARTICLES OF CERTIFICATE OF AUTHORITY) ☐ NON-PROFIT ORGANIZATION ☐ OTHER (EXPLAIN) _____	5. IS BUSINESS WITHIN SC MUNICIPAL LIMITS? ☒ YES ☐ NO WHICH CITY?
	6. WHAT IS YOUR RETAIL SALES TAX NUMBER? <u>805#1826185454</u>
11. HAS THIS LOCATION BEEN PREVIOUSLY LICENSED TO SELL BEER, WINE AND/OR ALCOHOLIC LIQUEURS? ☐ YES ☒ NO IF YES PRINT NAME OF BUSINESS AND BEER, WINE AND LICENSE PERMIT NUMBER:	
A. PREVIOUS OPERATORS BEER & WINE LICENSE NUMBER:	B. NAME OF BUSINESS:
(For organization name including trade name)	

COMPLETE REVERSE SIDE OF THIS FORM

(1)

000025

DESIGNATED AGENT

A. (1) Give the name of the person you are appointing as the designated agent under § 61-2-100(F) for service of all

notices concerning the permit or license: Ken Allen

The designated agent can be an owner, partner, officer, or any other person that the applicant wishes to receive notices from the Department. No person may act as agent for more than one business entity unless that person has an ownership interest in the entities. I understand that the Department will give me notice by mailing it to this person listed above at the address shown, on line three on the front of this form and that it is my responsibility to inform the Department if this person or mailing address changes. Must be 21 years of age and a resident of South Carolina.

B. Must be completed for publicly traded corporations only.

You must designate an officer or other employee of good moral character, over the age of twenty-one and a resident of South Carolina in whose name the permit or license will be held on behalf of your corporation. See § 61-2-100(H)(2)(i).

1. Designated officer or other employee: _____

2. Has the designated officer or other employee been convicted of a crime in South Carolina or any other state?
☐ Yes ☐ No (You must reveal any convictions whether the designated officer or other employee went to jail or not. The S.C. State Law Enforcement Division will check this person's record for convictions, and your application may be denied if you do not correctly answer this question). Nancy & Moussiaux

C. Contact person for SLED investigation purposes:

Name Ken Allen

Telephone Number 803-748-1335

(804) 987-0158

(804) 787-4429

Important Notice to be signed for all types of licenses and permits.

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premises consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit. I have read the instructions to this application and to the best of my knowledge, all information provided with this application is true and accurate.

SWORN to before me this

20th day of May, 2004

Cheryl A. Cole

Notary Public for South Carolina Maryland

My commission expires _____

CHERYL A. COLE

NOTARY PUBLIC STATE OF MARYLAND

My Commission Expires July 11, 2007

[Signature]
Applicant (owner, partner, or corporate officer)

Processing of this application may take six to eight weeks. If the application is denied by the department or protested by a member of the public or law enforcement, it may take up to six months for a public hearing to be held, and a decision made on the application.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this form. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration. SC Regulation 117-1 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

Name of Corporation, Partnership, LLC, etc.

FEI

File Number

3203462-5

CONSENT AND WAIVER

S.C. Code Section 61-2-160 prohibits the issuance of any permits or license under Title 61 if the applicant or any principal owes delinquent taxes, penalties, or interest to the S.C. Department of Revenue or to the I.R.S. By signing below, a person authorizes the I.R.S. to release to the S.C. Department of Revenue information concerning that person owing delinquent taxes, penalties, or interest as of the date of the signing of this document, plus the next five years. This consent may be withdrawn at any time by writing to the Internal Revenue Service Disclosure Officer, 1835 Assembly Street, MDP15, Columbia, SC 29201. The signature below also authorizes the S.C. Department of Revenue to release to the applicant, or to the applicant's agent, attorney, information concerning delinquent taxes, penalties, or interest that is causing the denial of this application.

1 - 12 is a list of principals. Each principal must complete and sign a box below. If a required person does not sign, this application will be denied:

Type of Principals:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.).
11. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name:	David Trone		Principal/Type: (use above number)	2
Home Address: Street	11417 Skipwith Lane			
City	Potomac	State	Maryland	Zip 20854
Social Security No:	[REDACTED]	Sex:	M	Race: White Date of Birth: [REDACTED]
Yr/Date of SC Residency:	N/A	Signature	[Signature]	
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors?				
☐ Yes ☒ No If yes, give details in Schedule A.				
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A				

Name:	Robert Trone		Principal/Type: (use above number)	2
Home Address: Street	9814 Potomac Manors Drive			
City	Potomac	State	Maryland	Zip 20854
Social Security No:	[REDACTED]	Sex:	M	Race: White Date of Birth: [REDACTED]
Yr/Date of SC Residency:	N/A	Signature	[Signature]	
Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors?				
☐ Yes ☒ No If yes, give details in Schedule A.				
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, give details in Schedule A				

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OCT 21 2013

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
ABL RENEWAL FORM

ABL-565
(Rev. 2/23/12)
4278

Renew and pay online. Go to www.scbos.sc.gov
Mail to: SCDOR, ABL Section, Columbia, SC 29214-0907
Renewal Due Date: 31-OCT-2013 **Renewal Fee 2,200.00

For Office Use Only

▶ File Number 320341625▶ License Period Ending 11/30/2015License Type 2255482-P7B

1. Mailing Name and Address

Any change of address should be noted to the right of the old address.

ACABL 4538112008



RETAIL SERVICES

TOTAL WINE

11325 SEVEN LOCKS RD STE 214
POTOMAC MD 20854-3205

Retail Services /Total Wine

103 Yost Blvd., Suite 101
Pittsburgh, PA 15221

2. A. Owner/Corporate Name GREENVILLE FINE WINE INC
(If Liquor Producer Rep., indicate the company you represent)

Federal ID # ****

B. Licensee
(If Sole Proprietor)

Social Security # _____

C. Retail Sales Tax License # 023771946

(REQUIRED)

3. Trade Name (If Applicable) TOTAL WINE4. Business Address 1125 WOODRUFF RD STE 300AGREENVILLE, SC 296074111Ownership Type DCCounty GREENVILLE

5. If there is a change in your location's address, check why: () U.S. Postal Service changed address () Moved location of business () Other - Explain: _____

N/A

6. Have you, any partner, any principal, or any employee with day-to-day management responsibilities ever been convicted of a crime? ☐ Yes ☒ No If "yes", give details: _____

7. Review and sign this application. Return it with the appropriate renewal fee. If this application with the appropriate fee is not received by the S.C. Department of Revenue prior to the expiration date shown above, you must pay a filing fee along with the license fee. If your renewal is late, you may be required to file an application for a new license, publish a newspaper notice of your application, and wait on a SLED investigation. You must cease all sales of beer, wine, or liquor upon the expiration of your license, and may not resume sales until you receive your new license. Therefore, file your renewal application promptly.

*Note: For faster processing renew online. (See information sheet attached for instructions for online renewing www.SCBOS.SC.GOV).

By signing this application, I certify that all the information listed above is correct.

(Signature of applicant)

Date

10-29-13 412-825-0579

Telephone number from 8 a.m. to 5 p.m.

RECEIVED

**61-6-120B: (An applicant for license renewal or for a new license at an existing location shall pay a five dollar certification fee to determine if the exemptions provided for in subsection (A) apply. Subsection A refers to the distance requirements for retail liquor stores, business liquor by the drink and nonprofit private club liquor by the drink licenses.

OCT 04 2013

SCDOR ALCOHOLIC
BEVERAGE LICENSING

42781021

000028

CONSENT AND WAIVER

ABL-946 Rev. 12/16/11

GREENVILLE FINE WINE INC

Name of Corporation, Partnership, LLC, etc.

FEI

File

Number: 32034162-5

S.C. Code Ann. Section 61-2-160 prohibits the issuance of any permit or license under Title 61 unless the Department determines that the applicant does not owe the State any delinquent taxes, penalties or interest. The signature(s) below authorizes the S.C. Department of Revenue, pursuant to the provisions of S.C. Code Ann. Section 12-54-240 and 30-2-10, et seq., to release to any party, person or entity, law enforcement request(s) for purposes of processing this application or responding to questions related thereto, including but not limited to an information related to problems with the application, reasons for denial, delinquent taxes, outstanding liabilities, failure to file returns, penalties and interest. The signature below also authorizes S.C. Law Enforcement Division (SLED) to check, examine and release to the Department of Revenue the criminal history record of the person(s) having signed below. If an application is made for a license or permit by a person other than an individual, all principals are deemed to be the applicant. S.C. Code Ann. Section 61-2-100(C). All principals of the applicant are therefore required to be disclosed to the Department of Revenue.

SOCIAL SECURITY DISCLOSURE

"In compliance with the Federal Privacy Act of 1974, the disclosure of an individual's social security number on this form is mandatory". SC regulation 117-201 provides that any person required to make a return, statement or document to the Department must include identifying numbers on such return, statement or document if the Department requests such information. Social security numbers are primarily used for the purposes of identifying taxpayers and monitoring tax compliance and/or fraud."

1 - 12 is a list of principal types. Each principal type must complete and sign a box below. If a required principal does not sign, this application will be denied.

Principal Types:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.).
11. All other principals must be listed also. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name David TroneHome Address 11417 Skipwith LaneCity Potomac State MD Zip 20854Yr/Mo/Date of SC Residency N/A Sex M Race Cauc Date of Birth [REDACTED]Social Security No. [REDACTED] Federal Employer Identification No. [REDACTED]Principal/Type: (use above #1-12) #2 % of ownership 50 Signature [REDACTED]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Additional Space on Back.

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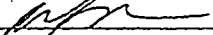
RECEIVED

NOV 04 2013

SCDOR ALCOHOLIC
BEVERAGE LICENSING

000029

File Number: 32034162-5

Name Robert TroneHome Address 9829 Avenel Farm DriveCity Potomac State MD Zip 20854Yr/Mo/Date of SC Residency N/A Sex M Race Cauc Date of Birth Social Security No.  Federal Employer Identification No. Principal/Type: (use above #1-12) #2 % of ownership 50 Signature Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____
Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____
Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

Name _____

Home Address _____

City _____ State _____ Zip _____

Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____

Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____
Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

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804169-003

800232-002

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR RETAIL BEER,
WINE, AND LIQUOR

ABL-901
(Rev. 9/29/10)
4280

Mail to: SC Department of Revenue, ABL Section, Columbia, SC 29214-0907
Telephone: (803) 898-5864 DOR Website: www.sclax.org

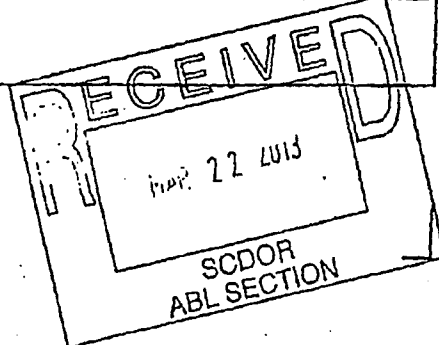
File Number: 320620198

License Type	Nonrefundable Filing Fee	License Fee
☐ On premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Off premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Brewpub	\$ 300.00	\$ 2,200.00 biennially
☒ 7-day off-premises beer & wine	\$ 300.00	\$ 2,200.00 biennially
☐ Sunday/Sabbath beer & wine	\$ 300.00	\$ 650.00 biennially
☐ Business (restaurant/hotel/motel) liquor by the drink	\$ 200.00	\$ 1,700.00 biennially
☐ Nonprofit private club liquor by the drink	\$ 200.00	\$ 1,700.00 biennially
☐ Retail liquor store	\$ 200.00	\$ 1,400.00 biennially
☐ Alcoholic liquors (cooking license)	\$ -0-	\$ 250.00 biennially
☐ 120 day temporary beer & wine	\$ -0-	\$ 25.00
☐ 120 day temporary liquor by the drink	\$ -0-	\$ 25.00
☐ 120 day temporary retail liquor	\$ -0-	\$ 25.00
☐ Certification fee	\$ -0-	\$ 5.00

*(Certification fee is required, in addition to filing fees, if you are applying for a license at a location that is currently licensed to sell liquor by the drink or retail liquor. 61-6-120)

PLEASE PRINT OR TYPE ALL INFORMATION		DEPT OF REVENUE
1. OWNER, PARTNERSHIP, OR CORPORATE CHARTER NAME <u>Columbia Fine Wine, Inc.</u>		6. TRADE NAME (DOING BUSINESS AS) <u>MAR 21 2013</u> RECEIVED TAXPAYERS ASSISTANCE
2. PHYSICAL LOCATION OF BUSINESS REQUIRED (NO P.O. BOX) <u>275-C Harbison Blvd. Unit 1</u> STREET <u>Columbia, Lexington, SC 29212</u> CITY COUNTY (REQUIRED) STATE ZIP		
3. MAILING ADDRESS (FOR ALL CORRESPONDENCE) <u>Total Wine & More</u> IN CARE OF <u>103 Yost Blvd., Ste 101</u> STREET <u>Pittsburgh, PA 15221</u> CITY COUNTY STATE ZIP		8. BUSINESS PHONE NUMBER <u>301-795-1000</u> DAYTIME PHONE NUMBER
4. TYPE OF OWNERSHIP ☐ SOLE PROPRIETOR (one owner) ☐ PARTNERSHIP (two or more owners) ☐ LLC/LLP ☒ SC CORPORATION DATE INC. _____ ☐ FOREIGN CORPORATION STATE INC. _____ DATE OF INC. _____ ☐ NON-PROFIT ORGANIZATION ☐ OTHER (EXPLAIN) _____		7. FEDERAL IDENTIFICATION NUMBER AND/OR SOCIAL SECURITY NO <u>[REDACTED]</u>
5. IF THE CORPORATION IS PUBLICLY TRADED, YOU MUST DESIGNATE AN OFFICER OR OTHER PERSON TO HOLD THE LICENSE. THIS PERSON MUST BE OF GOOD MORAL CHARACTER, OVER THE AGE 21, AND A SC RESIDENT. THIS PERSON SHOULD BE INCLUDED ON THE CONSENT AND WAIVER ALONG WITH OTHER PRINCIPALS OF THE CORPORATION. Name of designated officer or other employee: _____		8. NATURE OF BUSINESS <u>Beer/Wine Store</u>
9. WHAT IS YOUR RETAIL SALES TAX NUMBER? <u>032 374 083</u>		10. IS BUSINESS WITHIN SC MUNICIPAL LIMITS? ☒ YES ☐ NO IF YES, WHICH CITY? <u>Columbia</u>

42801035



000031

10. HAS THIS LOCATION BEEN PREVIOUSLY LICENSED TO SELL BEER, WINE AND/OR ALCOHOLIC LIQUORS?
IF YES PRINT NAME OF BUSINESS AND BEER, WINE AND LIQUOR LICENSE PERMIT NUMBER.

Unk

A. PREVIOUS OPERATORS LICENSE NUMBER:

B. NAME OF BUSINESS:

(Full organization name including trade name)

DESIGNATED AGENT

- A. You must designate a person to receive all notices from the Department of Revenue concerning your permit/license. These notices will be sent to the person at the mailing address shown in question 3. It is your responsibility to keep the department advised of any change regarding this person or your mailing address as the law will presume you received all notices sent to the address you have given us.

Name of Designated Agent:

David Trone

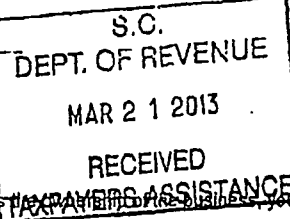
CONTACT PERSON

- B. The S.C. State Law Enforcement Division will conduct an investigation on this application, and will need to meet with the contact person at the location for which you are seeking a permit or license, to discuss the business and ownership of the business. Give the name and telephone numbers (daytime and evening) of the contact person who can meet with the SLED agent for this purpose.

Name of Contact Person Ken Allen, AttorneyTelephone Number 803-748-1335 (daytime)

Telephone Number _____ (evening)

If the agent is unable to contact the Contact Person or if the Contact Person cannot discuss the application, your application will be delayed.



Processing of this application may take six to eight weeks, or more. If the application is denied by the Department or protested by a member of the public or law enforcement, it could take up to six months or more for a hearing to be held and a decision made on the application by the Administrative Law Court.

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premise consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit. Nothing herein shall be construed so as to prevent or prohibit "Tastings" in accordance with and as specifically permitted by S.C. Code Ann. Section 61-4-960.

I understand that a misstatement or concealment of fact in an application is sufficient grounds for the revocation of the license or permit. I consent to the inspection of the premises covered by this license or permit by any agent of the SC Department of Revenue or any law enforcement officer.

I have read the instructions to this application and to the best of my knowledge, all information provided with this application is true and accurate.

SWORN to and subscribed before me this

19th day of March, year of 2013Notary Public for MarylandMy Commission Expires: 7-11-2015Notary (L.S.) Cheryl A. ColeNotary (printed name) Cheryl A. ColeCHERYL A. COLE
NOTARY PUBLIC

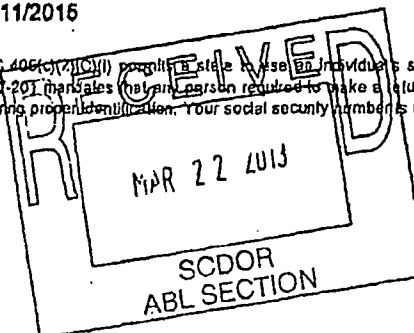
Commission Expires 07/11/2015

Applicant (owner, partner, or corporate officer)

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form. 42 U.S.C. 406(c)(2)(C)(i) prohibits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 111-201 mandates that an individual is required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

42802033



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CONSENT AND WAIVER

ABL-946 Rev. 12/18/11

Columbia Fine Wine, Inc.

Name of Corporation, Partnership, LLC, etc.

FEI

File

Number:

S.C. Code Ann. Section 81-2-160 prohibits the issuance of any permit or license under Title 81 unless the Department determines that the applicant does not owe the State any delinquent taxes, penalties or interest. The signature(s) below authorizes the S.C. Department of Revenue, pursuant to the provisions of S.C. Code Ann. Section 12-54-240 and 30-2-10, et seq., to release to any party, person or entity, law enforcement request(s) for purposes of processing this application or responding to questions related thereto, including but not limited to an information related to problems with the application, reasons for denial, delinquent taxes, outstanding liabilities, failure to file returns, penalties and interest. The signature below also authorizes S.C. Law Enforcement Division (SLED) to check, examine and release to the Department of Revenue the criminal history record of the person(s) having signed below. If an application is made for a license or permit by a person other than an individual, all principals are deemed to be the applicant. S.C. Code Ann. Section 81-2-100(C). All principals of the applicant are therefore required to be disclosed to the Department of Revenue.

SOCIAL SECURITY DISCLOSURE

"In compliance with the Federal Privacy Act of 1974, the disclosure of an individual's social security number on this form is mandatory". SC regulation 117-201 provides that any person required to make a return, statement or document to the Department must include identifying numbers on such return, statement or document if the Department requests such information. Social security numbers are primarily used for the purposes of identifying taxpayers and monitoring tax compliance and/or fraud."

1 - 12 is a list of principal types. Each principal type must complete and sign a box below. If a required principal does not sign, this application will be denied.

Principal Types:

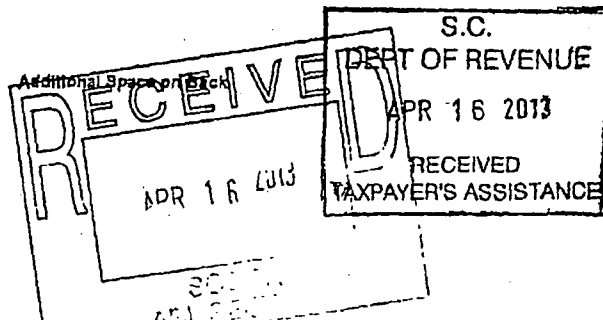
1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.).
11. All other principals must be listed also. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name William Clifton White IIHome Address 194 Arthurdale Dr.City West Columbia State SC Zip 29170Yr/Mo/Date of SC Residency Life Sex M Race W Date of Birth [REDACTED]Social Security No. [REDACTED] Federal Employer Identification No. n/aPrincipal/Type: (use above #1-12) 9 % of ownership 0 Signature [Signature]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

44221038



000033

CONSENT AND WAIVER

ABL-848 Rev. 11/19/09

File

Number: _____

Name of Corporation, Partnership, LLC, etc.

FEI

S.C. Code Ann. Section 61-2-160 prohibits the issuance of any permit or license under Title 61 unless the Department determines that the applicant does not owe the State any delinquent taxes, penalties or interest. The signature(s) below authorizes the S.C. Department of Revenue, pursuant to the provisions of S.C. Code Ann. Section 12-54-240 and 30-2-10, et seq., to release to any party, person or entity, law enforcement request(s) for purposes of processing this application or responding to questions related thereto, including but not limited to an information related to problems with the application, reasons for denial, delinquent taxes, outstanding liabilities, failure to file returns, penalties and interest. The signature below also authorizes S.C. Law Enforcement Division (SLED) to check, examine and release to the Department of Revenue the criminal history record of the person(s) having signed below. If an application is made for a license or permit by a person other than an individual, all principals are deemed to be the applicant. S.C. Code Ann. Section 61-2-100(C). All principals of the applicant are therefore required to be disclosed to the Department of Revenue.

SOCIAL SECURITY DISCLOSURE

"In compliance with the Federal Privacy Act of 1974, the disclosure of an individual's social security number on this form is mandatory". SC regulation 117-201 provides that any person required to make a return, statement or document to the Department must include identifying numbers on such return, statement or document if the Department requests such information. Social security numbers are primarily used for the purposes of identifying taxpayers and monitoring tax compliance and/or fraud."

1 - 12 is a list of principal types. Each principal type must complete and sign a box below. If a required principal does not sign, this application will be denied.

Principal Types:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business entity;
6. Members and Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.).
11. All other principals must be listed also. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

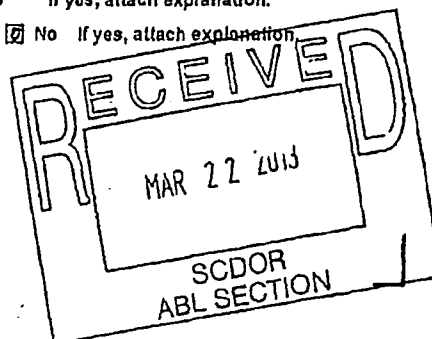
Name Retail Services & Systems, Inc.,Home Address 11325 Seven Locks Road, Ste 214City Potomac State Md Zip 20854Yr/Mo/Date of SC Residency n/a Sex n/a Race n/a Date of Birth n/aSocial Security No. n/a Federal Employer Identification No. [REDACTED]Principal/Type: (use above #1-12) 11 % of ownership 100 Signature [Signature]

Have you as an individual, or as an organization in which you were a principal had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☒ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Additional Space on Back.

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File Number: _____

Name David Trone
 Home Address 11417 Skipwith Lane
 City Potomac State MD Zip 20854
 Yr/Mo/Date of SC Residency n/a Sex M Race W Date of Birth [REDACTED]
 Social Security No. [REDACTED] Federal Employer Identification No. n/a
 Principal/Type: (use above #1-12) 2 % of ownership 0 Signature [Signature]
 Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☒ Yes ☐ No If yes, attach explanation.
 Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

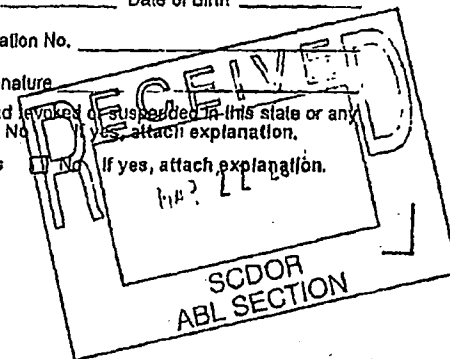
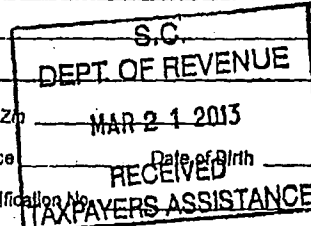
Name Robert Trone
 Home Address 9829 Avenel Farm Drive
 City Potomac State MD Zip 20854
 Yr/Mo/Date of SC Residency n/a Sex M Race W Date of Birth [REDACTED]
 Social Security No. [REDACTED] Federal Employer Identification No. n/a
 Principal/Type: (use above #1-12) 2 % of ownership 0 Signature [Signature]
 Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☒ Yes ☐ No If yes, attach explanation.
 Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Name _____
 Home Address _____
 City _____ State _____ Zip _____
 Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____
 Social Security No. _____ Federal Employer Identification No. _____
 Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____
 Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.
 Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

Name _____
 Home Address _____
 City _____ State _____ Zip _____
 Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____
 Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____
 Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.
 Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

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800231-002

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR RETAIL BEER,
WINE, AND LIQUOR

ABL-901
(Rev. 9/29/10)
1280

Mail to: SC Department of Revenue, ABL Section, Columbia, SC 29214-0907
Telephone: (803) 898-5864 DOR Website: www.sctax.org

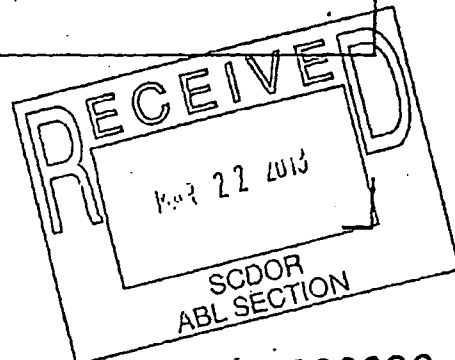
File Number: 30070770

License Type	Nonrefundable Filing Fee	License Fee
☐ On premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Off premises beer & wine	\$ 300.00	\$ 600.00 biennially
☐ Brewpub	\$ 300.00	\$ 2,200.00 biennially
☐ 7-day off-premises beer & wine	\$ 300.00	\$ 2,200.00 biennially
☐ Sunday/Sabbath beer & wine	\$ 300.00	\$ 650.00 biennially
☐ Business (restaurant/hotel/motel) liquor by the drink	\$ 200.00	\$ 1,700.00 biennially
☐ Nonprofit private club liquor by the drink	\$ 200.00	\$ 1,700.00 biennially
☒ Retail liquor store	\$ 200.00	\$ 1,400.00 biennially
☐ Alcoholic liquors (cooking license)	\$ -0-	\$ 250.00 biennially
☐ 120 day temporary beer & wine	\$ -0-	\$ 25.00
☐ *120 day temporary liquor by the drink	\$ -0-	\$ 25.00
☐ *120 day temporary retail liquor	\$ -0-	\$ 25.00
☐ *Certification fee	\$ -0-	\$ 5.00

*Certification fee is required, in addition to filing fees, if you are applying for a license at a location that is currently licensed to sell liquor by the drink or retail liquor. 61-6-120)

PLEASE PRINT OR TYPE ALL INFORMATION	
1. OWNER, PARTNERSHIP, OR CORPORATE CHARTER NAME <u>Columbia Fine Wine, Inc.</u>	5. TRADE NAME (DOING BUSINESS AS) <u>Total Wine & More</u>
2. PHYSICAL LOCATION OF BUSINESS REQUIRED (NO P.O. BOX) <u>275-C Harbison Blvd. Unit 2</u> STREET <u>Columbia, Lexington, SC 29212</u> CITY COUNTY (REQUIRED) STATE ZIP	6. BUSINESS PHONE NUMBER <u>301-795-1000</u>
3. MAILING ADDRESS (FOR ALL CORRESPONDENCE) <u>Total Wine & More</u> IN CARE OF <u>103 Yost Blvd., Ste 101</u> STREET <u>Pittsburgh, PA 15221</u> CITY COUNTY STATE ZIP	7. FEDERAL IDENTIFICATION NUMBER AND/OR SOCIAL SECURITY NO. [REDACTED]
4. TYPE OF OWNERSHIP ☐ SOLE PROPRIETOR (one owner) ☐ PARTNERSHIP (two or more owners) ☐ LLC/LLP ☒ SC CORPORATION DATE INC. _____ ☐ FOREIGN CORPORATION STATE INC. _____ DATE OF INC. _____ ☐ NON-PROFIT ORGANIZATION ☐ OTHER (EXPLAIN) _____	8. NATURE OF BUSINESS <u>Liquor Store</u>
If the corporation is publicly traded, you must designate an officer or other person to hold the license. This person must be of good moral character, over the age 21, and a SC resident. This person should be included on the Consent and Waiver along with other principals of the corporation. Name of designated officer or other employee: _____	9. WHAT IS YOUR RETAIL SALES TAX NUMBER? <u>032 356129</u>
	10. IS BUSINESS WITHIN SC MUNICIPAL LIMITS? ☒ YES ☐ NO IF YES, WHICH CITY? <u>Columbia</u>

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10. HAS THIS LOCATION BEEN PREVIOUSLY LICENSED TO SELL BEER, WINE AND/OR ALCOHOLIC LIQUORS?
IF YES PRINT NAME OF BUSINESS AND BEER, WINE AND LIQUOR LICENSE PERMIT NUMBER.

Unk

A. PREVIOUS OPERATORS LICENSE NUMBER:

B. NAME OF BUSINESS:

(Full organization name including trade name)

DESIGNATED AGENT

- A. You must designate a person to receive all notices from the Department of Revenue concerning your permit/license. These notices will be sent to the person at the mailing address shown in question 3. It is your responsibility to keep the department advised of any change regarding this person or your mailing address as the law will presume you received all notices sent to the address you have given us.

Name of Designated Agent: David Trone

CONTACT PERSON

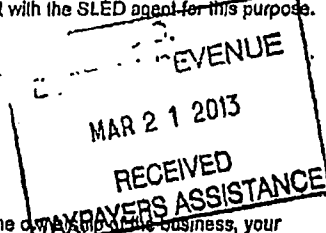
- B. The S.C. State Law Enforcement Division will conduct an investigation on this application, and will need to meet with the contact person at the location for which you are seeking a permit or license, to discuss the business and ownership of the business. Give the name and telephone numbers (daytime and evening) of the contact person who can meet with the SLED agent for this purpose.

Name of Contact Person Ken Allen, Attorney

Telephone Number 803-748-1335 (daytime)

Telephone Number _____ (evening)

If the agent is unable to contact the Contact Person or if the Contact Person cannot discuss the ownership of the business, your application will be delayed.



Processing of this application may take six to eight weeks, or more. If the application is denied by the Department or protested by a member of the public or law enforcement, it could take up to six months or more for a hearing to be held and a decision made on the application by the Administrative Law Court.

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premise consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit. Nothing herein shall be construed so as to prevent or prohibit "Tastings" in accordance with and as specifically permitted by S.C. Code Ann. Section 61-4-960.

I understand that a misstatement or concealment of fact in an application is sufficient grounds for the revocation of the license or permit. I consent to the inspection of the premises covered by this license or permit by any agent of the SC Department of Revenue or any law enforcement officer.

I have read the instructions to this application and to the best of my knowledge, all information provided with this application is true and accurate.

SWORN to and subscribed before me this

19th day of March, year of 2013

Notary Public for Maryland

My Commission Expires: 7-11-2015

Notary (L.S.) Cheryl A. Cole

Notary (printed name) Cheryl A. Cole

CHERYL A. COLE
NOTARY PUBLIC

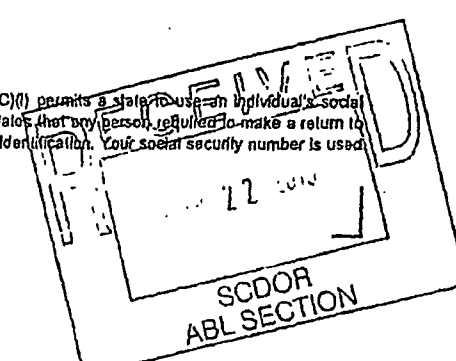
Commission Expires 07/11/2015

Applicant (owner, partner, or corporate officer)

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form. 42 U.S.C. 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. 8C Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

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CONSENT AND WAIVER

ABL-946 Rev. 11/19/09

File

Number.

Name of Corporation, Partnership, LLC, etc.

FEI

S.C. Code Ann. Section 61-2-160 prohibits the issuance of any permit or license under Title 61 unless the Department determines that the applicant does not owe the State any delinquent taxes, penalties or interest. The signature(s) below authorizes the S.C. Department of Revenue, pursuant to the provisions of S.C. Code Ann. Section 12-54-240 and 30-2-10, et seq., to release to any party, person or entity, law enforcement request(s) for purposes of processing this application or responding to questions related thereto, including but not limited to an information related to problems with the application, reasons for denial, delinquent taxes, outstanding liabilities, failure to file returns, penalties and interest. The signature below also authorizes S.C. Law Enforcement Division (SLED) to check, examine and release to the Department of Revenue the criminal history record of the person(s) having signed below. If an application is made for a license or permit by a person other than an individual, all principals are deemed to be the applicant. S.C. Code Ann. Section 61-2-100(C). All principals of the applicant are therefore required to be disclosed to the Department of Revenue.

SOCIAL SECURITY DISCLOSURE

"In compliance with the Federal Privacy Act of 1974, the disclosure of an individual's social security number on this form is mandatory". SC regulation 117-201 provides that any person required to make a return, statement or document to the Department must include identifying numbers on such return, statement or document if the Department requests such information. Social security numbers are primarily used for the purposes of identifying taxpayers and monitoring tax compliance and/or fraud."

1 - 12 is a list of principal types. Each principal type must complete and sign a box below. If a required principal does not sign, this application will be denied.

Principal Types:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business entity;
6. Members and Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.);
11. All other principals must be listed also. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name Retail Services & Systems, Inc.,

Home Address 11325 Seven Locks Road, Ste 214

City Potomac State Md Zip 20854

Yr/Mo/Date of SC Residency n/a Sex n/a Race n/a Date of Birth n/a

Social Security No. n/a Federal Employer Identification No. [REDACTED]

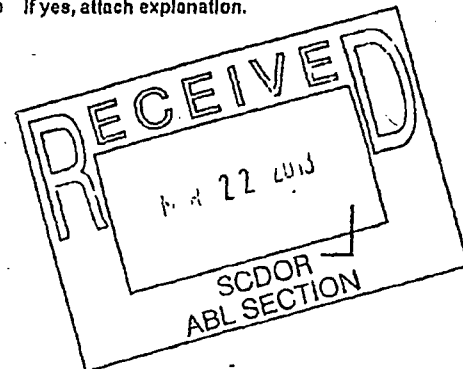
Principal Type: (use above #1-12) 11 % of ownership 100 Signature [Signature]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☒ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

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CONSENT AND WAIVER
ABL-246 Rev. 12/16/11

Columbia Fine Wine, Inc.

Name of Corporation, Partnership, LLC, etc.

FEI

File

Number:

S.C. Code Ann. Section 61-2-160 prohibits the issuance of any permit or license under Title 61 unless the Department determines that the applicant does not owe the State any delinquent taxes, penalties or interest. The signature(s) below authorizes the S.C. Department of Revenue, pursuant to the provisions of S.C. Code Ann. Section 12-54-240 and 30-2-10, et seq., to release to any party, person or entity, law enforcement request(s) for purposes of processing this application or responding to questions related thereto, including but not limited to an information related to problems with the application, reasons for denial, delinquent taxes, outstanding liabilities, failure to file returns, penalties and interest. The signature below also authorizes S.C. Law Enforcement Division (SLED) to check, examine and release to the Department of Revenue the criminal history record of the person(s) having signed below. If an application is made for a license or permit by a person other than an individual, all principals are deemed to be the applicant. S.C. Code Ann. Section 61-2-100(C). All principals of the applicant are therefore required to be disclosed to the Department of Revenue.

SOCIAL SECURITY DISCLOSURE

"In compliance with the Federal Privacy Act of 1974, the disclosure of an individual's social security number on this form is mandatory". SC regulation 117-201 provides that any person required to make a return, statement or document to the Department must include identifying numbers on such return, statement or document if the Department requests such information. Social security numbers are primarily used for the purposes of identifying taxpayers and monitoring tax compliance and/or fraud."

1 - 12 is a list of principal types. Each principal type must complete and sign a box below. If a required principal does not sign, this application will be denied.

Principal Types:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (designated agent) (must be over 21 and a resident of S.C.);
11. All other principals must be listed also. If not a publicly traded corporation, list all stockholders.
12. If a nonprofit organization, list all officers and directors of the organization.

Name William Clifton White II

Home Address 194 Arthurdale Dr.

City West Columbia State SC Zip 29170

Yr/Mo/Date of SC Residency Life Sex M Race W Date of Birth [REDACTED]

Social Security No. [REDACTED] Federal Employer Identification No. n/a

Principal/Type: (use above #1-12) 9 % of ownership 0 Signature [Signature]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

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S.C. DEPT OF REVENUE	
APR 16 2013	
RECEIVED TAXPAYER'S ASSOCIATION	
RECEIVED	
APR 16 2013	
SODOR ABL SECTION	

000039

File Number: _____

Name David Trone
 Home Address 11417 Skipwith Lane
 City Potomac State MD Zip 20854
 Yr/Mo/Date of SC Residency n/a Sex M Race W Date of Birth [REDACTED]
 Social Security No. [REDACTED] Federal Employer Identification No. n/a
 Principal/Type: (use above #1-12) 2 % of ownership 0 Signature [Signature]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☒ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Name Robert Trone
 Home Address 9829 Avenel Farm Drive
 City Potomac State MD Zip 20854
 Yr/Mo/Date of SC Residency n/a Sex M Race W Date of Birth [REDACTED]
 Social Security No. [REDACTED] Federal Employer Identification No. n/a
 Principal/Type: (use above #1-12) 2 % of ownership 0 Signature [Signature]

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☒ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Name _____
 Home Address _____
 City _____ State _____ Zip _____
 Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____
 Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

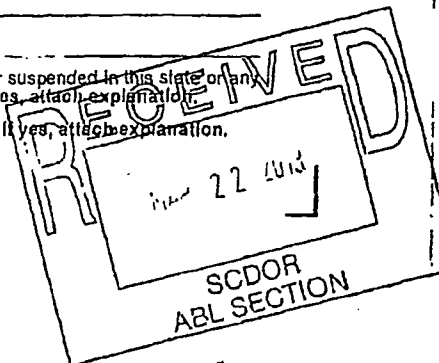
Name _____
 Home Address _____
 City _____ State _____ Zip _____
 Yr/Mo/Date of SC Residency _____ Sex _____ Race _____ Date of Birth _____
 Social Security No. _____ Federal Employer Identification No. _____

Principal/Type: (use above #1-12) _____ % of ownership _____ Signature _____

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☐ No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☐ No If yes, attach explanation.

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR BEER, WINE,
AND/OR LIQUOR

ABL-901
(Rev. 11/7/01)
4280

Processing of this application normally takes six to eight weeks. If the application is denied by the department or protested by a member of the public or law enforcement, it could take up to six months for a public hearing to be held, and a decision made on the application.

File #: 3 203-0605-8

Type of license applied for:

- | | |
|--|---|
| ☒ Off-premises beer and wine | ☐ Business (restaurant/hotel/motel) minibottle |
| ☐ On-premises beer and wine | ☐ Nonprofit private club minibottle |
| ☐ Brewpub | ☐ Retail liquor store |
| ☐ Wholesale beer and wine | ☐ Wholesale liquor |
| ☐ *7-Day beer/wine (off-premises only) | ☐ Alcoholic liqueurs (cooking license) |
| ☐ ** Sunday/Sabbath beer and wine | ☐ Brewery/Winery |
| ☐ Liquor Manufacturer | |

KENNETH E. ALLEN
ATTORNEY AT LAW
1201 MAIN STREET, SUITE 1880
COLUMBIA, SC 29201

SECTION I. Applicant Information.

You must check and complete either A, B, or C in Section I.

(NOTE: Revealing the social security number(s) requested in this application is mandatory. Section 61-2-160 prohibits the issuance of any permit or license if delinquent taxes are owed by the applicant or any principal. The social security numbers are used to determine if delinquent taxes are owed. In addition, social security numbers are used to verify identity for criminal record purposes. If you do not provide social security numbers as requested, your application will be denied.)

☐ **A. Sole Proprietorship.** Check this block if you are the sole owner of the business applying for this permit or license.

1. Owner's full name: _____

2. Social security number is: _____ Nationality: _____

3. Home address (list street address and city, do not list P.O. Box): _____

Email address: _____

4. Driver's License number: _____ 4.(a) State of Issuance: _____

5. Home telephone number (include area code): _____

6. Legal resident of the United States: ☐ Yes ☐ No

7. Legal S.C. resident and maintained principal place of abode in the State of S.C. since (year and date): _____

8. Date of birth (must be 21 years of age): _____

9. Have you been involved before in the sale of beer, wine, or alcoholic liquors. ☐ Yes ☐ No
If yes, give details in Schedule A.

10. Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors.
☐ Yes ☐ No If yes, give details in Schedule A.

11. Do you have any financial interest of any kind in any other tier of the beer, wine, or alcoholic beverage industry? (For example, if you are seeking a retail beer and wine permit, do you have a financial interest of any kind in a beer and wine wholesale business or a brewery?) ☐ Yes ☐ No If yes, give details in Schedule A.

12. Does an entity or person who works for or has an ownership or financial interest in another tier of the beer, wine or alcoholic beverage industry have any type of financial interest in your business? ☐ Yes ☐ No If yes, give details in Schedule A.

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13. Have you or any employee with management responsibilities been convicted of a crime in South Carolina or any other state? (You must reveal any convictions whether you or the person went to jail or not. The S.C. State Law Enforcement Division will check for convictions, and your application may be denied if you do not correctly answer this question) ☐ Yes ☐ No If yes, give details in Schedule A

14. List all employees who will have day-to-day operational management responsibilities for the business. Each name must also be listed on Schedule B.

Name

- ☐ B. Partnership or Limited Liability Partnership (L.L.P.): Check this block if the business is owned by a partnership or L.L.P.

1. Name of Partnership _____ FEI # _____

2. List all partners or members:

Name	% of Ownership

- 3 List all employees who have day-to-day operational management responsibilities for the business. Each name must also be listed on Schedule B.

Name

- 4 Has any partner or member had revoked or suspended in this or any other state, any license to sell beer, wine, or alcoholic liquors. ☐ Yes ☐ No If yes, give details in Schedule A.

- 5 Does any partner or member have any financial interest of any kind in any other tier of the beer, wine, or alcoholic beverage industry? (For example, if the partnership or L.L.P. is seeking a retail beer and wine permit, does any partner or member have a financial interest of any kind in a beer and wine wholesale business or a brewery?) ☐ Yes ☐ No If yes, give details in Schedule A

- 6 Does a person with a financial interest in any other tier of the beer, wine or alcoholic beverage industry have any type of financial interest in your partnership or L.L.P.? ☐ Yes ☐ No. If yes, give details in Schedule A

7. Has any partner or member or person with management responsibilities been convicted of a crime in South Carolina or any other state? (You must reveal any convictions whether the partner or member went to jail or not. The S.C. State Law Enforcement Division will check for convictions, and your application may be denied if you do not correctly answer this question) ☐ Yes ☐ No If yes, give details in Schedule A.

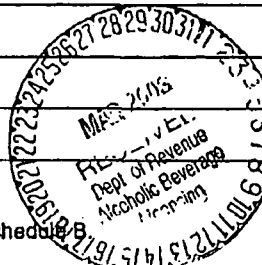
☒ C. Corporation or Limited Liability Company (LLC). Check this block if the business is owned by a corporation, LLC.

1. Name of corporation or L.L.C. Columbia Fine Wine, Inc.
2. FEI# Applied For [REDACTED]
3. Is the stock of your corporation traded on any exchange? ☐ Yes ☒ No. If yes, what exchange? _____
4. If your stock is not traded on any exchange, list below all persons who own any interest in the corporation. Those owning 25% or more interest in the corporation must be listed on Schedule B.

Name	Number of Shares Owned	% of Corporation Owned
David Trone - Columbia Fine Wine, Inc.,	1,000	100
David Trone - Retail Services & Systems, Inc	250	50
Robert Trone - Retail Services & Systems, Inc.	250	50

5. List all employees who will have day-to-day operational management responsibilities for the business. These employees should also be listed on Schedule B.

Name
David J. Trone
Robert L. Trone
Jerry Felibczak



6. List all officers of the corporation. Each should be listed on Schedule B.

Name	Corporate Title
David J. Trone	President
Robert L. Trone	Secretary/Treasurer

7. Has any person with day-to-day management responsibilities, any corporate officer, or any person owning 25% or more of stock had revoked, or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, give details in Schedule A.

8. Does any person with day-to-day management responsibilities, any corporate officer, or any person owning 25% or more of stock have any financial interest of any kind in any other tier of the beer, wine, or alcoholic beverage industry? (For example, if the corporation is seeking a retail beer and wine permit, does any officer or person owning 25% or more of stock have a financial interest of any kind in a beer and wine wholesale business or a brewery?)
☐ Yes ☒ No *If yes, give details in Schedule A.*
9. Does a person with a financial interest in any other tier of the beer, wine or alcoholic beverage industry have any type of financial interest in your corporation? ☐ Yes ☒ No *If yes, give details in Schedule A.*
10. Has any person with day-to-day management responsibilities, any corporate officer, or person owning 25% or more of stock been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ NO *If yes, give details in Schedule A. For any nonresidents, you must attach a criminal history report from the state of residence. (You must reveal any convictions whether the person went to jail or not.) The S.C. State Law Enforcement Division will check for convictions, and your application may be denied if you do not correctly answer this question.*

SECTION II. DESIGNATED AGENT

Section II(A) must be completed for all applications.

- A. (1) Give the name of the person you are appointing as the designated agent under § 61-2-100(F) for service of all

notices concerning the permit or license: Ken Allen, ATTY
 The designated agent can be an owner, partner, officer, or any other person that the applicant wishes to receive notices from the Department. No person may act as agent for more than one business entity unless that person has an ownership interest in the entities. I understand that the Department will give me notice by mailing it to this person at the address shown above, and that it is my responsibility to inform the Department if this person or mailing address changes. Must be 21 years of age and a resident of South Carolina.

- (2) Give the mailing address and telephone numbers where the Department can contact this person:

Suite 1980, 1201 main Cola SC 29201
 Street Address City State ZIP
345-2780 748-1335
 Telephone # (Home) (Business)

Section II(B) must be completed for publically traded corporations only. This information must also be listed on Schedule B.

- B. If you are a publically traded corporation, you must designate an officer or other employee of good moral character, over the age of twenty-one and a resident of South Carolina in whose name the permit or license will be held on behalf of your corporation. See § 61-2-100(H)(2)(i).

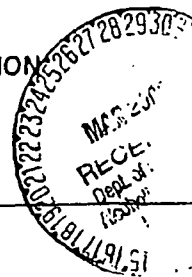
1. Designated officer or other employee: _____

2. Has the designated officer or other employee been convicted of a crime in South Carolina or any other state?
☐ Yes ☐ No (You must reveal any convictions whether the designated officer or other employee went to jail or not. The S.C. State Law Enforcement Division will check this person's record for convictions, and your application may be denied if you do not correctly answer this question).

SECTION III. LOCATION INFORMATION

Section III must be completed for all applications.

- A. Trade name, if applicable: Total Wine & More



Address of the location for which you are seeking a license or permit: Must be exact, and must include street and city. Must match address in newspaper notice and on retail sales tax license. Do not list a post office box as the business address.

275 Harrison Blvd. Columbia SC 29210 Lexington
Street Address City State ZIP Code County

(1) Mailing Address if different from above

90 Ken Allen, ATTY, Suite 1480, 1201 Main St., S.C. 29201
Street Address City State ZIP Code County

(2) Is this location within the city limits? ☒ Yes ☐ No

(3) Is there a building onsite? ☒ Yes ☐ No If no, are you requesting a conditional site approval? ☒ Yes ☐ No

(4) Who owns the land and/or building? A.C. Moore, Inc. 856-228-6700
Landlord's Name Telephone Number

(5) Attach copy of lease agreement, deed or other ownership documentation for this location.

C. TELEPHONE NUMBER (including area code) for your place of business: Not yet issued

D. Give a description of the nature of your business. (List the primary business activity. Examples: Convenience store, bar, grocery store, motel, night club, restaurant or tavern)

Wine, Beer and Spirit store

E. How many parking spaces will you have at your business location? 200

F. What will be your days and hours of operation? Monday-Thursday 9:00am-9:00pm

Friday-Saturday 9:00am-10:00pm
G. What is the approximate maximum number of people you expect to have in your business at any one time? 20

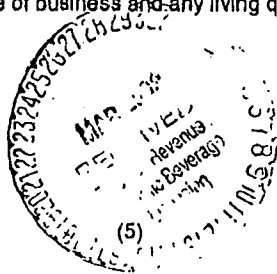
H. Is there currently a beer, wine, or liquor license at the location for which you are seeking a license or permit?
☐ Yes ☒ No. If yes, give the name of the business holding the license or permit, and the license or permit number.

I. What is the retail sales tax number for the place of business? Applied For 03235612-9 To whom is that license issued?
Columbia Fine Wine, Inc. (Must be in the same name as the applicant for this license or permit).
(Your permit/license cannot be issued before you get your retail license.)

J. Do you plan to sell beer, wine, or alcoholic liquors on a drive-thru or curb service basis? (S.C. law prohibits this)
☐ Yes ☒ No

K. Does your business location have a functioning restroom available for use by customers ☒ Yes ☐ No
Applicants for on-premises licenses or permits must have functioning restrooms before the license or permit can be issued.

L. Is there interior access between your place of business and any living quarters? ☐ Yes ☒ No.
If yes, give details in Schedule A.



000045

Section IV. Minibottle License - Restaurant

Section IV must be completed only if you are applying for a minibottle license as a restaurant.

- A. Is your business primarily and substantially engaged in the preparation and serving of meals? ☐ Yes ☐ No
If no, give details in Schedule A.
- B. Does your business location have seating for no less than forty persons simultaneously at tables for the service of meals each day it is open for business? ☐ Yes ☐ No If no, give details in Schedule A.
- C. Does your business have a kitchen that is a separate area of the business that is used solely for the preparation serving of solid foods that make-up meals? ☐ Yes ☐ No If no, give details in Schedule A.
- D. Does your kitchen have a working fixed grill, stove, or microwave oven? ☐ Yes ☐ No
If no, give details in Schedule A.
- E. Do you have a functioning cold storage unit with a minimum of 21 cubic feet capacity? ☐ Yes ☐ No
If no, give details in Schedule A.
- F. Do you have a menu or sign listing the meals offered at your place of business? ☐ Yes ☐ No
If no, give details in Schedule A.
- G. Is there adequate food on the premises of your business to serve forty (40) people a hot meal? ☐ Yes ☐ No
If no, give details in Schedule A. (Prepackaged single portions foods prepared off the premises will not count as adequate food.)
- H. Do you have (or plan to have by the time you open for business) hot meals during normal "mealtimes" which occur when your business plans to be open to the public? ☐ Yes ☐ No. If no, give details in Schedule A.
- I. Is the bar area used for storing and dispensing minibottles lighted (or planned to be lighted by time you open for business) so that customers have a clear view of all activities taking place in the bar area? ☐ Yes ☐ No
If no, give details in Schedule A.
- J. Is your place of business at least 300 feet from a church, school or playground located in the city, or 500 feet from a church, school, or playground located in the county? ☐ Yes ☐ No If no, give details in Schedule A. This requirement does not apply if the establishment or location was established prior to November 7, 1962.
- K. Does your place of business have a Grade A Restaurant License issued by the Health Department?
☐ Yes ☐ No If no, give details in Schedule A. Before your minibottle license can be issued, you must furnish to the Department a copy of the inspection form given to you by the Health Department showing that the Grade A Restaurant License has been issued.
- L. Is this application for a new license at a location that is currently licensed to sell minibottles? ☐ Yes ☐ No
If yes, you must include an additional \$5.00 certification fee with your filing fees.

SECTION V. MINIBOTTLE LICENSE - HOTEL OR MOTEL

Section V must be completed only if you are applying for a minibottle license as a hotel or motel.

- A. Does your business rent accommodations for lodging to the public on a regular basis consisting of not less than twenty rooms? ☐ Yes ☐ No If no, give details in Schedule A.
- B. Is the bar area used for storing and dispensing minibottles lighted (or planned to be lighted by time you open for business) so that customers have a clear view of all activities taking place in the bar area? ☐ Yes ☐ No.
If no, give details in Schedule A.
- C. Is your place of business at least 300 feet from a church, school or playground located in the city, or 500 feet from a church, school, or playground located in the county? ☐ Yes ☐ No. If no, give details in Schedule A.
This requirement does not apply if the establishment or location was established prior to November 7, 1962.
- D. Is this application for a new license at a location that is currently licensed to sell minibottles? ☐ Yes ☐ No
If yes, you must include an additional \$5.00 certification fee with your filing fees.

SECTION VI. MINIBOTTLE LICENSE (NONPROFIT, PRIVATE CLUB)

Section VI must be completed only if you are applying for a minibottle license as a nonprofit organization.

- A. The premises to be licensed are located in a place separate and distinct from the premises of any business establishment. ☐ Yes ☐ No If no, give details in Schedule A. (This means that the location must have a separate address, separate entrance, and cannot be connected by common doors or passageways with any business premises.)

- B. Does your club's by-laws call a definite fixed method of electing persons on an individual basis to membership in the organization? ☐ Yes ☐ No. If no, give details in Schedule A.
- C. Does the method of electing members bear some reasonable relationship to the object and purpose of your organization? ☐ Yes ☐ No. If no, give details in Schedule A.
- D. Does your club's by-laws require that upon dissolution of the organization, its residual assets must not inure to the direct benefit of any member, but must be turned over to a nonprofit organization which is organized and operated for charitable purposes? ☐ Yes ☐ No. If no, give details in Schedule A.
- E. Does your organization's by-laws, charter, or constitution require that it be operated solely and exclusively for social, benevolent, patriotic, recreational, or fraternal purposes? ☐ Yes ☐ No. If no, give details in Schedule A. You must attach a copy of your club's by-laws. You must also attach a certified copy of the organization's charter, articles of incorporation, or constitution.
- F. List all officers and directors of the organization. Must also be included on Schedule B.

Name	Title	Age	Mailing Address	Business Employment

- G. Is the bar area used for storing and dispensing minibottles lighted (or planned to be lighted by time you open for business) so that customers have a clear view of all activities taking place in the bar area? ☐ Yes ☐ No. If no, give details in Schedule A.
- H. Is your place of business at least 300 feet from a church, school or playground located in the city, or 500 feet from a church, school, or playground located in the county? ☐ Yes ☐ No. If no, give details in Schedule A. This requirement does not apply if the establishment or location was established prior to November 7, 1962.
- I. Is this application for a new license at a location that is currently licensed to sell minibottles? ☐ Yes ☐ No. If yes, you must include an additional \$5.00 certification fee with your filing fees.

SECTION VII. RETAIL LIQUOR LICENSE

Completed this section only if you are applying for a retail liquor store.

- A. Does any other member of your household have a current retail liquor store license? ☐ Yes ☒ No. If yes, give details in Schedule A. NOT IN S.C.
- B. Do you have any other retail liquor licenses issued to you? ☐ Yes ☒ No. If yes, list each license number in Schedule A. NOT IN S.C.
- C. Does any person with an interest in the business for which you are applying have any interest whatsoever in any other business that has been issued a retail liquor license? ☐ Yes ☒ No. If yes, give details in Schedule A. NOT IN S.C.
- D. Do you, your partnership, or your corporation have an interest of any kind in any other business with a liquor license except those already listed in question VII (B) above? ☐ Yes ☒ No. If yes, give details in Schedule A.
- E. Is your place of business at least 300 feet from a church, school or playground located in the city, or 500 feet from a church, school, or playground located in the county? ☒ Yes ☐ No. If no, give details in Schedule A.
- F. Is this application for a new license at a location that is currently licensed to sell retail liquor? ☐ Yes ☒ No. If yes, you must include an additional \$5.00 certification fee with your filing fees.

Section VIII. Sabbath Beer and Wine Permit

Completed this section only if you wish to close your business on Saturday and sell beer on Sunday.

I wish to refrain from opening my business on Saturday for religious reasons, and do hereby affirm that I will close my business from 12:01 a.m. on Saturday until midnight Saturday night. ☐ Yes ☐ No. In addition to the normal filing and permit fee for a beer and wine permit, enclose an additional \$50 for administrative and enforcement costs of this special permit. I understand that if I operate on Saturdays while holding this permit, the Department will revoke my retail permit to sell beer and wine. These permits are issued only in those counties or municipalities who have passed a referendum allowing Sunday sale of beer.

Explain this Section

Section IX. 120 Days Temporary Beer, and Wine Permit/Minibottle License/Retail Liquor License

Completed this section only if you are applying for a 120 Days Temporary Beer, and Wine Permit/Minibottle License/Retail Liquor License.

A. Does this business have a current beer and wine permit, and is it currently selling beer and wine? ☐ Yes ☐ No
Give current permit number and name of permit holder (Existing permit must be attached before 120 day temp is issued):

B. Does this business have a current minibottle license, and is it currently selling minibottles? ☐ Yes ☐ No.
Give current license number and name of licensee (Existing permit must be attached before 120 day temp is issued)
Restaurants must attach current Grade A Health certificate issued in this applicant's name before 120 temp can be issued.

C. Does this business have a current retail liquor license, and is it currently selling alcohol? ☐ Yes ☐ No
Give current license number and name of licensee (existing license must be attached before 120 day temp is issued.)

D. Did the applicant acquire this business by purchase, lease, inheritance, divorce decree, eviction, or otherwise?
☐ Yes ☐ No If no, give details in Schedule A. Attach a copy of the bill of sale, lease, probate document, divorce decree, or eviction order or document showing how the applicant acquired the business. Enclose an additional \$25 for a 120 days beer and wine permit, and an additional \$25 for a 120 days minibottle license. If the applicant is not currently licensed at another location, you must attach a criminal background check on ALL principals. A principal is the owner, partner, member of a L.L.P. or L.L.C., officer of the corporation, the designated agent, owner of 25% or more of stock, or employee with day-to-day management responsibilities.

Requirements for 120-day temporary:

1. \$25 for each temporary permit requested. If applying for a temporary beer/wine and minibottle, \$50 would be required.
2. Attach a copy of bill of sale, lease, probate document, divorce decree, or eviction order or document showing how the applicant acquired the business.
3. If the applicant is not currently licensed at another location, a current criminal history background check is required on the applicant if applying as sole proprietor. If applying as corporation, a criminal history background check must be furnished for each principal of a corporation, partnership, limited liability company or limited partnership. (See Schedule B for explanation of principal.)
4. Must attach the existing permit/license.
5. Must attach a current Grade A health inspection. (For restaurant minibottle)
6. Must attach a copy of Articles of Incorporation if applying for nonprofit private club.
7. Must attach a copy of bylaws if applying for nonprofit private club.

Important Notice:

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premises consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit.

Section X. To be signed for all types of applications.

SWORN to before me this

10th day of Feb 03
[Signature]

Notary Public for South Carolina

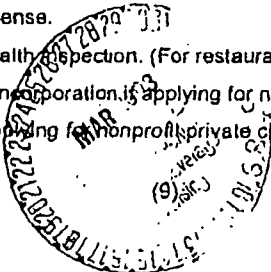
My commission expires: 8-7-11

[Signature]
Applicant (owner, partner, or corporate officer)

Notice requirements: In addition to the newspaper advertisement described in the attachment to this application, an agent of the S.C. State Law Enforcement Division must post a notice at the proposed place of business. This sign must remain posted for at least fifteen days, and must be removed by the SLED agent. If the SLED agent returns to remove the sign, and the sign is not posted, the agent must re-post the property. This will delay issuance of your license or permit. If the sign disappears before it is removed by the SLED Agent, contact the S.C. Department of Revenue immediately.

Enclosure Checklist:

1. Completed application, signed, dated and notarized.
2. Proper filing fees.
3. Copy of lease, deed or other ownership documentation.
4. Submit an Affidavit of Publication from the newspaper running your ad. The affidavit must include a copy of your ad. If you have just started your ad in the newspaper and have not received the ad and affidavit, you must include the receipt from the newspaper with your application. Forward the ad and affidavit from the newspaper as soon as it is provided to you by the newspaper. Your license/permit cannot be issued until this is received. (ABL-32)
5. Schedule B must be completed for all applications.
6. If you are applying for a restaurant minibottle license, you must submit a current Grade A health inspection.
7. If you are applying as a nonprofit private club, you must include a copy of your clubs bylaws and a copy of your Articles of Incorporation.
8. If you are applying as a corporation, limited liability company, partnership, or a limited partnership and any of your principals are nonresidents of SC, you must attach a current criminal history background check obtained from the state of residency for each nonresident. These background checks must accompany your application. See Schedule B for definition of principal.
9. If applying under Section IX, 120 days temporary permit or license, attach:
 - a. \$25 for each temporary permit requested. If applying for a temporary beer/wine and minibottle, \$50 would be required.
 - b. Attach a copy of bill of sale, lease, probate document, divorce decree, or eviction order or document showing how the applicant acquired the business.
 - c. If the applicant is not currently licensed at another location, a current criminal history background check is required on the applicant if applying as sole proprietor. If applying as corporation, a criminal history background check must be furnished for each principal of a corporation, partnership, limited liability company or limited partnership. (See Schedule B for explanation of principal.)
 - d. Must attach the existing permit/license.
 - e. Must attach a current Grade A health inspection. (For restaurant minibottle only)
 - f. Must attach a copy of Articles of Incorporation if applying for nonprofit private club.
 - g. Must attach a copy of bylaws if applying for nonprofit private club.



000049

10. **Federal special occupational tax.** Prior to selling beer or wine, you must also pay a Federal Special Occupational Tax. This tax is due before commencing the business to sell beer and wine, and thereafter, on or before July 1 each year at the rate of \$250. For detailed information and taxpayer assistance contact the Bureau of Alcohol, Tobacco, and Firearms, National Revenue Center, Cincinnati, Ohio, toll-free at 1-800-937-8884 or 513-684-2979. For tax returns, ATF F 5630.5, and instructions, you may visit www.atf.treas.gov or write to: Bureau of Alcohol, Tobacco & Firearms, Room 8002 Federal Office building, 650 Main Street, Cincinnati, Ohio 45202.



(10)

000050

SCHEDULE B
Consent and Waiver:

3203-0688-8

S.C. Code Section 61-2-160 prohibits the issuance of any permits or license under Title 61 if the applicant or any principal owes delinquent taxes, penalties, or interest to the S.C. Department of Revenue or to the I.R.S. By signing below, a person authorizes the I.R.S. to release to the S.C. Department of Revenue information concerning that person owing delinquent taxes, penalties, or interest as of the date of the signing of this document, plus the next five years. This consent may be withdrawn at any time by writing to the Internal Revenue Service Disclosure Officer, 1835 Assembly Street, MDP15, Columbia, SC 29201. The signature below also authorizes the S.C. Department of Revenue to release to the applicant, or to the applicant's agent, attorney, information concerning delinquent taxes, penalties, or interest that is causing the denial of this application.

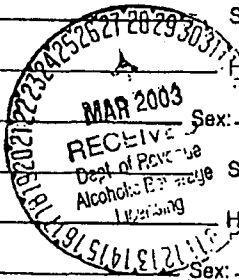
The following are principals and must complete and sign below. If a required person does not sign, this application will be denied:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity; and,
10. If a publicly traded corporation, the designated license holder (must be over 21 and a resident of S.C.).

Columbia Fine Wine, Inc.
Name of Corporation, Partnership, LLC, etc.

FEI

(A) Name: David Trone Home Address: 11417 Skipwith Lane, Potomac, MD
(print) [redacted] 20854
Social Security No.: [redacted] Sex: M Race: Wh Date of Birth: [redacted]
Yr/Date of SC Residency: 0 Signature: [Signature]
(B) Name: Robert Trone Home Address: 9814 Potomac Manors Dr., Potomac, MD
(print) [redacted] 20854
Social Security No.: [redacted] Sex: M Race: Wh Date of Birth: [redacted]
Yr/Date of SC Residency: 0 Signature: [Signature]
(C) Name: Terry Felinczak Home Address: 123 Persimmon Hill, Pittsboro, NC
(print) [redacted] 27312
Social Security No.: [redacted] Sex: M Race: Wh Date of Birth: [redacted]
Yr/Date of SC Residency: 0 Signature: [Signature]
(D) Name: _____ Home Address: _____
(print) _____
Social Security No.: _____ Sex: _____ Race: _____ Date of Birth: _____
Yr/Date of SC Residency: _____ Signature: _____
(E) Name: _____ Home Address: _____
(print) _____
Social Security No.: _____ Sex: _____ Race: _____ Date of Birth: _____
Yr/Date of SC Residency: _____ Signature: _____
(F) Name: _____ Home Address: _____
(print) _____
Social Security No.: _____ Sex: _____ Race: _____ Date of Birth: _____
Yr/Date of SC Residency: _____ Signature: _____



(12)

000051



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR BEER, WINE,
AND/OR LIQUOR

ABL-901

(Rev. 11/7/01)
4280

Processing of this application normally takes six to eight weeks. If the application is denied by the department or protested by a member of the public or law enforcement, it could take up to six months for a public hearing to be held, and a decision made on the application.

File #:

3203-0593-2

Type of license applied for:

- | | |
|---|---|
| ☐ Off-premises beer and wine | ☐ Business (restaurant/hotel/motel) minibottle |
| ☐ On-premises beer and wine | ☐ Nonprofit private club minibottle |
| ☐ Brewpub | ☒ Retail liquor store |
| ☐ Wholesale beer and wine | ☐ Wholesale liquor |
| ☐ *7-Day beer/wine (off-premises only) | ☐ Alcoholic liquors (cooking license) |
| ☐ ** Sunday/Sabbath beer and wine | ☐ Brewery/Winery |
| ☐ Liquor Manufacturer | |

KENNETH E. ALLEN
ATTORNEY AT LAW
1201 MAIN STREET, SUITE 1880
COLUMBIA, SC 29201

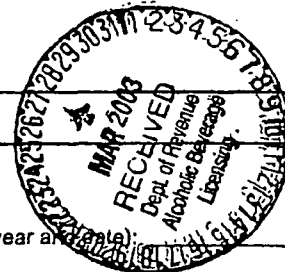
SECTION I. Applicant Information.

You must check and complete either A, B, or C in Section I.

(NOTE: Revealing the social security number(s) requested in this application is mandatory. Section 61-2-160 prohibits the issuance of any permit or license if delinquent taxes are owed by the applicant or any principal. The social security numbers are used to determine if delinquent taxes are owed. In addition, social security numbers are used to verify identity for criminal record purposes. If you do not provide social security numbers as requested, your application will be denied.)

☐ A. Sole Proprietorship. Check this block if you are the sole owner of the business applying for this permit or license.

1. Owner's full name: _____
2. Social security number is: _____ Race: _____ Nationality: _____
3. Home address (list street address and city, do not list PO Box): _____
Email address: _____
4. Driver's License number: _____ 4.(a) State of Issuance: _____
5. Home telephone number (include area code): _____
6. Legal resident of the United States: ☐ Yes ☐ No
7. Legal S.C. resident and maintained principal place of abode in the State of S.C. since (year and date): _____
8. Date of birth (must be 21 years of age): _____
9. Have you been involved before in the sale of beer, wine, or alcoholic liquors. ☐ Yes ☐ No
If yes, give details in Schedule A.
10. Have you had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors.
☐ Yes ☐ No If yes, give details in Schedule A.
11. Do you have any financial interest of any kind in any other tier of the beer, wine, or alcoholic beverage industry? (For example, if you are seeking a retail beer and wine permit, do you have a financial interest of any kind in a beer and wine wholesale business or a brewery?) ☐ Yes ☐ No If yes, give details in Schedule A.
12. Does an entity or person who works for or has an ownership or financial interest in another tier of the beer, wine or alcoholic beverage industry have any type of financial interest in your business? ☐ Yes ☐ No If yes, give details in Schedule A.



13. Have you or any employee with management responsibilities been convicted of a crime in South Carolina or any other state? (You must reveal any convictions whether you or the person went to jail or not. The S.C. State Law Enforcement Division will check for convictions, and your application may be denied if you do not correctly answer this question). ☐ Yes ☐ No If yes, give details in Schedule A.

14. List all employees who will have day-to-day operational management responsibilities for the business. Each name must also be listed on Schedule B.

Name

- ☐ B. Partnership or Limited Liability Partnership (LLP): Check this block if the business is owned by a partnership or L.L.P.

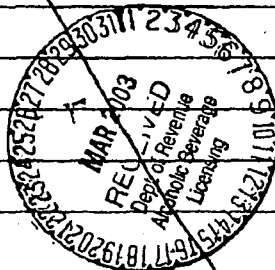
1. Name of Partnership _____ FEI # _____

2. List all partners or members:

Name	% of Ownership

3. List all employees who have day-to-day operational management responsibilities for the business. Each name must also be listed on Schedule B.

Name



4. Has any partner or member had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors. ☐ Yes ☐ No If yes, give details in Schedule A.
5. Does any partner or member have any financial interest of any kind in any other tier of the beer, wine, or alcoholic beverage industry? (For example, if the partnership or L.L.P. is seeking a retail beer and wine permit, does any partner or member have a financial interest of any kind in a beer and wine wholesale business or a brewery?). ☐ Yes ☐ No If yes, give details in Schedule A.
6. Does a person with a financial interest in any other tier of the beer, wine or alcoholic beverage industry have any type of financial interest in your partnership or L.L.P.? ☐ Yes ☐ No. If yes, give details in Schedule A.

7. Has any partner or member or person with management responsibilities been convicted of a crime in South Carolina or any other state? (You must reveal any convictions whether the partner or member went to jail or not. The S.C. State Law Enforcement Division will check for convictions, and your application may be denied if you do not correctly answer this question) ☐ Yes ☐ No If yes, give details in Schedule A.

☒ C. Corporation or Limited Liability Company (LLC). Check this block if the business is owned by a corporation, L.L.C.

1. Name of corporation or L.L.C. Columbia Fine Wine, Inc.
2. FEI# Applied For [REDACTED]
3. Is the stock of your corporation traded on any exchange? ☐ Yes ☒ No. If yes, what exchange? _____
4. If your stock is not traded on any exchange, list below all persons who own any interest in the corporation. Those owning 25% or more interest in the corporation must be listed on Schedule B.

Name	Number of Shares Owned	% of Corporation Owned
David Trone - Columbia Fine Wine, Inc.	1,000	100
David Trone - Retail Services & Systems, Inc	250	50
Robert Trone - Retail Services & Systems, Inc.	250	50

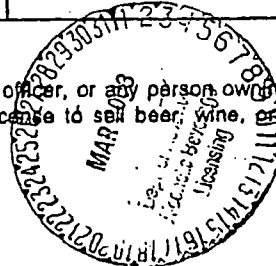
5. List all employees who will have day-to-day operational management responsibilities for the business. These employees should also be listed on Schedule B.

Name
David J. Trone
Robert L. Trone
Jerry Felibczak

6. List all officers of the corporation. Each should be listed on Schedule B.

Name	Corporate Title
David J. Trone	President
Robert L. Trone	Secretary/Treasurer

7. Has any person with day-to-day management responsibilities, any corporate officer, or any person owning 25% or more of stock had revoked or suspended, in this or any other state, any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, give details in Schedule A.



- 8 Does any person with day-to-day management responsibilities, any corporate officer, or any person owning 25% or more of stock have any financial interest of any kind in any other tier of the beer, wine, or alcoholic beverage industry? (For example, if the corporation is seeking a retail beer and wine permit, does any officer or person owning 25% or more of stock have a financial interest of any kind in a beer and wine wholesale business or a brewery?)
☐ Yes ☒ No If yes, give details in Schedule A
- 9 Does a person with a financial interest in any other tier of the beer, wine or alcoholic beverage industry have any type of financial interest in your corporation? ☐ Yes ☒ No If yes, give details in Schedule A.
- 10 Has any person with day-to-day management responsibilities, any corporate officer, or person owning 25% or more of stock been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ NO If yes, give details in Schedule A For any nonresidents, you must attach a criminal history report from the state of residence. (You must reveal any convictions whether the person went to jail or not) The S.C. State Law Enforcement Division will check for convictions, and your application may be denied if you do not correctly answer this question.

SECTION II. DESIGNATED AGENT

Section II(A) must be completed for all applications.

- A (1) Give the name of the person you are appointing as the designated agent under § 61-2-100(F) for service of all

notices concerning the permit or license: Ken Allen, A.T.T.
 The designated agent can be an owner, partner, officer, or any other person that the applicant wishes to receive notices from the Department. No person may act as agent for more than one business entity unless that person has an ownership interest in the entities. I understand that the Department will give me notice by mailing it to this person at the address shown above, and that it is my responsibility to inform the Department if this person or mailing address changes. Must be 21 years of age and a resident of South Carolina.

- (2) Give the mailing address and telephone numbers where the Department can contact this person:

Suite 1980, 1201 main Cola SC 29201
 Street Address City State ZIP
345-2780 748-1335
 Telephone # (Home) (Business)

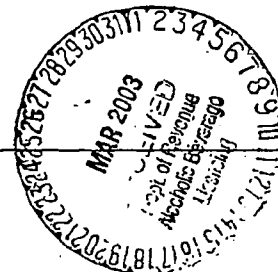
Section II(B) must be completed for publically traded corporations only. This information must also be listed on Schedule B.

- B If you are a publically traded corporation, you must designate an officer or other employee of good moral character, over the age of twenty-one and a resident of South Carolina in whose name the permit or license will be held on behalf of your corporation. See § 61-2-100(H)(2)(i).
- Designated officer or other employee: _____
 - Has the designated officer or other employee been convicted of a crime in South Carolina or any other state?
☐ Yes ☐ No (You must reveal any convictions whether the designated officer or other employee went to jail or not The S.C. State Law Enforcement Division will check this person's record for convictions, and your application may be denied if you do not correctly answer this question).

SECTION III. LOCATION INFORMATION

Section III must be completed for all applications.

- A. Trade name, if applicable: Total Wine & More



275 Harrison Blvd. Columbia SC 29210

90 Ken Allen, ATTY, Suite 1980, 1201 Main Csl, S.C. 29201

(4) Who owns the land and/or building? A.C. Moore, Inc. 856-228-6700
Landlord's Name Telephone Number

ROA 199

Section IV. Minibottle License - Restaurant

Section IV must be completed only if you are applying for a minibottle license as a restaurant.

- A. Is your business primarily and substantially engaged in the preparation and serving of meals? ☐ Yes ☐ No
If no, give details in Schedule A.
- B. Does your business location have seating for no less than forty persons simultaneously at tables for the service of meals each day it is open for business? ☐ Yes ☐ No
If no, give details in Schedule A.
- C. Does your business have a kitchen that is a separate area of the business that is used solely for the preparation serving of solid foods that make up meals? ☐ Yes ☐ No
If no, give details in Schedule A.
- D. Does your kitchen have a working fixed grill, stove, or microwave oven? ☐ Yes ☐ No
If no, give details in Schedule A.
- E. Do you have a functioning cold storage unit with a minimum of 21 cubic feet capacity? ☐ Yes ☐ No
If no, give details in schedule A.
- F. Do you have a menu or sign listing the meals offered at your place of business? ☐ Yes ☐ No
If no, give details in Schedule A.
- G. Is there adequate food on the premises of your business to serve forty (40) people a hot meal? ☐ Yes ☐ No
If no, give details in Schedule A. (Prepackaged single portions foods prepared off the premises will not count as adequate food.)
- H. Do you have (or plan to have by the time you open for business) hot meals during normal "mealtimes" which occur when your business plans to be open to the public? ☐ Yes ☐ No.
If no, give details in Schedule A.
- I. Is the bar area used for storing and dispensing minibottles lighted (or planned to be lighted by time you open for business) so that customers have a clear view of all activities taking place in the bar area? ☐ Yes ☐ No
If no, give details in Schedule A.
- J. Is your place of business at least 300 feet from a church, school or playground located in the city, or 500 feet from a church, school, or playground located in the county? ☐ Yes ☐ No
If no, give details in Schedule A. This requirement does not apply if the establishment or location was established prior to November 7, 1962.
- K. Does your place of business have a Grade A Restaurant License issued by the Health Department?
☐ Yes ☐ No
If no, give details in Schedule A. Before your minibottle license can be issued, you must furnish to the Department a copy of the inspection form given to you by the Health Department showing that the Grade A Restaurant License has been issued.
- L. Is this application for a new license at a location that is currently licensed to sell minibottles? ☐ Yes ☐ No
If yes, you must include an additional \$5 00 certification fee with your filing fees.

SECTION V. MINIBOTTLE LICENSE - HOTEL OR MOTEL

Section V must be completed only if you are applying for a minibottle license as a hotel or motel.

- A. Does your business rent accommodations for lodging to the public on a regular basis consisting of not less than twenty rooms? ☐ Yes ☐ No
If no, give details in Schedule A.
- B. Is the bar area used for storing and dispensing minibottles lighted (or planned to be lighted by time you open for business) so that customers have a clear view of all activities taking place in the bar area? ☐ Yes ☐ No.
If no, give details in Schedule A.
- C. Is your place of business at least 300 feet from a church, school or playground located in the city, or 500 feet from a church, school, or playground located in the county? ☐ Yes ☐ No
If no, give details in Schedule A. This requirement does not apply if the establishment or location was established prior to November 7, 1962.
- D. Is this application for a new license at a location that is currently licensed to sell minibottles? ☐ Yes ☐ No
If yes, you must include an additional \$5 00 certification fee with your filing fees.

SECTION VI. MINIBOTTLE LICENSE (NONPROFIT, PRIVATE CLUB)

Section VI must be completed only if you are applying for a minibottle license as a nonprofit organization.

- A. The premises to be licensed are located in a place separate and distinct from the premises of any business establishment. ☐ Yes ☐ No
If no, give details in Schedule A. (This means that the location must have a separate address, separate entrance, and cannot be connected by common doors or passageways with any business premises.)

- B. Does your club's by-laws call for definite fixed method of electing persons on an individual basis to membership in the organization? ☐ Yes ☐ No. *If no, give details in Schedule A.*
- C. Does the method of electing members bear some reasonable relationship to the object and purpose of your organization? ☐ Yes ☐ No. *If no, give details in Schedule A.*
- D. Does your club's by-laws require that upon dissolution of the organization, its residual assets must not inure to the direct benefit of any member, but must be turned over to a nonprofit organization which is organized and operated for charitable purposes? ☐ Yes ☐ No. *If no, give details in Schedule A.*
- E. Does your organization's by-laws, charter, or constitution require that it be operated solely and exclusively for social, benevolent, patriotic, recreational, or fraternal purposes? ☐ Yes ☐ No. *If no, give details in Schedule A. You must attach a copy of your club's by-laws. You must also attach a certified copy of the organization's charter, articles of incorporation, or constitution.*
- F. List all officers and directors of the organization. Must also be included on Schedule B.

Name	Title	Age	Mailing Address	Business Employment

- G. Is the bar area used for storing and dispensing minibottles lighted (or planned to be lighted by time you open for business) so that customers have a clear view of all activities taking place in the bar area? ☐ Yes ☐ No. *If no, give details in Schedule A.*
- H. Is your place of business at least 300 feet from a church, school or playground located in the city, or 500 feet from a church, school, or playground located in the county? ☐ Yes ☐ No. *If no, give details in Schedule A. This requirement does not apply if the establishment or location was established prior to November 7, 1962.*
- I. Is this application for a new license at a location that is currently licensed to sell minibottles? ☐ Yes ☐ No. *If yes, you must include an additional \$5.00 certification fee with your filing fees.*

SECTION VII. RETAIL LIQUOR LICENSE

Completed this section *only* if you are applying for a retail liquor store.

- A. Does any other member of your household have a current retail liquor store license? ☐ Yes ☒ No. *If yes, give details in Schedule A. NOT IN S.C.*
- B. Do you have any other retail liquor licenses issued to you? ☐ Yes ☒ No. *If yes, list each license number in Schedule A. NOT IN S.C.*
- C. Does any person with an interest in the business for which you are applying have any interest whatsoever in any other business that has been issued a retail liquor license? ☐ Yes ☒ No. *If yes, give details in Schedule A. NOT IN S.C.*
- D. Do you, your partnership, or your corporation have an interest of any kind in any other business with a liquor license except those already listed in question VII (B) above? ☐ Yes ☒ No. *If yes, give details in Schedule A.*
- E. Is your place of business at least 300 feet from a church, school or playground located in the city, or 500 feet from a church, school, or playground located in the county? ☒ Yes ☒ No. *If no, give details in Schedule A.*
- F. Is this application for a new license at a location that is currently licensed to sell retail liquor? ☐ Yes ☒ No. *If yes, you must include an additional \$5.00 certification fee with your filing fees.*

Section VIII. Sabbath Beer and Wine Permit

Completed this section *only* if you wish to close your business on Saturday and sell beer on Sunday.

I wish to refrain from opening my business on Saturday for religious reasons, and do hereby affirm that I will close my business from 12:01 a.m. on Saturday until midnight Saturday night. ☐ Yes ☐ No. In addition to the normal filing and permit fee for a beer and wine permit, enclose an additional \$50 for administrative and enforcement costs of this special permit. I understand that if I operate on Saturdays while holding this permit, the Department will revoke my retail permit to sell beer and wine. These permits are issued *only* in those counties or municipalities who have passed a referendum allowing Sunday sale of beer.

Explain this Section

Section IX. 120 Days Temporary Beer, and Wine Permit/Minibottle License/Retail Liquor License

Completed this section *only* if you are applying for a 120 Days Temporary Beer, and Wine Permit/Minibottle License/Retail Liquor License.

A Does this business have a current beer and wine permit, and is it currently selling beer and wine? ☐ Yes ☐ No
Give current permit number and name of permit holder (Existing permit must be attached before 120 day temp is issued).

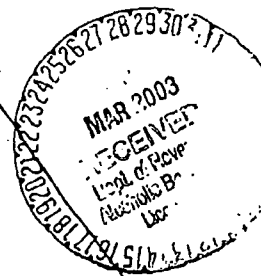
B Does this business have a current minibottle license, and is it currently selling minibottles? ☐ Yes ☐ No.
Give current license number and name of licensee (Existing permit must be attached before 120 day temp is issued)
Restaurants must attach current Grade A Health certificate issued in this applicant's name before 120 temp can be issued.

C Does this business have a current retail liquor license, and is it currently selling alcohol? ☐ Yes ☐ No
Give current license number and name of licensee (existing license must be attached before 120 day temp is issued.)

D Did the applicant acquire this business by purchase, lease, inheritance, divorce decree, eviction, or otherwise?
☐ Yes ☐ No If no, give details in Schedule A. Attach a copy of the bill of sale, lease, probate document, divorce decree, or eviction order or document showing how the applicant acquired the business. Enclose an additional \$25 for a 120 days beer and wine permit, and an additional \$25 for a 120 days minibottle license. If the applicant is not currently licensed at another location, you must attach a criminal background check on ALL principals. A principal is the owner, partner, member of a L.L.P. or L.L.C., officer of the corporation, the designated agent, owner of 25% or more of stock, or employee with day-to-day management responsibilities.

Requirements for 120-day temporary:

1. \$25 for each temporary permit requested. If applying for a temporary beer/wine and minibottle, \$50 would be required
2. Attach a copy of bill of sale, lease, probate document, divorce decree, or eviction order or document showing how the applicant acquired the business
3. If the applicant is not currently licensed at another location, a current criminal history background check is required on the applicant if applying as sole proprietor. If applying as corporation, a criminal history background check must be furnished for each principal of a corporation, partnership, limited liability company or limited partnership. (See Schedule B for explanation of principal)
4. Must attach the existing permit/license.
5. Must attach a current Grade A health inspection. (For restaurant minibottle only)
6. Must attach a copy of Articles of Incorporation if applying for nonprofit private club.
7. Must attach a copy of bylaws if applying for nonprofit private club.



Important Notice:

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premises consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit.

Section X. To be signed for all types of applications.

SWORN to before me this

10th day of Feb 03
[Signature]

Notary Public for South Carolina

My commission expires: 8-7-11

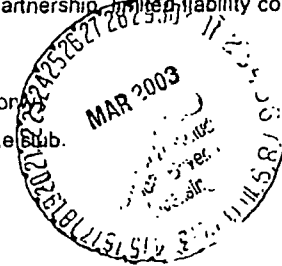
[Signature]
Applicant (owner, partner, or corporate officer)

Notice requirements: In addition to the newspaper advertisement described in the attachment to this application, an agent of the S.C. State Law Enforcement Division must post a notice at the proposed place of business. This sign must remain posted for at least fifteen days, and must be removed by the SLED agent. If the SLED agent returns to remove the sign, and the sign is not posted, the agent must re-post the property. This will delay issuance of your license or permit. If the sign disappears before it is removed by the SLED Agent, contact the S.C. Department of Revenue immediately.

Enclosure Checklist:

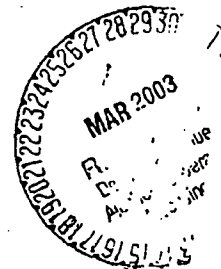
1. Completed application, signed, dated and notarized.
2. Proper filing fees.
3. Copy of lease, deed or other ownership documentation.
4. Submit an Affidavit of Publication from the newspaper running your ad. The affidavit must include a copy of your ad. If you have just started your ad in the newspaper and have not received the ad and affidavit, you must include the receipt from the newspaper with your application. Forward the ad and affidavit from the newspaper as soon as it is provided to you by the newspaper. Your license/permit cannot be issued until this is received. (ABL-32)
5. Schedule B must be completed for all applications.
6. If you are applying for a restaurant minibottle license, you must submit a current Grade A health inspection.
7. If you are applying as a nonprofit private club, you must include a copy of your clubs bylaws and a copy of your Articles of Incorporation.
8. If you are applying as a corporation, limited liability company, partnership, or a limited partnership and any of your principals are nonresidents of SC, you must attach a current criminal history background check obtained from the state of residency for each nonresident. These background checks must accompany your application. See Schedule B for definition of principal.
9. If applying under Section IX, 120 days temporary permit or license, attach:
 - a. \$25 for each temporary permit requested. If applying for a temporary beer/wine and minibottle, \$50 would be required.
 - b. Attach a copy of bill of sale, lease, probate document, divorce decree, or eviction order or document showing how the applicant acquired the business.
 - c. If the applicant is not currently licensed at another location, a current criminal history background check is required on the applicant if applying as sole proprietor. If applying as corporation, a criminal history background check must be furnished for each principal of a corporation, partnership, limited liability company or limited partnership. (See Schedule B for explanation of principal.)
 - d. Must attach the existing permit/license.
 - e. Must attach a current Grade A health inspection. (For restaurant minibottle only.)
 - f. Must attach a copy of Articles of Incorporation if applying for nonprofit private club.
 - g. Must attach a copy of bylaws if applying for nonprofit private club.

(9)



000060

10. **Federal special occupational tax.** Prior to selling beer or wine, you must also pay a Federal Special Occupational Tax. This tax is due before commencing the business to sell beer and wine, and thereafter, on or before July 1 each year at the rate of \$250. For detailed information and taxpayer assistance contact the Bureau of Alcohol, Tobacco, and Firearms, National Revenue Center, Cincinnati, Ohio, toll-free at 1-800-937-8864 or 513-684-2979. For tax returns, ATF F 5630.5, and instructions, you may visit www.atf.treas.gov or write to: Bureau of Alcohol, Tobacco & Firearms, Room 8002 Federal Office building, 550 Main Street, Cincinnati, Ohio 45202.



(10)

000061

SCHEDULE B
Consent and Waiver:

3203-0893-2

S.C. Code Section 61-2-160 prohibits the issuance of any permits or license under Title 61 if the applicant or any principal owes delinquent taxes, penalties, or interest to the S.C. Department of Revenue or to the I.R.S. By signing below, a person authorizes the I.R.S. to release to the S.C. Department of Revenue information concerning that person owing delinquent taxes, penalties, or interest as of the date of the signing of this document, plus the next five years. This consent may be withdrawn at any time by writing to the Internal Revenue Service Disclosure Officer, 1835 Assembly Street, MDP15, Columbia, SC 29201. The signature below also authorizes the S.C. Department of Revenue to release to the applicant, or to the applicant's agent, attorney, information concerning delinquent taxes, penalties, or interest that is causing the denial of this application.

The following are principals and must complete and sign below. If a required person does not sign, this application will be denied.

- 1 The owner (if sole proprietorship);
- 2 All officers of the business or entity which owns the business;
- 3 All partners (limited partners that cannot exercise management control need not sign);
- 4 All persons who own twenty-five percent (25%) or more of the value of the business entity;
- 5 All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
- 6 Managers of a limited liability company which is managed by managers;
- 7 Members of a limited liability company which is not managed by managers;
- 8 Any fiduciary who manages, controls title, or is otherwise in control of the business;
- 9 All employees who will have day-to-day operational management responsibility for the business or entity, and;
- 10 If a publicly traded corporation, the designated license holder (must be over 21 and a resident of S.C.)

Columbia Fine Wine, Inc.

Name of Corporation, Partnership, LLC, etc.

FEI

(A) Name: David Trone Home Address: 11417 Skipwith Lane, Potomac, MD
(print) 20854
Social Security No.: [REDACTED] Sex: M Race: Wh Date of Birth: [REDACTED]
Yr/Date of SC Residency: 0 Signature: [Signature]

(B) Name: Robert Trone Home Address: 9814 Potomac Manors Dr., Potomac, MD
(print) 20854
Social Security No.: [REDACTED] Sex: M Race: Wh Date of Birth: [REDACTED]
Yr/Date of SC Residency: 0 Signature: [Signature]

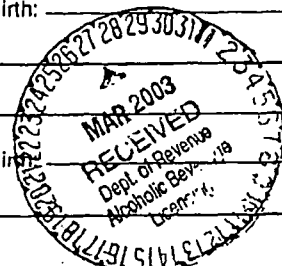
(C) Name: Terry Felinczak Home Address: 123 Persimmon Hill, Pittsboro, NC
(print) 27312
Social Security No.: [REDACTED] Sex: M Race: Wh Date of Birth: [REDACTED]
Yr/Date of SC Residency: 0 Signature: [Signature]

(D) Name: _____ Home Address: _____
(print) _____
Social Security No.: _____ Sex: _____ Race: _____ Date of Birth: _____
Yr/Date of SC Residency: _____ Signature: _____

(E) Name: _____ Home Address: _____
(print) _____
Social Security No.: _____ Sex: _____ Race: _____ Date of Birth: _____
Yr/Date of SC Residency: _____ Signature: _____

(F) Name: _____ Home Address: _____
(print) _____
Social Security No.: _____ Sex: _____ Race: _____ Date of Birth: _____
Yr/Date of SC Residency: _____ Signature: _____

(12)



000062

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
Retail Services & Systems, Inc., dba	)	Civil Action No. 2014-CP-02-00259
Total Wine & More	)	
	)	
Plaintiff,	)	
	)	<u>PLAINTIFF'S REPLY IN SUPPORT</u>
vs.	)	<u>OF MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT</u>
South Carolina Department of Revenue	)	
and ABC Stores of South Carolina,	)	
	)	
Defendants.	)	
	)	

Plaintiff Retail Services & Systems, Inc., dba Total Wine & More ("Retail Services") respectfully submits this reply in support of its motion for summary judgment. In their cross-motions for summary judgment and at oral argument, Defendants have argued that S.C. Code Ann. section 61-6-140 and -150 (the "Statutes") are constitutional because (1) the regulation of alcohol in general is within the General Assembly's police power and (2) there are numerous provisions of the Alcoholic Beverage Control Act (the "ABC Act") that promote the health, morals, and safety of South Carolina.

Defendants' arguments miss the mark. Retail Services has not challenged the ABC Act as a whole. Rather, it is has brought a narrow challenge concerning two specific provisions of the ABC Act. As explained below and in prior briefing, the Statutes at issue do not promote the health, safety, or morals of South Carolina. Therefore, they are not a valid exercise of the police power, and summary judgment in Retail Service's favor is proper.

C O R Y
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AUG 14 2014 110
AIKEN COUNTY
CLERK OF COURT

ARGUMENT

Retail Services does not dispute that alcoholic liquors are a unique commodity. Perhaps the late Judge Noah S. "Soggy" Sweat, Jr., while serving as a representative in the Mississippi Legislature, best captured the unique legal and political nature of alcoholic liquors:

My friends, I had not intended to discuss this controversial subject at this particular time. However, I want you to know that I do not shun controversy. On the contrary, I will take a stand on any issue at any time, regardless of how fraught with controversy it might be. You have asked me how I feel about whiskey. All right, here is how I feel about whiskey:

If when you say whiskey you mean the devil's brew, the poison scourge, the bloody monster, that defiles innocence, dethrones reason, destroys the home, creates misery and poverty, yea, literally takes the bread from the mouths of little children; if you mean the evil drink that topples the Christian man and woman from the pinnacle of righteous, gracious living into the bottomless pit of degradation, and despair, and shame and helplessness, and hopelessness, then certainly I am against it.

But, if when you say whiskey you mean the oil of conversation, the philosophic wine, the ale that is consumed when good fellows get together, that puts a song in their hearts and laughter on their lips, and the warm glow of contentment in their eyes; if you mean Christmas cheer; if you mean the stimulating drink that puts the spring in the old gentleman's step on a frosty, crispy morning; if you mean the drink which enables a man to magnify his joy, and his happiness, and to forget, if only for a little while, life's great tragedies, and heartaches, and sorrows; if you mean that drink, the sale of which pours into our treasuries untold millions of dollars, which are used to provide tender care for our little crippled children, our blind, our deaf, our dumb, our pitiful aged and infirm; to build highways and hospitals and schools, then certainly I am for it.

This is my stand. I will not retreat from it. I will not compromise.

http://en.wikipedia.org/wiki/Noah_S._Sweat, last visited August 12, 2004.

The fact that alcoholic liquors are controversial and oft regulated, however, does not give the General Assembly unfettered discretion on this topic. The Constitution of the State of South Carolina (the "Constitution") is clear. When the General Assembly regulates alcoholic liquors, it must act within the scope of its "police powers." S.C Const., art. VII-A. Because the Statutes before the Court exceed the scope of those police powers, they are unconstitutional.

I. Retail Services is not challenging the ABC Act as a whole.

In response to Retail Services' police power challenge, Defendants argue that, in general, the ABC Act and the regulation of alcoholic liquors have traditionally been viewed as an exercise of the police powers. In support, Defendants cite Judge Geathers' treatise, *The Regulation of Alcoholic Beverages in South Carolina* and the case of Pendarvis v. Berry, 214 S.C. 363, 52 S.E.2d 705 (1949). Both of those authorities, however, addressed the ABC Act as a whole. They did not address the specific Statutes at issue. For instance, the passage Defendants quote from Judge Geathers' treatise broadly discusses the "regulation of alcoholic liquors in South Carolina" and the "licensing system" as a whole. (Def. ABC Stores' Mem. in Supp. p. 10.)

Additionally, Pendarvis v. Berry, concerned a contract dispute, not a constitutional challenge, i.e. whether a partnership agreement that violated the ABC Act of 1945 was void and unenforceable. Pendarvis, 214 S.C. at 366, 52 S.E.2d at 705. As an initial point, because the Pendarvis court was not asked to determine the constitutionality of the ABC Act, its opinion has no bearing on the current issues before the Court. See Kennedy v. S.C. Retirement System, 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001) ("[A]ppellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked."). Moreover, the appellant in Pendarvis argued that the ABC Act of 1945, *as a whole*, was "not designed to protect the public." 214 S.C. at 367, 52 S.E. at 706. The Court rejected this broad argument, and in its brief discussion on police powers explained that "while the Act of 1945 is also a revenue law, its principal purpose is the protection of the public health and morals. Liquor control legislation *is generally* of such purpose." Id. (emphasis added). Thus, Pendarvis merely stated that the ABC Act and the regulation of liquor, in general, fall within

the police powers. The Pendarvis court was not asked to decide, and did not decide, whether the predecessors to the licensing Statutes at issue here were within the General Assembly's police powers.

Contrary to Defendants' broad assertions, Retail Services is *not* challenging the ABC Act as a whole. Rather, as discussed below, it is asking the Court to declare two specific provisions of the act unconstitutional. Such relief is within the Court's authority to grant. See Curtis v. State, 345 S.C. 557, 571, 549 S.E.2d 591, 598 (2001) ("A statute may be constitutional and valid in part and unconstitutional and invalid in part. . . . When the residue of an Act, sans that portion found to be unconstitutional, is capable of being executed in accordance with the Legislative intent, independent of the rejected portion, the Act as a whole should not be stricken as being in violation of a Constitutional Provision."). As such, the Court should ignore Defendants' misplaced arguments regarding how alcoholic liquor laws, in general, are within in the scope of the police powers and, instead, focus on whether the specific Statutes at issue promote the health, morals, or safety of South Carolina.

II. The Statutes are not an exercise of the General Assembly's police powers.

Defendants' arguments about the perceived evils of alcoholic liquors also ring hollow for the simple fact that the Statutes do nothing to regulate the quality or quantity of retail liquor stores in South Carolina. Rather, they merely limit the number of stores in which one businessman or company can have an interest. To the extent the General Assembly wanted to control the number of stores in a given area, it did so in S.C. Code Ann. section 61-6-170, which gives the DOR the discretion to "limit the further issuance of retail dealer licenses in a political subdivision if it determines that the citizens who desire to purchase alcoholic liquors

therein are more than adequately served.” Id.; see also S.C. Code 61-6-120 (placing restrictions on the proximity of retail liquor stores to churches, schools, and playgrounds).

Further, Defendants’ argument that the Statutes prevent market concentration is illusory. Again, the Statutes place no limitation on where a licensee may place his retail liquor stores. It is absurd, therefore, to suggest that the Statutes prevent market concentration when an individual could flood a small market with just three stores. Rather, it is clear that Defendants’ real motive for defending the Statutes is to promote the economic interests of Defendant ABC Stores’ members by preventing statewide competition through the use of an arbitrary three license limit. (See Def. ABC Stores’ Mem. in Supp. p. 7-10 (devoting three pages of argument about why the Statutes are needed to protect “small single-location licensees”).) This is exactly the type of “economic protectionism” that our Supreme Court has held to be unconstitutional because it is not a valid exercise of the police powers. See State ex rel. George v. Aiken, 41 S.C. 220, 246-47, 19 S.E. 221, 230 (1894) (holding that if the object of a statute is to impact commercial enterprises within the state, then it is “not a police measure [and] would be unconstitutional.”).

Finally, the plain language of the Statutes demonstrates that they do not promote the police powers. First, nowhere in the Statutes’ text or in the acts that created them did the General Assembly even attempt to provide an explanation as to how limiting the number of licenses that can be issued, or the number of liquor stores that a person may have an interest in, promotes the well-being of the State. See id. at 239, 20 S.E. at 227 (noting the many safeguards, as well as the express language of the Dispensary Act of 1893 stating that it was for the morals, good health, and safety of the state, supported its finding that the act was an exercise of the police power).

Further, the grandfather clause contained in S.C. Code Ann. section 61-6-150 clearly demonstrates that the purpose of the Statutes is to promote economic protectionism, not the welfare of the State. That provision does not limit its application to people who already had an interest in more than three licenses on the statute's effective date as Defendants argue. Rather, it states "[t]he prohibitions in this section do not apply to a person having *an interest* in liquor stores on July 1, 1978." S.C. Code Ann. § 61-6-150 (emphasis added). Thus, anyone who had an interest in a single retail liquor store on July 1, 1978 is not prohibited from having an interest in more than three stores today. There is simply no valid justification for this provision; it is pure economic protectionism and is a further reason why the Court should declare the Statutes unconstitutional.

CONCLUSION

Judge Sweat, in his "Whiskey Speech", recognized there are clear differences (legal and political) between alcoholic beverages and other commodities. The South Carolina Constitution and case law recognize with equal clarity that statutes such as those before the Court that do nothing to address issues of health, safety and morals are not an exercise of the police power and must fall. For the reasons set forth above and in its prior briefing, Retail Services has exceeded its burden to establish that the Statutes are not an exercise of the General Assembly's police powers and that they violate the Equal Protection and Due Process Clauses. Accordingly, Retail Services respectfully requests the Court enter an Order declaring S.C. Code Ann. sections 61-6-140 and -150 unconstitutional.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

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*Attorneys for Retail Services & Systems, Inc., dba Total Wine
& More*

August 13, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

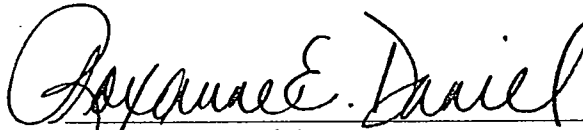
Pleadings:

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

Counsel Served:

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State of SC Dept. of Revenue
P.O. Box 12265
Columbia, SC 29211

Burnett R. Maybank, III, Esquire
Nexsen Pruet, LLC
1230 Main Street
Columbia, SC 29201



Roxanne E. Daniel
Administrative Assistant

Aug. 13, 2014

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AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

Retail Services & Systems, Inc. d/b/a Total Wine & More,
☒ Plaintiff,

vs.

SC Dept. of Revenue and ABC Stores of SC,
☐ Defendants.

Case No. 2014-CP-02-00259

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

Plaintiff's Attorney:
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Defendants' Attorneys:

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Burnett R. Maybank, III, Nexsen Pruet, 1230 Main St.,
Columbia, SC 29201, (803) 540-2048

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider Order Granting Defendants' Motion for Summary Judgment

Estimated Time Needed 15 min.

Court Reporter Needed: YES ☒ NO ☐

SECTION II: Motion Type

- ☐ Written order attached
☐ Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff ☒ Defendant ☐

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT:** \$ 25.00

☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE _____

CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____
(print name)

DATE FILED

☐ **MOTION FEE COLLECTED:** _____

☐ **CONTESTED - AMOUNT DUE:** _____

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DEC 08 2014

**AIKEN COUNTY
CLERK OF COURT**

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
Retail Services & Systems, Inc., dba	)	Civil Action No. 2014-CP-02-00259
Total Wine & More	)	
	)	
Plaintiff,	)	
	)	<u>PLAINTIFF'S MOTION TO</u>
vs.	)	<u>RECONSIDER ORDER</u>
	)	<u>GRANTING DEFENDANTS'</u>
South Carolina Department of Revenue	)	<u>MOTION FOR SUMMARY</u>
and ABC Stores of South Carolina,	)	<u>JUDGMENT</u>
	)	
Defendants.	)	
	)	

NOW COMES Plaintiff Retail Services & Systems, Inc. dba Total Wine & More ("Retail Services") and submits this motion to reconsider pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and the inherent authority of the Court. For the following reasons, the Court should reconsider its Order entered November 21, 2014 granting Defendants' motions for summary judgment (the "Order") and enter a new order granting Retail Services' motion for summary judgment:¹

In its Order, the Court did not consider several arguments presented in Retail Services' briefing. The specific arguments the Court did not consider are set forth below, and are explained in detail in Retail Services' Memorandum in Support of its Motion for Summary Judgment (attached hereto as **Exhibit A**) and its Reply in Support of its Motion for Summary Judgment (attached hereto as **Exhibit B**).

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AIKEN COUNTY
CLERK OF COURT

¹ Retail Services received written notice of the Order on November 24, 2014 and served this Motion within days of receipt of that notice. Therefore, this Motion is timely under Rule 59(c), SCRCP.

I. Police Powers.

As to the issue of whether S.C. Code Ann. section 61-6-140 and -150 (the "Statutes") are unconstitutional because they are not within the General Assembly's police power as mandated by Article VIII-A of the Constitution of the State of South Carolina, the Court did not consider the following arguments:

1. Under the precedent established by State ex rel. George v. Aiken, 41 S.C. 220, 19 S.E. 221 (1894); McCullough v. Brown, 41 S.C. 220, 19 S.E. 458 (1894); Mugler v. Kansas, 123 U.S. 623 (1887); and Bacchus Imports v. Dias, 468 U.S. 277 (1984) the Statutes are not a valid exercise of the General Assembly's police powers because they promote economic protectionism rather than the morals, good health, and safety of the State. Therefore, they are unconstitutional. (Pl.'s Mem. in Supp. pp. 9-11.)

2. The Statutes merely limit the number of stores in which one individual or company can have an interest. They do nothing to regulate the number or quality of stores in a given area. To the extent the General Assembly wanted to control the number and quality of stores in a given area, it did so through other provisions of the ABC Act such as S.C. Code sections 61-6-170 and 61-6-120. Moreover, since an individual can flood a small market with just three stores, the Order erred in finding that the Statutes prevent market concentration. Because the Statutes do not promote the morals, good health, and safety of the State, they are not a valid exercise of the police powers and are unconstitutional. (Pl.'s Mem. in Supp. pp. 11-12; Pls. Reply pp. 4-5.)

3. The legislative history also shows that the Statutes were intended to provide economic protection for existing retail liquor store owners. Prior to 1978, the ABC Act did not limit the number of retail dealer licenses that could be issued for the use of one

corporation, and it did not limit the number of stores in which a person could have a financial interest. There is no explanation in the Statutes or their amendments why these limitations were needed after 1978 to promote the public welfare when they were not needed before it. (Pl.'s Mem. in Supp. pp. 12-13.)

4. Additionally, S.C. Code Ann. section 61-6-150 states that anyone who had an interest in a single retail liquor store prior to July 1, 1978 is not prohibited from having an interest in more than three stores today. S.C. Code Ann. § 61-6-150 ("The prohibitions in this section do not apply to a person having *an interest* in liquor stores on July 1, 1978." (emphasis added)). The purpose of this provision of S.C. Code Ann. section 61-6-150 is to promote economic protectionism, not the welfare of the State. Therefore, the statute is unconstitutional. (Pl.'s Mem. in Supp. pp. 12-13 & Pl.'s Reply 5-6.)

5. Finally, the Order erred in concluding that Pendarvis v. Berry, 214 S.C. 363, 52 S.E.2d 705 (1949) held that the Statutes were a valid exercise of the police power. Pendarvis addressed the ABC Act as a whole, not the specific Statutes at issue. Further, Pendarvis concerned a contract dispute, not a constitutional challenge. Therefore, the Pendarvis court did not address the police power challenge to the Statutes that Retail Services raised in this case. (Pl.'s Reply pp. 5-6.)

6. If the Court had considered the arguments set forth above, it would have concluded that the Statutes are not a valid exercise of the police powers and are, therefore, unconstitutional.

II. Equal Protection.

As to the issue of whether the Statutes are unconstitutional because they violate South Carolina's Equal Protection Clause, S.C. Const. Art. I, § 3, the Court did not consider the following arguments:

1. To determine if a statute creates a classification, courts must look at the statute "both in form and in operation." Cabiness v. Town of James Island, 393 S.C. 176, 712 S.E.2d 416 (2011).

2. Under the precedent established by Broome v. Truluck, 270 S.C. 227, 241 S.E.2d 739 (1978), the Statutes violate the Equal Protection clause because there is no rational basis for them to arbitrarily:

- a. Treat retail liquor store owners who sell alcoholic liquors for "off-site consumption" differently from individuals that sell alcoholic liquors for "on-site consumption," such as restaurant and bar owners; and
- b. Discriminate against retail liquor store owners which were licensed after July 1, 1978 that want to expand their business while protecting the interests of those people who were licensed prior to July 1, 1978. See S.C. Code Ann. § 61-6-150.

(Pl.'s Mem. in Supp. pp. 13-16.)

3. If the Court had considered the arguments set forth above, it would have concluded that the Statutes violate the Equal Protection Clause and are, therefore, unconstitutional.

III. Due Process.

As to the issue of whether the Statutes are unconstitutional because they violate South Carolina's Due Process Clause, S.C. Const. Art. I, § 3, the Court did not consider the following arguments:

1. "[T]he standard for reviewing all substantive due process challenges to state statutes, including economic and social welfare legislation, is whether the statute bears a reasonable relationship to any legitimate interest of government." Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006).

2. Retail Services is being deprived of its right to participate in its field of business. As explained above, the General Assembly did not act within the scope of its police powers when it enacted the Statutes, which improperly promote economic protectionism. Therefore, the Statutes do not bear a reasonable relationship to any legitimate interest of government. As such they violate the Due Process Clause and are unconstitutional. (Pl.'s Mem. in Supp. pp. 16-17.)

3. If the Court had considered the arguments set forth above, it would have concluded that the Statutes violate the Due Process Clause and are, therefore, unconstitutional.

This Motion is further supported by the South Carolina Rules of Civil Procedure, applicable case and statutory law, and any supporting memorandum that may be submitted before, during, or after the hearing on this motion.

CONCLUSION

If the Court had considered the foregoing arguments, it would have concluded that the Statutes are not a valid exercise of the police powers and that they violate South Carolina's Equal Protection and Due Process Clauses. Additionally, the Court would have denied

Defendants' motions for summary judgment and would have granted Retail Services' motion for summary judgment. Accordingly, Retail Services respectfully requests the Court to withdraw the Order and replace it with an order granting Retail Services' motion for summary judgment.

Respectfully submitted,

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& More*

December 4, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

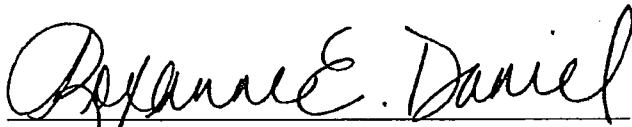
Pleadings:

PLAINTIFF'S MOTION TO RECONSIDER ORDER
GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

Counsel Served:

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Columbia, SC 29201



Roxanne E. Daniel
Administrative Assistant

Dec. 4, 2014

C O P Y
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DEC 08 2014

AIKEN COUNTY
CLERK OF COURT

State of South Carolina

Court of Common Pleas

County of Aiken

Retail Services)
& Systems, Inc., d/b/a)
Total Wine & More,)

Plaintiff,)

v.)

South Carolina)
Department of Revenue)
and ABC Stores of South)
Carolina,)

Defendants.)

Transcript of Record
2014-CP-02-00259

August 5, 2014
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

Dwight Drake, Esquire
Brian Barnwell, Esquire
Attorneys for the Plaintiff

Burnett Maybank, Esquire
Milton Kimpson, Esquire
Attorneys for the Defendants

Bethanie K. Creppon
Circuit Court Reporter

	I N D E X	
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1 (The following proceedings were held August 5,
2 2014.)

3 THE COURT: Everybody's got a motion for
4 summary judgment on undisputed facts?

5 MR. DRAKE: Right.

6 THE COURT: How do you want to handle it?
7 What's y'all's suggestion? I'll do it any way y'all
8 want to do it.

9 MR. DRAKE: Your Honor, for the record, Dwight
10 Drake for the plaintiffs. I propose -- we filed our
11 motion first, we're the moving party; they filed
12 summary judgment motion to -- effectively a
13 cross-summary-judgment motion. I think it would be
14 logical and make sense for us to go first with our
15 argument, if that's acceptable to counsel and the
16 Court.

17 MR. MAYBANK: Fine with the Department of
18 Revenue. That's perfect.

19 THE COURT: Okay. Who's going to do it?

20 MR. DRAKE: I'm going to do it, Your Honor.
21 And I'm going to ask Mr. Barnwell if he'd put a
22 statute up on a tripod. Now, I know Your Honor can
23 read. When you see this big print, it may not help
24 Your Honor, but it will help me. Okay?

25 THE COURT: You don't have to be patronizing to

1 me.

2 MR. DRAKE: I do not mean to be doing that.

3 Your Honor --

4 THE COURT: But I appreciate the big print.

5 MR. DRAKE: Thank you. I am, for the record
6 again, Dwight Drake. And along with me, my law
7 firm, Nelson Mullen, Brian Barnwell, and along with
8 us, Baylen Moore. And I do want to thank your law
9 clerk and you and everybody for accommodating my
10 schedule.

11 We, of course, have brought this action under
12 the Declaratory Judgment Act. We're asking the
13 Court, under the Declaratory Judgment Act, to
14 declare these two statutes unconstitutional. A
15 summary of our argument is that Article 8 (a) of the
16 Constitution and the case law of this state say that
17 the General Assembly has the authority to regulate
18 liquor only in the exercise of its police powers.

19 So the question that we suggest before Your
20 Honor is a simple one: What do these statutes,
21 which limit to three the number of retail liquor
22 licenses that anybody can have a financial interest
23 in, what do these statutes have to do with the
24 health, the safety, and the morals of the public?
25 Because that's what the case law says is the

1 definition police power. And we say the answer to
2 that question is that these two statutes have
3 absolutely nothing to do with the health, the
4 safety, or the public morals.

5 Now, we say that because we arrived at that
6 conclusion because of an analysis, not because of
7 the Constitution -- the wording of the Constitution,
8 but two cases that were decided in the same year
9 within six months of one another by the South
10 Carolina Supreme Court in 1894. Those cases are
11 *McCullough vs. Brown*, which was decided on April
12 19th of 1894, and *State Ex Rel George vs. The City*
13 *Council of Aiken*. These are the only two cases in
14 the history of the state of South Carolina when
15 Supreme Court has had before it the question that's
16 before Your Honor, and that is, is a statute or
17 statutes here in excess of police powers?

18 Now, these cases have a lot in common; both of
19 them were decided in the same year, both of them
20 were decided by a two-to-one vote -- the Supreme
21 Court knows the -- constituted three members rather
22 than the five that we have now -- both of them were
23 split decisions, as I said, and both of them dealt
24 with what was called the same act, the Dispensary
25 Act.

1 The first case dealt with the Dispensary Act of
2 1892; the second one dealt with the Dispensary Act
3 of 1893 which was a modification for the prior
4 year's act. Now, in these two cases, the Court
5 reached a different outcome. In the first case, the
6 McCullough case, the Supreme Court ruled that the
7 Dispensary Act was unconstitutional as being in
8 excess of the police power of the state, so it was
9 thrown out. That, again, was by a two-to-one vote.
10 And that Court had before it the '92 act.

11 Six months later, the Supreme Court had before
12 it the '93 act, passed by the General Assembly, also
13 called the Dispensary Act. In that case, the Court
14 ruled that the '93 act was constitutional and was
15 not in excess of the police powers. But when you
16 look at those cases, they really lead and analyze
17 the statutes in the same way, and in the same way
18 we're asking the Court this afternoon to analyze
19 this.

20 Now, there's a bit of history about these two
21 cases that I think gives some context, and I'll try
22 to go through this very quickly. But on Christmas
23 Eve at 5:30 in the morning in 1892, the South
24 Carolina House of Representatives concurred, in
25 Senate Amendments, to appeal. Later that day,

1 Governor Tillman signed the Dispensary Act; later it
2 came to be known as Tillman's baby, in fact.

3 The history is that in the election of 1892
4 when Tillman was elected for a second two-year term,
5 there was also on the ballot a referendum as to
6 whether the state was going to be dry and whether
7 the state would have absolute prohibition. That
8 referendum passed overwhelming; the voters voted to
9 prohibit the sale of alcoholic beverages completely
10 and totally.

11 When the Legislature convened later that same
12 year, 1892, in November and into December, the House
13 quickly passed a bill entitled An Act to Prohibit
14 the Sale and Manufacture of Alcoholic Beverages,
15 Complete Prohibition. That passed the House, went
16 to the Senate. Now, Governor Tillman had been more
17 or less ambivalent on the issue and said he'd sign
18 whatever the General Assembly had sent to him. But
19 history shows that he became concerned because the
20 Legislature also passed a number of acts for use of
21 taxes and he and others were concerned that the
22 State wasn't going to have enough money to fund
23 state government. And he learned from a newspaper
24 reporter that the city of Athens, Georgia had, by
25 ordinance, created a monopoly in liquor and created

1 its own dispensary system, and he had that ordinance
2 telegraphed to him. And the bill had already gone
3 to the Senate at this time.

4 The session was moving quickly and he, as it
5 was described, jumped on that like a June bug. And
6 he persuaded the Senate to amend that bill that the
7 House had passed and the title then read: To
8 Prohibit the Manufacture and Sale of Alcoholic
9 Beverages Except as Provided Herein. And as
10 provided herein was what was the Dispensary Act.
11 And, briefly, what it did was it created a monopoly
12 in state government for the sale of liquor. Only
13 the State could engage in the sale of liquor. It
14 created more control by the governor, they had the
15 authority to appoint local boards, it set the
16 prices, the profits, and provided -- the price had
17 to be increased 50 percent of what the State
18 purchased it for, and that 50 percent went to the
19 State. Then when it was distributed out to the
20 local dispensaries. They had to raise the price 50
21 percent, and the profits from that were split
22 between the municipalities and the counties in which
23 the municipalities were located.

24 It was very controversial, to say the least.
25 It had been sprung on the public, there was a lot of

1 litigation that ensued, including this first case
2 that we're talking about here, and there were a
3 whole lot of other legal challenges. In fact, when
4 you look at the McCullough case, you'll see that
5 it's a consolidation of six cases. And in that case
6 you'll see that they talk about the various other
7 challenges that had been brought in the federal
8 courts and in the state courts. So Tillman knew
9 that it was being challenged.

10 In addition to legal challenge, the public in
11 many parts of the state just decided to completely
12 ignore the Dispensary Statute, and Darlington was a
13 place that that occurred. And in the spring of that
14 year, 1893, there was what is described in the
15 history books as the Darlington Riot in which three
16 people were killed and seven people were injured
17 because the governor had to call out the militia.
18 And some of the militia wouldn't come up, wouldn't
19 respond to those calls, and the community, in
20 outrage, had this riot in Darlington.

21 Now, Tillman knew about the controversy and
22 about these legal challenges, and so he persuaded
23 the Legislature to pass the '93 Act. When you read
24 the McCullough case, it's interesting because it
25 says in the outset that that '93 Act had been

1 passed, the Attorney General, who was a party to
2 that case, had written the Court and said, I've got
3 this '93 Act, you might want to take a look at it.
4 The Court said, nobody really made a motion, so
5 that's not before us, and went ahead and ruled on
6 the '92 Act; as I said earlier, ruled it
7 unconstitutional.

8 In looking at that case the Court said, we're
9 going to describe what we see as the nature and
10 scope and the object of this. And they described
11 what I have just described here, and they further
12 described the taxes or the fees or the profits or
13 whatever you want it to be. And they held, based on
14 reading that statute, reading the words of the
15 statute, that it exceeded the police powers and that
16 it was not an exercise of the police powers, but it
17 was a revenue-raising bill, pure and simple, by a
18 two-to-one vote. In its holding it summarized -- a
19 lengthy decision, but it summarized it by saying,
20 judging the Act from the terms in it, the only way
21 in which a Court is at liberty to form an opinion,
22 it cannot justly be regarded as a police regulation,
23 but simply as an act to increase the revenue of the
24 State. So they looked at the words of the statute,
25 the bill, this is not an exercise by the General

1 Assembly of the police powers, it's an exercise of
2 this revenue-raising power.

3 Now, let's go to the second case which was
4 decided in October of that year. As I said, there
5 were a lot of similarities between the two cases,
6 and the difference being the outcome. There had
7 also been another change between April and October,
8 and that's the makeup of the court. The lieutenant
9 governor -- Tillman's lieutenant governor had
10 managed to become elected to the Supreme Court by
11 October and he, in fact, wrote what was the majority
12 decision on the '93 Act in the *State Ex Rel George*
13 case. And they ruled that the '93 Dispensary Act
14 was a legitimate exercise of the police power and
15 was constitutional.

16 Now, they did that, they spent a lot of time at
17 the outset dealing with the '92 decision and then
18 said, sorry, this truly doesn't apply here -- for
19 interesting reasons that I won't go into -- and then
20 he said three things. He said, liquor is different
21 than other commodities; he said, secondly, the
22 State, pursuant to its police powers, can regulate
23 liquor -- nobody argued with that -- and then they
24 said the '93 Act is a police measure, it is an
25 exercise of the police powers.

1 Now, they did that by doing exactly what the
2 Court in the first case said that was the thing to
3 do, and what we're asking Your Honor to do is to
4 look at the words of the statute -- don't look at
5 something else -- look at the words of the statute
6 to determine whether it's an exercise of the police
7 power. And when they did that in this case, they
8 picked out and went through, from title to end, that
9 Act. And they started by saying the title is an act
10 to declare the law in reference to and further
11 regulate the use, sale and consumption,
12 transportation and disposition of alcohol, liquors
13 in South Carolina and to police the same. So the
14 title itself invokes the police powers.

15 And another provision that the Court pointed
16 out was -- was in that Act is that, quote, all such
17 liquors, except when bought from the State officer
18 authorized to sell the same or in possession of it
19 are declared to be contraband and against the
20 morals, good health, and safety of the state, and
21 may be seized wherever found. They go on further
22 and talk about the fact that the Act created a
23 commissioner who had to be an abstainer from
24 intoxicants. He went on, further evidencing the
25 Legislature's intent and manifestation for it to be

1 a police powers and quoted the statute to say: All
2 liquors shall be tested by a chemist and declared to
3 be pure before sale to the county dispensaries;
4 obviously, a health measure.

5 They talked about the bond that to be put up by
6 the local commissioners, that was set forth in the
7 Act, that no one could be a county commissioner, an
8 employee of the dispensary, if they had any record
9 regarding liquor law violations, the statute
10 provided that; the statute further provided that
11 nobody could work for the dispensary that was in the
12 restaurant or hotel business, all kinds of measures
13 that the Court said evidenced the Legislature's
14 intent for it to be, in its words, an exercise of
15 the police powers. And this quote from the '93
16 decision, the act, the words of the act, shows that
17 the Legislature had in view the protection of the
18 morals, good health, and safety of the state, after
19 listing all those things that they saw in the act.

20 So the two cases are obviously at one another.
21 One said it was not a police power, that it was a
22 revenue measure of the '92 Act; it was amended.
23 Many of these provisions that the Court invoked in
24 analyzing the '93 Act, the Court reached the
25 conclusion that it was an exercise of the police

1 powers because of what was in the statute and that
2 it was not a revenue measure, it was a police power.

3 So in reviewing, Your Honor, those two cases,
4 what's the job that -- of this Court today? We
5 think that it is to do exactly as the Supreme Court
6 did in those two cases, and that is look at the
7 words of these two statutes and determine whether
8 these statutes, on their face, in the words of the
9 legislature, have anything to do with the health,
10 safety, and morals of the state.

11 The wording in these two statutes is a little
12 bit obtuse for several reasons that I think is worth
13 going in. Now, what they mean is obviously not in
14 dispute because read together, what they mean is
15 that currently nobody in this state can have a
16 financial interest, directly or otherwise, in more
17 than three liquor licenses. Nobody argues other
18 than that. But if you look at the wording of the
19 statutes, you can see that on its face not only is
20 there nothing in there that mentions health, safety,
21 or morals were even gradually connected to it, but
22 there are a lot of things that are disconnected to.
23 And one of the reasons that the statute is worded
24 as it is, is that because of other provisions in the
25 law, while corporations can be the owner of liquor

1 stores, the licenses have to be in individuals'
2 names. So you see how they talk about dealer
3 licenses and so forth? That's individuals.

4 This second sentence of the section 140 and
5 then section 150 to make it clear that nobody
6 indirectly can have an ownership interest, that was
7 not always the case. Prior to 1978, there was
8 nothing in the statute regarding the limiting of
9 liquor licenses regarding corporations. And in
10 1970, the issue had come up as to whether this -- as
11 to whether the then-existing statute was applicable
12 to corporations.

13 And there's several things about that opinion
14 that by -- I'll refer to Goolsby who -- of course it
15 was later on in the Court of Appeals that I think
16 are interesting and important. First, the request
17 for that opinion came from the old ABC Commission,
18 obviously a body that knew something about liquor
19 laws, and it came because they had an applicant who
20 had this bad situation: He had a corporation, West
21 Inn Package Stores or something to that effect that
22 I recall, and he had two liquor stores that were not
23 in his name but were in the names of his
24 secretary-treasurer of the corporation. He then was
25 applying -- and that was the reason for this request

1 of this opinion.

2 The president of the company who had no
3 licenses was applying for another license for the
4 corporation in his name, for a third one, yet the
5 secretary-treasurer had, separate and apart from
6 that corporation, another liquor license in his
7 name. So the question was, does this violate the
8 statute because of this application causing, in
9 effect, this corporation to be connected to four
10 liquor licenses?

11 And what the Attorney General said in that
12 opinion was that there was nothing in the language
13 that speaks to the corporations and said, as of yet,
14 I think was the term, this statute doesn't apply to
15 corporations. That was amended in 1978 and
16 subsequently re-amended in 1996, when the whole ABC
17 Act was re-codified, leaving us with what we have
18 here now.

19 So, A, if the State and ABC Commission had had
20 any notation of the Attorney General that the
21 statute was a police powers statute, that opinion
22 would have been completely different than what it
23 was because it wouldn't make any sense for the State
24 to exercise the police power in one fashion for
25 individuals but in a separate fashion for

1 corporations. Nobody even mentioned the police
2 power because there's nothing in that statute then
3 or now regarding connected to or relating to the
4 exercise of the police power.

5 The other thing that I'd like Your Honor to
6 focus on is the breadth of what's been called a
7 grandfather amendment. When they amended this in
8 1978, there obviously were some entities that had a
9 financial interest in more than three liquor stores,
10 so they put what they called a grandfather clause.
11 And that grandfather clause is not exactly a
12 grandfather clause because it doesn't -- its words
13 don't say if you happen to have four or more
14 licenses now, you can keep them. That would be a
15 grandfather clause. What it says is this, this last
16 sentence of section 150: The prohibitions in this
17 section do not apply to a person having an interest
18 in retail liquor stores on July 1, 1978. The
19 breadth of that is such that any human being on July
20 1, 1978, who had any interest in a liquor store was
21 not limited and is not limited, if they happen to
22 still be alive, in the number of licenses that they
23 could have a financial interest in. And that by
24 itself shows that this statute, these statutes, have
25 nothing to do with the health, safety, and morals,

1 and purely are related to the business of the sale
2 of alcoholic beverages and purely related to the
3 economic protection of those who currently have
4 licenses.

5 In addition to the language showing a complete
6 absence of anything to do with health, safety, or
7 morals of the public or any logical connection to
8 the health, safety, and morals of the public, there
9 are other reasons that show these are clearly not
10 police power statutes. And let me mention a few of
11 them --

12 THE COURT: Mr. Drake, we're going to have to
13 move along. I've got to listen to that side and
14 I've got a whole afternoon of general sessions,
15 so --

16 MR. DRAKE: Yes, sir. I apologize. I'll move
17 quickly.

18 THE COURT: You don't have to apologize, I'm
19 just telling you.

20 MR. DRAKE: Several things: I mention the
21 opinion from the Attorney General. Another thing
22 I'd draw to the Court's attention about the statute
23 is this: When we brought this action -- and anybody
24 that brings an action challenging the
25 constitutionality of a statute has to serve the

1 Attorney General of South Carolina with this
2 lawsuit -- and we served him -- that's to give him
3 the right, if he wants, to come to court and protect
4 them.

5 I would only make this observation: If the
6 State of South Carolina, through its attorney
7 general, thought these were the exercise of police
8 powers, the Attorney General would be here defending
9 this statute. And you see by their absence that
10 they're not. So if you, Your Honor, do as the
11 Courts in both of these cases that I've talked about
12 from 1894, look at this language, look at the
13 context, look at the other factors that I've
14 enumerated, you can only come to the conclusion that
15 these statutes have nothing to do with and are not
16 an exercise of the police powers and should be
17 declared unconstitutional.

18 We also raise two other causes of action that
19 I'll cover very quickly, the equal protection and
20 due process. And I'll try to just cover them at the
21 same time.

22 The Legislature -- the Constitution says you
23 can't treat similarly situated people differently,
24 and there's obviously some exceptions to that. But
25 we make two points: One, there are other ways to

1 buy liquor in South Carolina; restaurants, bars and
2 hotels. And there is no limit on the number of
3 licenses that any company, any corporation, any
4 individual can have for on-premise consumption, none
5 whatsoever. That in itself shows that the policy of
6 this state is not to exercise the police power by
7 limiting ownership of people who dispense liquor.
8 And, secondly, it creates another classification
9 between those of us like Total Wine Retail Services
10 that we represent who want to expand and grow and
11 those who want to keep things as they are. And
12 while we don't contend that we or anybody else have
13 a right to be in the liquor business, we do have a
14 right to be treated the same way. And by virtue of
15 the difference between on-premise consumption,
16 licenses being limited and the number that are there
17 and the classification between those who want to
18 expand, as we do, those who want to stay as they
19 are, creating a class, that violates both the due
20 process laws of the state and federal constitution
21 and the Equal Protection Clause. So for all three
22 of those reasons, but especially because of the
23 absence of the exercise of police powers, we ask
24 this Court to declare these two statutes
25 unconstitutional. Thank you, Your Honor.

1 MR. MAYBANK: Thank you, Your Honor. Burnett
2 Maybank here on behalf of ABC Stores, and I'll speed
3 my argument up.

4 Mr. Drake first says that what we hear today is
5 that Total Wine is saying that basically that we
6 need to have a liquor store in every Walmart and
7 every Family Dollar, strip mall, in South Carolina.
8 They're saying that our -- unconstitutional and that
9 we need to have a liquor store at every Walmart, and
10 every Family Dollar needs to have a liquor store in
11 South Carolina. They said that the act limiting the
12 three liquor stores isn't based on police powers.

13 *McCullough vs. Brown*, which Mr. Drake first
14 cited, the Court said it wasn't a police power
15 because the State was basically -- all it was doing
16 was putting private liquor stores out of business
17 and replacing them with State-owned liquor stores.
18 There was no change in the liquor statutes
19 themselves, especially when you took the private
20 sector out and put the public sector in. And they
21 said, with no change in the liquor law, you're just
22 replacing a private liquor store with a public
23 liquor store; that's obviously related to the taxing
24 authority, not the police power.

25 But the second case cited by Mr. Drake -- they

1 overruled the first case, they overruled the
2 powers -- on whether or not this is a valid exercise
3 of the police powers, I cited repeatedly --
4 everything I'm going to say here comes straight out
5 of my brief. But a current Court of Appeals Judge
6 Geathers wrote a book, *The Great ABC -- a South*
7 *Carolina Law Treatise, The Regulation of Alcoholic*
8 *Beverages in South Carolina.*

9 And Judge Geathers states: A regulation of
10 alcoholic beverages in South Carolina is by matters
11 in the State government. This licensing system has
12 been characterized as a, quote, typical exercise of
13 the police power of the State, designed for the
14 comprehensive system of regulation that closely
15 polices the commerce and alcoholic beverages.

16 Now, Judge Geathers also states -- basically
17 summarizes the law, the article makes clear that
18 this is the police power as being exercised. Now,
19 whether or not it's police power has directly come
20 before the Supreme Court in a case long after
21 Mr. Drake's, and that is the case *Pendarvis vs.*
22 *Berry*, a 1949 case. It dealt with the predecessor
23 statute, whether or not -- in that case, the
24 plaintiff and defendant had conspired -- they set up
25 a second corporation to evade it. At that time,

1 you're limited to one liquor store. They set up a
2 corporation, had another liquor store; they had a
3 falling out, they sued each other; the defendant
4 said, you can't enforce that contract because that
5 contract is illegal, it was set up to file the one
6 liquor store regulation.

7 And the Court noted the appellant's argument.
8 The argument says: The excellent brief of Appellant
9 is based upon the contention the Act of 1949
10 contained no declaration that a contract in evasion
11 of its terms is void and unenforceable, and the Act
12 is not designed to protect the public health and
13 morals. And the Court rejected that argument. So
14 that was the argument that they made.

15 The Supreme Court stated: A further obstacle
16 to Appellants' attempted distinction as it had
17 overlooked or ignored the consideration that the
18 Alcohol Beverage Control Act of 1945 is a typical
19 exercise of the police power of the State and is
20 designed for the protection, morals, and welfare of
21 the public. It cannot be said that, while the Act
22 of 1945 is also a revenue law, its principal purpose
23 is the protection of public health and morals.
24 Liquor control legislation is generally of such
25 purpose. So that's a 1945 case dealt right on point

1 with the predecessor statute and our Supreme Court
2 ruled that it was a police power of the State.

3 Now briefly on equal protection and due
4 process, Judge Geathers has described the exact
5 statute which we're dealing with today in his book.
6 And his book says that the ABC Act also places
7 strict restriction on how many liquor stores a
8 signal licensee may own and operate. Specifically,
9 a single retail liquor license with an individual
10 corporation may not be issued more than three retail
11 dealer licenses. This type of regulation of the
12 number of licenses that may be issued to one person
13 is aimed at controlling the tendency towards
14 concentration of power in the liquor industry,
15 preventing monopolies, avoiding practices such as
16 indiscriminate price-cutting and excessive
17 advertising, and preserving the right of small,
18 independent liquor dealers to do business, and these
19 restrictions have been held not to violate the due
20 process or equal protection rights of liquor
21 licensees.

22 Now, in my brief we go over the modern due
23 process standard of review and protection, so I'll
24 skip over those in the interest of time. But
25 there's actually quite a bit of law on whether or

1 not this precise statute violates due process and
2 equal protection.

3 In C.J.S., Intoxicating Liquors, the authors
4 state: A State legislator may provide for a
5 licensing system and may limit the number of
6 licenses which may be granted. The licensing of
7 persons to sell liquor is not an exercise of the
8 taxing power of the State to raise the revenue, but
9 rather of the police power. And C.J.S. goes on to
10 say: The Legislature may limit the number of
11 licenses or the number of licenses for particular
12 species of liquor business which may be owned by the
13 same person, group, or organization. And in
14 Intoxicating Liquors, they say much the same thing:
15 Such statutes have been upheld against attack on the
16 grounds that they denied protection, created illegal
17 monopoly, discriminate in favor of a limited number
18 of licensees, and amount to class legislation. They
19 work no unlawful discriminations, all had an equal
20 right to apply for one, the regulation of the number
21 of licenses issued having its own control and the
22 tendency towards the concentration of power, the
23 liquor industry creating monopolies, avoiding
24 practices such as indiscriminate price-cutting and
25 excessive advertising do not violate the equal

1 protection principles.

2 Now, in my brief, there's been about seven or
3 eight cases directly on this exact issue. We've
4 cited them all in my brief. Virtually every single
5 case the Court has upheld the constitutionality
6 under due process equal protection claims. The
7 Massachusetts Supreme Court, for example, stated
8 first, many sound reasons have been advanced to
9 support restrictions on the number of liquor
10 licenses allowed by any one business interest.
11 Concentration of retail in the hands of the
12 economically powerful few has been thought to
13 intensify the dangers of number of liquor sale
14 stimulations. Regulation of the number of licenses
15 issued aimed to controlling the tendency toward the
16 concentration of power in the liquor industry,
17 preventing monopoly, avoiding practices such as
18 indiscriminate price-cutting and excessive
19 advertising.

20 The New Hampshire Supreme Court said the same
21 thing: The obvious purpose of this well-rounded
22 regulatory system is to supervise and fractionalize
23 the beverage industry. The New Jersey Supreme Court
24 said -- the legislator accepted widely held views as
25 to sound liquor control; these include beliefs that

1 the consumption of liquor is elastic rather than
2 inelastic, that price-cuttings and advertisement,
3 along with comparable practices, are undesirable,
4 and so on and so forth.

5 Lastly the Fifth Circuit Court of Appeals, in a
6 case only about ten years old, they ruled in a
7 Georgia statute. And the Court -- the Fifth Circuit
8 Court of Appeals said: Tested on the above
9 principles there is no hesitancy in concluding the
10 ordinance reasonably relates to the problem sought
11 to be controlled and certainly cannot be said as a
12 matter of law. The ordinances have no rational
13 basis on which to rest. Their enforcement tends to
14 increase competition and lessen the evils described
15 of price discrimination and split deliveries.

16 So with that, I'll turn it over to Mr. Kimpson.
17 In summary, these principles -- these sections do
18 have a rational relationship through any legitimate
19 interests in state government, and they're not
20 plainly arbitrary. Thank you.

21 THE COURT: Mr. Kimpson.

22 MR. KIMPSON: If it pleases the Court, Your
23 Honor, I'm Milton Kimpson on behalf of the
24 Department of Revenue. I'd like to also introduce
25 Dana Krajack who is also a lawyer in our office.

1 Your Honor, we stand on what we've put forward
2 in our motion and memorandum in support. There are
3 two or three things that I would like to hurriedly
4 mention, and I greatly apologize for --

5 THE COURT: You don't have to apologize. I'll
6 give you the same amount of time that everyone else
7 had.

8 MR. KIMPSON: Well, thank you.

9 First of all, Your Honor, in our memorandum,
10 we've articulated still yet another argument why
11 this case should not go forward. We do not believe
12 there is a justiciable issue here --

13 THE COURT: You attack it on the DJ action
14 itself; the declaratory judgment --

15 MR. KIMPSON: Correct.

16 THE COURT: -- action itself.

17 MR. KIMPSON: There --

18 THE COURT: No standing and no justiciable
19 controversy.

20 MR. KIMPSON: Correct, Your Honor. There has
21 to be a real controversy.

22 Despite the arguments here, even if this Court
23 rules, gets nothing more than an advisory opinion
24 given the fact that there's never been any
25 application, there's never been any action on behalf

1 of the plaintiffs actually saying, yes, we're going
2 to build -- we're going to have a liquor store here
3 in Aiken County. Again, Your Honor, that argument
4 is fully briefed in our memorandum.

5 If we can go then to the substance, statutes
6 61-6-140 and 61-6-150, the Department would point
7 out a couple things for the Court's consideration;
8 first of all, that any duly enacted statutes by the
9 General Assembly are presumed to be constitutional
10 and, of course, the plaintiff bears a heavy burden.
11 We would submit, of course, that they've not met any
12 of those burdens, even approaching what would be
13 necessary to declare these statutes
14 unconstitutional.

15 Under the South Carolina Constitution, of
16 course, the State does, in fact, have the police
17 power to regulate for the safety, public welfare,
18 morals, as Mr. Maybank has pointed out. In the
19 Pendarvis case, the ABC Act has been held to be a
20 valid exercise of police power of the state of South
21 Carolina. These two statutes are but apart; two
22 statutes in this entire system of laws have a design
23 to regulate alcohol. And, of course, as we've
24 talked about Ex Rel George and other cases, and I
25 believe Mr. Drake has already mentioned, alcohol has

1 a special circumstance; it's not like cotton or any
2 other commodity or good, it is recognized by our
3 Courts. And alcohol is to be regulated and has,
4 quite frankly, very adverse effects if it's not
5 adequately regulated. So alcohol is just a little
6 bit different.

7 We would further say, Your Honor, that -- and
8 point out to the Court that there is no property
9 right to have a liquor license; this is a privilege
10 that's granted by the State. And, therefore, as we
11 look at this entire regulatory framework, we got to
12 keep all these things in mind as we go forward. The
13 Feldman case stands for that proposition.

14 Now, Mr. Maybank has outlined all of the cases
15 for various jurisdictions that uphold the principle
16 that limitations on the number of licenses fall
17 within the police power. I don't need to go over
18 that; we've talked about the Martignetti case out of
19 New Jersey, the Granite State case out of New
20 Hampshire, but we recommend the Court to read the
21 provision in Mr. Maybank's brief that begins on page
22 8 that comes from the case that is -- I believe it's
23 the Sills case, *Grand Union vs. Sills*. That
24 provision starts at bottom of page 8 going into page
25 9. And again, Your Honor, I'm not going to read it

1 for the Court. But we'd submit that these laws may
2 very well have some economic impact. They may have
3 some private economic benefit. But the fact remains
4 that the enactment of these laws, the basic effect,
5 is for temperance. A state certainly has, within
6 its police power, the right to be concerned about
7 the unregulated use and sale of alcohol. Temperance
8 is, in fact -- and we'd submit to the Court,
9 temperance is a valid object when we come to
10 regulation here in the state.

11 THE COURT: In 2014, temperance is a valid
12 state?

13 MR. KIMPSON: Yes, Your Honor. Well, what --
14 and, Your Honor, I know as we all -- and I have to
15 tell you, even as we drove up here today, we were
16 talking about various alcoholic drinks. But the
17 state has a protected interest --

18 THE COURT: I guess that's why we have DUI
19 laws.

20 MR. KIMPSON: Yes, sir. We have a valid
21 interest in regulating the sale of alcohol. And
22 what's interesting further about that, the General
23 Assembly -- this is within the province of the
24 General Assembly. Courts, we cannot act as a
25 super-legislature; it may not be a great way to

1 regulate, it may not be a great way to provide for
2 temperance, but that's a province we've got to talk
3 to the General Assembly about.

4 We, again, would submit that these statutes, as
5 held on a number of jurisdictions, are
6 constitutional and certainly are within the police
7 power of the state of South Carolina. On the
8 concept of equal protection, we'd point out to the
9 Court that somebody challenging the
10 constitutionality of any statute based on equal
11 protection is essentially has to negate every
12 conceivable, reasonable basis for the statute
13 temperance. When we look at the problems that
14 unrestrained use of alcohol occurs, there is
15 certainly a rational basis for all of these
16 statutes.

17 Mr. Drake cannot and the plaintiffs cannot
18 stand here and say that a restaurant, bar, or hotel
19 are similarly situated to a retail liquor store. If
20 I wanted to open a restaurant, I'd have to have a
21 kitchen, I'd have to substantially serve food; if I
22 wanted a bar in a hotel, I've got to also serve or
23 have seating or -- excuse me; not seating, but
24 rooms. So these businesses are not similarly
25 situated to retail liquor stores and, more

1 importantly, when I go into a restaurant, when I go
2 to a hotel bar, I'm getting single drinks, liquor by
3 the drink. When I go into the liquor store, I can
4 walk out there -- out of that liquor store with
5 quarts of alcohol. So if nothing more than the
6 quantity of alcohol allowed in a retail liquor store
7 makes these businesses certainly different from
8 Mr. Drake's client's.

9 Also with regard to equal protection, we would
10 further point out that there simply is no real -- he
11 speaks about --

12 THE COURT: Isn't he just focusing on 61-6-140
13 and 150, not the whole statutory scheme? And if you
14 look at the rest of the statutory scheme, it pretty
15 much takes care of what you're arguing. But how
16 does 140 and 150, how does that evoke police powers
17 of the state, those two separate provisions within
18 the whole statutory scheme? He's arguing not the
19 whole scheme is unconstitutional, just 140 and 150
20 is because of the limitation of the three licenses,
21 and has nothing to do with the police powers.

22 MR. KIMPSON: Your Honor, again, our point is
23 that these two statutes are part of that overall --

24 THE COURT: I understand that.

25 MR. KIMPSON: Yes, sir. Now --

1 THE COURT: But can you declare two sections or
2 two statutes in the whole scheme to be
3 unconstitutional and leave the rest of the statutory
4 scheme in effect? Can you do that?

5 MR. KIMPSON: That's certainly possible, Your
6 Honor. But, of course, what we'd urge this Court is
7 that these two statutes are concentrated, are --

8 THE COURT: Well, I understand that. But he's
9 saying just -- he's not saying the whole scheme
10 where you're worried about walking out with gallons
11 of liquor, he just wants to be able to have more
12 than three licenses. And he says that's strictly an
13 economic situation that hasn't got anything to do
14 with the police powers.

15 MR. MAYBANK: If I could answer that briefly,
16 Your Honor. Judge Geathers, in his book, directly
17 says these two statutes were enacted as part of the
18 police powers aspect. Judge Geathers wasn't talking
19 about the whole entire act, he's talking about these
20 exact two statutes were part of the police power.
21 And that quotation is in my brief.

22 But the *Pendarvis vs. Barry* case deals with the
23 exact issue: The predecessor statute. And in the
24 predecessor statute, you can only get one license,
25 then the plaintiffs -- the defendant attempted to

1 evade that by setting up a second store. They had a
2 falling out, they sued each other. The defendant
3 says, you can't sue me under the contract because it
4 was designed to evade that statute and, therefore,
5 it's unenforceable.

6 The plaintiff said, well, it was designed to
7 evade the statute, but there's no police power in
8 that statute. And Supreme Court said, no, it's part
9 of the police power; that statute was enacted as
10 part of the police power of the state. It is a
11 typical exercise of the police power of the state
12 and designed to protect the morals and welfare of
13 the public. That statute limited to just one --

14 THE COURT: Now three.

15 MR. MAYBANK: Now three. So the Supreme Court
16 did directly reference the police power of the state
17 in saying that that illegal contract could not be
18 enforced through the Court.

19 THE COURT: Thank you.

20 MR. KIMPSON: Your Honor, we'd certainly
21 commend the Court to the language used in the cases
22 from the other jurisdictions that have essentially
23 addressed the constitutionality of the --

24 THE COURT: Of the limitation of the number of
25 retail --

1 MR. KIMPSON: Yes, Your Honor.

2 THE COURT: Well, it's a very interesting
3 situation.

4 MR. KIMPSON: It is, yes, Your Honor.

5 I'd like to address the grandfather clause just
6 very briefly. The grandfather clause essentially --
7 in South Carolina, we've done this by way of
8 affidavit. There is one business -- and I believe,
9 Your Honor, it's a corporation -- that is -- that
10 currently has more than three alcohol licenses. But
11 this corporation had those licenses well prior to
12 these particular statutes going into effect.
13 Person, for the purposes of ADL law under 61-2-100,
14 does apply to corporations. And again, Your Honor,
15 it's to the best of my belief that the one licensee
16 that has one license is a corporation. By virtue of
17 the fact that there are transfers -- I believe it's
18 25 percent -- transfer more than 25 percent of the
19 stock of a corporation, that triggers a need for a
20 new application. Essentially at some point, this
21 current licensee that has more than three licenses
22 will fall within the current law.

23 THE COURT: Thank you.

24 MR. KIMPSON: Your Honor, I'd further point
25 out, again, due process. There is no property right

1 in having the alcohol license. Our brief sets out
2 the standard for evaluating whether or not some
3 legislative act is violating the due process. This
4 falls well short of that.

5 Finally, Your Honor, I'd point out Mr. Drake's
6 characterization of the AG not being here. The
7 Department of Revenue was served and named a
8 defendant. As part of our statutory rules about
9 service, the AG's office then is notified, but the
10 AG was never served --

11 MR. DRAKE: Yes, they were. I got to -- excuse
12 me, Your Honor.

13 THE COURT: That's all right.

14 MR. KIMPSON: Well, Your Honor, now, that may
15 be something that I'm not aware of.

16 THE COURT: Well, the AG might be too busy
17 challenging the other interesting legal issue of the
18 day.

19 MR. KIMPSON: I'm not aware, and Mr. Drake can
20 correct me, that the AG was ever named as a party.
21 When you sue a state agency, you actually serve the
22 agency and then you notify the AG. You don't bring
23 the AG in as a party to the kind of notification
24 under rule -- and I think it's Rule 40.

25 But we would ask the Court to discount any

1 inference to be drawn from the fact that the AG is
2 not here. The AG was never a party. Your Honor, we
3 would rest on what we've said in our memorandum.
4 It's certainly more detailed than my poor attempt at
5 an oral argument today.

6 THE COURT: Excellent argument. Thank you.

7 MR. KIMPSON: But we would ask that you grant
8 our motion for summary judgment and deny the
9 plaintiff's.

10 THE COURT: Brief reply. I think I've got it.

11 MR. DRAKE: Very brief.

12 On the Pendarvis case, I want Your Honor to
13 read that case. Two things about it: One, he was
14 not dealing with this statute, and when you read it,
15 you'll see that that statute is very different;
16 second, the question of the constitutionality of the
17 statute in that case was not before the Court. What
18 was before the Court was a contract question; the
19 validity of a contract under the then one-minute
20 statute. Now, it is true that in that case there
21 was some broad language about the ABC Act being an
22 exercise of the police powers. We don't argue that.
23 We argue that the words that are on the code book
24 now are unconstitutional. And to make that point,
25 think about this: Under the current scheme, a party

1 can have three liquor stores in Aiken or three
2 liquor stores in Bamberg or three liquor stores in
3 Edisto; a concentration in a community as small as
4 Edisto, but this limits to the entire state. That
5 shows that this has nothing to do with temperance
6 because it allows a concentration in the smallest of
7 communities.

8 So, Your Honor, for all those reasons, we'd ask
9 that you grant our motion for summary judgment and
10 declare these statutes to be unconstitutional.

11 THE COURT: Thank you.

12 MR. DRAKE: And thank you for your time and
13 consideration.

14 THE COURT: Mr. Drake, I have received, and got
15 yesterday from the clerk's office, memos. I got one
16 from both defendants. I don't know that I got one
17 from you.

18 MR. DRAKE: We filed our memo much earlier.

19 THE COURT: Well, sometimes they get to me --

20 MR. DRAKE: I apologize for that.

21 THE COURT: Can we have this one?

22 MR. DRAKE: Oh, absolutely. I think that's one
23 that -- and one other thing I -- about what
24 Mr. Kimpson raised about the Attorney General, my
25 point there was this: The Declaratory Judgment Act

1 itself, separate and apart from the rules, requires
2 the party to actually serve the Attorney General.

3 THE COURT: When they're challenging the
4 constitutionality.

5 MR. DRAKE: Correct. We not only served him
6 and he chose not to be a party, I went and met with
7 him and his staff and told them what we were doing.

8 THE COURT: I understand that. But, I mean,
9 how can I give any inference to the fact they choose
10 not to be down here?

11 MR. DRAKE: For this simple reason, Your Honor:
12 The Attorney General is the chief lawyer for the
13 state of South Carolina. And if this were an
14 exercise of the police power, I think it's clear
15 that the Attorney General would be here defending
16 himself.

17 THE COURT: Well, don't I -- isn't that pure
18 speculation that he would be here?

19 MR. DRAKE: No. I don't think it's speculation
20 at all. He had the perfect opportunity, was served
21 with it, and made the conscious decision not to be
22 here.

23 THE COURT: I don't know that there's any cases
24 out there that say that I can infer anything because
25 the Attorney General is not here and --

1 MR. DRAKE: And I have none to cite you, Your
2 Honor.

3 THE COURT: And please don't -- I was just
4 being cute a while ago about him trying --

5 MR. DRAKE: I understand.

6 THE COURT: -- to deal with things regarding --

7 MR. DRAKE: Yes, Your Honor.

8 THE COURT: All right. Gentlemen, it's a most
9 interesting exercise to be -- to -- it's an
10 interesting case. I will take it under advisement
11 and try to have some type of decision out within 30
12 days.

13 MR. DRAKE: Thank you, Your Honor.

14 THE COURT: Thank you.

15 And I'll more than likely -- in my ruling I'll
16 set out certain things. And because of our huge
17 volume, I'll ask someone to prepare the proposed
18 order. But I'll put all that in an e-mail with
19 everyone. Thank you very much for excellent
20 arguments. Real interesting legal issues.

21 MR. DRAKE: Thank you very much.

22 MR. KIMPSON: Thank you, sir.

23 -- END OF TRANSCRIPT OF RECORD --

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the captioned cause, relative to appeal in the Common Pleas Court for Aiken County, South Carolina, on the 5th of August, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 3, 2015

/s/Bethanie Creppon
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2014-CP-02-00259

Appellate Case No. 2014-002728

Retail Services & Systems, Inc., dba Total Wine & More, ... Appellant,

v.

South Carolina Department of Revenue and ABC Stores of South Carolina, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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July 14, 2015

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal complies with Supreme Court Order dated August 13, 2007 regarding personal identifiers and sensitive information.

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July 14, 2015

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RECEIVED

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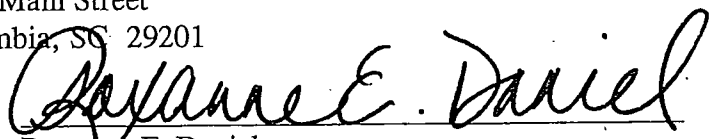
PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, Retail Services & Systems, Inc., dba Total Wine & More, do hereby certify that they have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same United States Mail, prepaid, to the following address(es):

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