

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Administrative Law Court

Hon. John D. McLeod, Administrative Law Judge  
Trial Court Case No. 2016ALJ170008CC

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JUL 12 2016

SC Court of Appeals

Appellate Case No. 2016-000593

Ex Parte: Johnnie Cordero, Appellant,

In Re: Fnu Satish Kumar d/b/a Piney Xpress, Petitioner,

v.

South Carolina Department of Revenue, Respondent.

MOTION FOR JUDICIAL NOTICE OF ADJUDICATIVE FACTS  
NOT SUBMITTED BELOW PURSUANT TO RULE 201(f) SCRE AND  
FOR LEAVE TO INCLUDE SAME IN THE RECORD ON APPEAL

Comes now, Johnnie Cordero, Appellant in the above captioned appeal who respectfully moves this court to exercise its discretion to take judicial notice of adjudicative facts not submitted to the Administrative Law Court below pursuant to Rule 201(f) of the South Carolina Rules of Evidence.

Appellant further requests that this court grant him leave to include the same as evidence in the Record on Appeal for the reasons set forth more particularly hereinafter.

## INTRODUCTION

Respondent Department of Revenue (hereinafter 'DOR') did not object to Appellant's Motion to Intervene in the proceedings below. In its brief in this court, however, Respondent argues that the motion to intervene was untimely because it was filed on the day of the hearing. The Respondent's argument is contrary to and undermined by its own document sent to the Appellant and all other protestants, in accord with its official policy. The document is entitled Administrative Memorandum to Individuals Protesting a License or Permit. The document includes a notice regarding intervention which states *inter alia*, "[a] motion to intervene may be made at the hearing, but you must show good cause for failure to make the motion earlier." (See Exhibit A, last paragraph).

## ARGUMENT

### Judicial Notice on Appeal

Under Rule 201(f), SCRE, "Judicial notice may be taken at any stage of the proceeding." In *Wise v. Wise*, 394 S.C. 591, 601 (Ct. App. 2011) this court construed this to mean that an appellate court may take judicial notice of adjudicative facts that were not presented to the trial court if the adjudicative facts are *indisputable*. The legislative notes to Rule 201SCRE state:

"Except for subsection (g), this rule is identical to the federal rule. . . . Adjudicative facts are "facts about the particular event which gave rise to the lawsuit and ... [help] explain who did what, when, where, how and with what motive and intent."

In *Romine v. Diversified Collection Services, Inc.*, 155 F. 3d 1142, 1146-1147 (9th Cir. 1998) ("We take judicial notice of a 1996 Federal Trade Commission (FTC) letter indicating

that a service similar or identical to Western Union's AVT service amounted to an indirect form of debt collection.) *See also, American Federation of Government Employees, v Acree*, 475 F.2d 1289, 1292 (D.C. Cir. 1973)("We may take judicial notice of the fact that while this appeal was pending the director of the Civil Service Commission's Bureau of Policies and Standards, in a letter to the president of the American Federation of Government Employees, stated that the Commission would not require an agency to provide a hearing where, as here, the regulations do not require one.)

In the instant case the Respondent, an administrative agency of the State of South Carolina, maintains a position on appeal that is in direct contradiction of its position stated in its Administrative Memorandum, *i.e.*, that a motion to intervene filed on the day of the hearing is untimely. The referenced Administrative Memorandum represents evidence of an adjudicative fact that directly contradicts the Respondent's position on appeal and which may be seen to explain Respondent's failure to object to Appellant's motion to intervene at the hearing.

Appellant contends and urges this court to find that pursuant to Rule 201(f) this court may take judicial notice of adjudicative facts on appeal and should do so in this case.

Appellant files this motion out of an abundance of caution and respectfully requests that this court take judicial notice of Respondent's Administrative Memorandum to Individuals Protesting a License or Permit and that he be permitted to submit same as part of the an

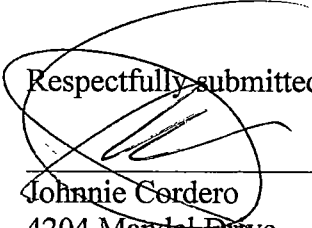
Appendix to the Record on Appeal in this matter or in any other manner that this court shall direct. Appellant has annexed a true copy of the Administrative Memorandum as Exhibit A for this court's review.

### CONCLUSION

For the foregoing reasons, Appellant respectfully requests that he be granted the relief requested in this motion and for such other and further relief as to this court may seem just and proper.

Dated: Columbia, South Carolina  
9 July 2016

Respectfully submitted,

  
\_\_\_\_\_  
Johnnie Cordero  
4204 Mandel Drive  
Columbia, SC 29210  
Tel.: (803) 753-8091  
APPELLANT, PRO SE

### CERTIFICATE OF SERVICE

I, Johnnie Cordero, hereby certify that I have, on the date indicated below, served counsel below with the Appellant's MOTION FOR JUDICIAL NOTICE OF ADJUDICATIVE FACTS NOT SUBMITTED BELOW PURSUANT TO RULE 201(f) SCRE AND FOR LEAVE TO INCLUDE SAME IN THE RECORD ON APPEAL by mailing a copy of same via United States Mail first-class postage prepaid and return address clearly indicated on said envelope, to the following persons at the following addresses:

Kenneth E. Allen, Esq.  
1201 Main Street, Ste. 1980  
Columbia, SC 29201

Sarah Khouri, Esq.  
SC Department of Revenue  
P.O. Box 12265  
Columbia, SC 29211

9 July 2016

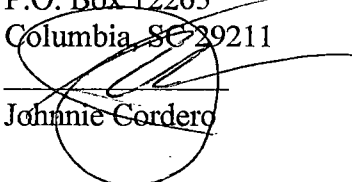
  
\_\_\_\_\_  
Johnnie Cordero

EXHIBIT A

**ADMINISTRATIVE MEMORANDUM TO INDIVIDUALS  
PROTESTING A LICENSE OR PERMIT**

Upon written request of a person who resides in the county where the license is requested to be issued, the department must not issue the permanent license until interested persons have been given an opportunity to be heard. S.C. Code Ann. § 61-6-1820 (2009). In the present case, the Applicant, upon notification of your protest, has requested a hearing before an Administrative Law Judge to hear evidence and determine whether the protested application(s) should be granted.

As a Protestant, you have the right to appear at the hearing to testify in opposition to the application(s), and have limited participation in the proceedings. A group of Protestants with common opposition should designate a spokesperson to present evidence and speak for the group. There is no maximum number of witnesses which may be called, but the Administrative Law Judge may limit cumulative testimony. Protestants may choose to be represented by an attorney.

A Protestant is not considered a party of record to the contested case. Byers v. S.C. Alcoholic Beverage Control Commission, 316 S.E.2d 705 (Ct. App. 1984). To have full participation rights at the hearing, including the right to cross examine witnesses, to receive a copy of the Administrative Law Judge's order, and to appeal an adverse decision, a Protestant must request to be admitted as a party. See Sabella v. S.C. Alcoholic Beverage Control Commission, 346 S.E.2d 530 (Ct. App. 1986).

Rules of Procedure for the Administrative Law Court provides that a person may intervene in a pending case upon showing:

- (1) that he or she will be aggrieved or adversely affected by the final order;
- (2) that his or her interests are not being adequately represented by existing parties; and
- (3) intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

If you wish to intervene as a party, you must file a Motion to Intervene with the Administrative Law Judge assigned to hear the case at least twenty (20) days before the hearing. A motion to intervene may be made at the hearing, but you must show good cause for failure to make the motion earlier. Blank forms for a Motion for Leave to Intervene are available from the Administrative Law Court upon request. A filing fee of \$50.00 is required for all Motions to Intervene filed with the Court, with checks or money orders made payable to the Administrative Law Court and should be mailed to the attention of the Clerk's office.

80201

REV. DR. JOHNNIE CORDERO  
4204 MANDEL DRIVE  
COLUMBIA, SC 29210

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JUL 12 2016

**SC Court of Appeals**

9 July 2016

Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Ex Parte: Johnnie Cordero (Kumar v. SCDOR )  
Appellate Case No. 2016-000593

Dear Clerk of Court:

Enclosed please find Appellant's Motion for Judicial Notice of Adjudicative Facts Not Submitted Below Pursuant to Rule 201(f) SCRE and for Leave to Include Same in the Record on Appeal submitted for filing in the above referenced matter. I have enclosed check # 567 in the amount of \$25.00 to defray the cost of filing the motion.

I have also enclosed a copy of the cover sheet to be time stamped and returned to me in the enclosed stamped self-addressed envelope for my records. Thank you for your kind consideration.

Sincerely



Johnnie Cordero

TEL.: (803)753-8091  
CORDERO1018@ATT.NET

CORDEMO  
4204 MANDEL DRIVE  
COLUMBIA, SC 29210

COLUMBIA SC 29203  
11 JUL 2016 PM 11



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CLERK OF COURT 12 2016  
SOUTH CAROLINA COURT OF APPEALS  
SC Court of Appeals  
1220 SENATE ST.  
COLUMBIA, SC 29201

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