

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
State of South Carolina on the relation of)	C.A. No. 2015-CP-23-02597
William Walter Wilkins, III, Solicitor of)	
The Thirteenth Judicial Circuit,)	
)	
Plaintiff,)	
)	
vs.)	
)	<u>ORDER</u>
Elephant, Inc., Gregory Kenwood)	
Gaines,)	
)	
Defendants.)	

This matter comes before the Court pursuant to a Verified Petition ("Petition") filed by the Thirteenth Circuit Solicitor ("Solicitor") on April 27, 2016. The Solicitor's Petition seeks contempt findings against Defendants Elephant, Inc. (treated interchangeably as "EI" or "Platinum Plus") and Gregory Kenwood Gaines ("Gaines") (Solicitor, EI, and Gaines treated collectively as "Parties"). The Petition alleges that EI and Gaines willfully violated a Consent Order executed by the Parties and thereafter entered by the Court on June 3, 2015 ("2015 Order"). The Court held a hearing on the Petition on June 14, 2016 ("Contempt Hearing").¹ All Parties appeared and were represented by counsel.

The 2015 Order

The 2015 Order arises out of an underlying civil action initiated by the Solicitor on April 17, 2015, pursuant to S.C. Code §15-43-10 *et seq.* ("Nuisance Action"). The Nuisance Action sought to abate a public nuisance allegedly existing at Platinum Plus's primary place of business located at 805 Frontage Road in Greenville, South Carolina ("Subject Property"). Following a

¹ The presiding administrative judge issued an Order to Show Cause on April 29, 2016 referring the proceedings to the undersigned and commanding Gaines and EI to appear on May 18, 2016. Thereafter, Defendants, through their attorney of record at that time, requested a continuance, which the Court granted, postponing the hearing date until June 14, 2016.

hearing, Platinum Plus was closed by the Court pursuant to an Order filed May 6, 2015. Pending a trial on the merits, the Parties thereafter negotiated, by and through their attorneys, a settlement of the Nuisance Action. See, 2015 Order. For purposes of assuring compliance, the Parties: incorporated their agreement into a consent order (*i.e.*, the 2015 Order), stipulated to the Court's continued jurisdiction to enforce the consent order, and subjected themselves to the Court's contempt power if they failed to comply with the order's terms. (*See* 2015 Order at 2, 8-9.)

As an initial matter, the Court finds the 2015 Order constitutes a valid and binding judgment of this Court. The Solicitor executed the 2015 Order on behalf of the State. (2015 Order, p. 10.) Conversely, as its sole shareholder, chief executive officer, and authorized signatory, Gaines executed the 2015 Order on behalf of EI. (*Id.* at 12.) Gaines also separately executed the 2015 Order in his individual capacity. (*Id.* at 13.)² Accordingly, the Court finds an identity of Parties exist as between the Consent Order and the Parties to the instant Contempt Hearing.

The 2015 Order set forth negotiated terms and conditions that Platinum Plus expressly agreed to honor (*i.e.*, not violate) if allowed to re-open. The 2015 Order also expressly incorporated and reaffirmed the terms and conditions of a prior Consent Order between the parties from 2002 ("2002 Order"). (*See* 2015 Order, p. 5 ("The terms of the [2002] Order are likewise incorporated by reference into and reaffirmed by this Consent Order thereby mandating full compliance with the same under this Consent Order as well.")). Platinum Plus also executed the 2002 Order by consent, and that action involved substantially the same issues as those presently before the Court. The 2002 Order, as did the 2015 Order, clearly defined what could or

²The 2015 Order reflects all signatories "had the benefit of the advice of counsel and knowingly and voluntarily agree[d] to be bound by the terms of [the 2015 Order]." (*Id.* at 9, ¶A.)

could not occur at the Subject Property and established defined affirmative duties and obligations Platinum Plus agreed to undertake.

For example, in the 2002 Order (and again by incorporation into the 2015 Order), Platinum Plus agreed not to allow any person at the Subject Property to: appear in a "state of nudity,"³ engage in specified sexual activities,⁴ or expose certain anatomical areas.⁵ (2002 Order at 2-3.) The 2002 Order's terms define, at length, what conduct is prohibited and even include examples of minimum compliance.⁶ Accordingly, the Court finds the negotiated terms of both the 2015 Order and the incorporated 2002 Order were sufficiently clear, subject to the below as relates to Gaines individually, to allow Defendants to understand with reasonable certainty what could and could not be done and what obligations Platinum Plus undertook as conditions precedent to its resuming business operations at the Subject Property.

Platinum Plus's Willful Violations of the 2015 Order

After carefully reviewing and considering all of the evidence of record, the Court finds that Platinum Plus had actual knowledge of terms and conditions of both Orders and the Solicitor has proved Platinum Plus willfully violated the 2015 Order beyond a reasonable doubt.

³The 2002 Order defined state of nudity as: "A female breast...shown with anything less than a complete opaque covering of the entire areola;" "A human buttock...exposed with anything less than a complete opaque covering of the genitals and anus and a complete opaque covering over the buttocks with a minimum width of two (2) or more inches at the sacrum;" and the exposure of "male or female genitals...with anything less than a completely opaque covering." (2002 Order at 2-3.)

⁴Prohibited sexual acts included: "the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;" "Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;" "Masturbation, actual or simulated." (*Id.* at 3; GCO §2.5-72.)

⁵"Specified anatomical areas" include "[m]ale genitals in the state of sexual arousal or the vulva or more intimate parts of the female genitals." (*Id.*)

⁶ Moreover, such prohibitions have been binding on Platinum Plus for over fourteen years, and twice knowingly and voluntarily agreed upon following advice from counsel.

Evidence illustrative of the Court's finding in this regard includes but is not limited to the following:

- Evidence overwhelmingly established Platinum Plus willfully and repeatedly violated the 2015 Order within only seven (7) days of re-opening. (Hr'g Tr. 31: 18-24, pp. 32-39.)
- Evidence established the Solicitor furnished notice to Platinum Plus of its non-compliance with the 2015 Order in January and February of 2016. (Verif. Petit., Ex. E.)
- Evidence established serial and persistent violations continued to occur even after the Solicitor furnished notice to Platinum Plus of its non-compliance. (See Hr'g Tr. 59:18-23, 64-65, 68, 72-75, 77, 84, 96, 97.)
- Evidence established serial and patent violations of the 2015 Order, which in and of itself, confirmed Platinum Plus's willful non-compliance. Evidence established at least thirteen (13) separate violations of the "state of nudity" prohibition incorporated into the 2015 Order from the 2002 Order. (See, e.g. Hr'g Tr. at 32, 37, 64, 65, 72, 73, 74, 77, 97.) And, evidence established at least fifteen (15) separate violations of the "specified sexual activities" prohibition incorporated into the 2015 Order from the 2002 Order. (See Hr'g Tr. at 32, 34, 35, 36, 64, 65, 68, 72, 73, 74, 77, 84, 96.)⁷
- Evidence established Platinum Plus's management and employees turned an institutional blind eye to violative conduct that occurred in their presence. (See, e.g., Hr'g Tr. at 35-36, 72-75, 96-97.)
- Evidence established Platinum Plus allowed dancers to wear patently violative clothing without taking corrective measures. (See Hr'g Tr. at 63-64, 72, 74, 77.)
- Evidence established that as late as March of 2016 Platinum Plus did not inform prospective dancers of what clothing and conduct proved off-limits under the Court Order. (See Hr'g Tr. at 108:23-24, 114:4-18.)
- Evidence established Platinum Plus continued to supply prospective dancers with an Entertainment Agreement, the terms of which failed to comply with the 2015 Order. (See State Ex. 7; Hr'g Tr. at 106-107.)
- Evidence established Platinum Plus violated Paragraph V(A)(4) of the 2015 Order by failing to provide the Solicitor video footage as requested. (See Hr'g Tr. at 40:17-41:18.)

⁷ Of note, these numbers largely reflect only what the two Independent Monitors observed on the three (3) randomly chosen nights when the State audited Platinum Plus's compliance efforts. The Order of May 6, 2015 also noted a myriad of violations.

- Evidence established the video cameras installed by Platinum Plus did not capture reviewable video footage in "all places where Dancers" interacted with customers as required by Paragraph V(A) of the 2015 Order. (*See* Hr'g Tr. at 26, 37-38; Verif. Petit., Ex. E at 1.)
- Video footage from Platinum Plus's surveillance cameras that was presented in Court during the hearing on June 14, 2016, clearly established the blatant and repeated violations of the Consent Orders (independent of the Monitors testimony) and substantially corroborated the testimony given by the State's witnesses. (*See* State Ex. 1-4.)⁸

The Court finds Platinum Plus (Elephant, Inc.) is, therefore, found in criminal contempt of the 2015 Order. The evidence overwhelmingly established Platinum Plus clearly, repeatedly, willfully and beyond a reasonable doubt violated the 2015 Order. *See State v. Passmore*, 611 S.E.2d 273, 275 (Ct. App. 2005) (Willful disobedience determined through "subjective, not objective" evaluation of "all the acts, words, and circumstances surrounding" Defendants' disobedience.)⁹ Alternatively, the Court also finds the evidence clearly and convincingly established Platinum Plus as being in civil contempt based upon clear and repeated violation of the Orders.

⁸The Court's citation to the Record in this Order is intended as merely illustrative, not exhaustive. Ample evidence supports the Court's conclusions throughout the decision beyond what is cited. Defendants have also raised a wide array of legal arguments in this case. After careful review and consideration, the Court addresses those it deems material herein. To the extent an argument has not been deemed worthy of discussion by the Court, it should be deemed as having been fully reviewed and rejected by the Court as without legal basis under the facts of the case *sub judice*.

⁹ Defendants assert Platinum Plus's dancers constitute independent contractors, over which they have no duty or control. The Court finds it need not reach such issues. Under the 2015 Order, Platinum Plus, in fact, assumed, and the Court correspondingly imposed, a positive obligation to ensure the dancers' compliance with the Order's terms while present at the Subject Property. As noted above, the evidence of record established willful violations of the 2015 Order's terms and conditions. However, if the dancers' status somehow mattered, the Court finds recent authority addressing the issue belies Defendants' attempted classification of the dancers as independent contractors. *See, e.g., Lewis v. L.B. Dynasty*, 411 S.C. 637, 639-640 (2015); *McFeeley v. Jackson St. Entm't, LLC*, 2016 U.S. App. LEXIS 10352 (4th Cir. 2016). This is particularly true where, as here, Platinum Plus voluntarily assumed the obligation to oversee and control both the dancers' manner of dress and conduct.

In regards to the finding of civil contempt, Defendants argue that the Solicitor alleged and proceeded solely on the basis of criminal contempt and that the defense was premised on this. However, in light of the Consent Orders, the pleadings and the evidence submitted at the hearing, the Court finds that the Solicitor has sufficiently alleged and proven a basis for either criminal and/or civil contempt.

Notwithstanding the above, as to Gaines, the Court finds the level and manner of his obligations and duties under the Consent Orders, as well as any determination of guilt or violation, less clear. The Court acknowledges Paragraph IX(A) of the 2015 Order states: "All undersigned signatories have had the benefit of the advice of counsel and knowingly and voluntarily agree to be bound by the terms of this Consent Order." (2015 Order, p. 8, ¶IX(A).) Gaines also signed the Consent Order individually and in his capacity as "sole shareholder and Chief Executive Officer" of Elephant, Inc. (*Id.* at 11 & 12.) And Paragraphs I, II, III, IV, and V of the 2015 Order all apply equally to both "EI and Gaines." (2015 Order.) The Court is likewise reluctant to excuse a party's voluntary failure to perform obligations imposed by a court order.

Even in light of this, the Court questions whether the Orders established in sufficiently definite terms the duties and obligations Gaines was personally undertaking or that the evidence establishes Gaines personally willfully violated the Consent Order beyond either a reasonable doubt or clear and convincing standard.¹⁰ As such, the Court declines to sanction Gaines for contempt of court. However, going forward, the Court hereby provides Gaines with clear and unequivocal notice that, as Elephant, Inc.'s sole shareholder and Chief Executive Officer, as a named tenant of the Subject Property, and as a signatory to the Consent Order in dual capacity,

¹⁰ One may not be held in contempt for violating a court order which fails to tell him in definite terms what he must do or not do. See, *Spartanburg Buddhist Center of SC v. Ork*, Op. #5427, SC Ct App. filed 7/13/2016.

the Court concludes he does possess an affirmative duty to ensure Platinum Plus adheres to 2015 Order's terms and conditions. Such affirmative duty requires Gaines to avail himself of and learn all such facts as are necessary to ensure Platinum Plus's compliance with the Order. Moving forward, Gaines may not assert ignorance of such facts to avoid the responsibilities undertaken under the 2015 Order. Having now been expressly afforded such notice, further violations of the 2015 Order by Platinum Plus may likely result in Gaines personally being subject to contempt of court sanctions.

Defendants' Objections

Defendants raised a series of arguments disputing the validity of the instant contempt proceedings. Before imposing contempt sanctions in this matter, the Court will endeavor to address Defendants' arguments.

Although Defendants question the undersigned's jurisdiction to hear the instant proceedings, the Court finds jurisdiction exists. (Hr'g Tr. at 10.) A standing order of the South Carolina Supreme Court confirms the Court's jurisdiction to hear the matter at bar. (*See* Court Ex. 1; *see also* S.C. Code §14-11-130.) Moreover, and independent of the standing order, the presiding administrative judge issued an Order referring the current proceedings to the undersigned. (*See* Order dated April 29, 2016.) And last, the Parties consented to the Court's continued personal and subject matter jurisdiction to enforce the 2015 Order's terms and conditions. (*See e.g.*, 2015 Order, p. 8, ¶IX(B), (D), and (E).) The Court, therefore, has jurisdiction.

Next, despite their arguments to the contrary, the Court finds Defendants had adequate time to retain new counsel and prepare for the June 14th, 2016 contempt hearing ("Contempt Hearing"). During a May 6, 2016 conference call with the Court, Defendants then counsel requested a continuance of the upcoming May 18, 2016 hearing that had been set by the

presiding administrative judge, citing a likelihood Defendants may retain new counsel. Over the Solicitor's objection, the Court postponed the hearing until June 14, 2016 but expressly stated no further continuances would follow. (Hr'g Tr. at 5:22-6:2.) Accordingly, the Court finds Defendants had sufficient time to hire counsel and prepare.¹¹

According to Defendants' next assertion, the Solicitor violated their Due Process and Sixth Amendment rights by serving "a person he knew was not acting as defendants' counsel." (Def. Closing, p. 5.) But, contrary to Defendants' argument, Attorney Randall Hiller ("Hiller"), one of Defendants' then lawyers of record, personally accepted service of: the Petition, the verification, the Order to Show Cause, and a subpoena for Gaines. (*See* Solicitor Closing, Ex. B.)¹² In so doing, Hiller acknowledged in writing his acceptance of service on behalf of both EI and Gaines and certified his authority to do so. (*Compare Id. with* Rule 4(j), SCRCP.)¹³ Accordingly, the Court rejects Defendants' service of process arguments.

Defendants further suggest the Solicitor violated their Sixth Amendment rights by subpoenaing Hiller as a potential witness during the June 14th hearing. Defendants claim Hiller's receipt of a subpoena left them "with time so short" and ensured "Defendants could not consult with him." (Def. Closing, p. 6.) As per their reasoning, the short timetable, in turn, deprived

¹¹ Notably, Defendants failed to submit any evidence demonstrating good and sufficient cause existed to warrant a continuance and justify a further delay. (*See also infra.*)

¹² In making the instant argument, Defendants appear to misquote the Solicitor. The record reflects the Solicitor stated: "Mr. Hiller made it very clear at the outset that he was not an attorney of record on this particular aspect of the case." (Hr'g Tr. at 14:21-24.)

¹³ At the time of Hiller's acceptance of service, the Solicitor had communicated with Hiller, as counsel for Defendants, for over a year. Hiller had not moved to withdraw as counsel of record. And, pursuant to the 2015 Consent Order, Defendants stipulated to the Court's personal jurisdiction over them; Defendants also clearly received notice of the Verified Petition. (*See* Hr'g Tr. at 5; 2015 Order, p. 8, ¶IX(B), (D), & (E).) Furthermore, Defendants submitted no evidence suggesting Hiller lacked the authority to accept service.

Defendants of their true choice of counsel, who lacked adequate time to gain *pro hac* admission. (See Hr'g Tr. at 8.)

The Court rejects all of Defendants' arguments in this regard. As noted, as of May 6, 2016 (*i.e.*, before Hiller received the subpoena), Defendants argued they needed a continuance because they would likely hire new counsel of record (*i.e.*, to replace Hiller) "on this particular aspect of the case." (*Id.* at 14:21-15:1-12.) The Court granted Defendants the requested continuance based upon their representations. (*Id.*) Thus, Defendants' claims they were caught short on time proves inconsistent with their own, prior representations to the Court.¹⁴

Contrary to Defendants' suggestions, the Court also finds Rule 3.7, RPC, Rule 407, SCACR ("Rule 3.7") would not have impaired Hiller's ability to help Defendants prepare for the Contempt Hearing, as it only restricts a lawyer's ability to advocate in court proceedings where he also may testify. *See S.C. Bar Ethics Adv. Op.* #90-27. In addition, Defendants could have, but did not, file a motion to quash Hiller's subpoena.¹⁵

In an interrelated argument, Defendants claim the Court deprived them of counsel of their choosing by requiring adherence to the South Carolina Supreme Court's *pro hac vice* requirements. (*See* Rule 405, SCACR.) To the contrary, a trial court does not abridge Sixth Amendment protections by requiring litigants to abide by state *pro hac* mandates. *See, e.g., United States v. Menner*, 374 F.App'x. 446, 447 (4th Cir. 2010) (unpublished), *cert denied*, 131

¹⁴ The Court notes the factual inconsistencies underpinning Defendants' arguments. On one hand, Defendants assert Hiller could not accept service as of May 14, 2016 because he was not their attorney. On the other hand, Defendants assert they were caught short preparing for the hearing because Hiller, their attorney, received a subpoena just prior to the hearing causing them to scramble for new counsel.

¹⁵ Nor did the Parties ask the Court to determine whether, under the facts and circumstances presented, Rule 3.7 even disqualified Hiller.

S.Ct. 191, 178 L.Ed.2d 114 (2010). If, as here, Defendants wish to proceed with out-of-state counsel, they must complete the requisite steps to secure the privilege (not right) of such counsel's lawful appearance. This is particularly true where, as here, the Court previously granted Defendants additional (and ample) time to retain new counsel and forewarned it would grant no further continuances. (Hr'g Tr. at 5:22-6:2.) .

A defendant's right to counsel "is only a qualified one" and "the opportunity guaranteed is only a 'fair' one." *Sampley v. Attorney General of North Carolina*, 786 F.2d 610, 612-16 (4th Cir. 1986). "[A] defendant has no constitutional right to dictate the time" of his trial by "showing up" and objecting that his "then retained" counsel is not "counsel of his choice." *Id.* (internal citation omitted). Under the facts at bar, then, the Court finds Defendants had a "fair" opportunity to retain counsel of their choosing.¹⁶

Also without merit, Defendants next contend the Solicitor violated their Fifth Amendment rights against self-incrimination by arguing they should be found guilty because they did not testify. (Def. Reply pp. 4, 6, 8-10.) The Court finds that the Solicitor did not make such an argument. Indeed, the passage Defendants rely upon does not even mention their failure to testify but instead points out Defendants "offered no proof--of anything." (Solicitor's Closing, p. 9.)¹⁷ Statements concerning a defendant's failure to introduce any evidence do not implicate

¹⁶ Furthermore, no evidence of record substantiated good cause to support a continuance. No evidence demonstrated why Defendants could not retain counsel during the time granted by the Court—or—that they did not actually do so. No evidence demonstrated the actual engagement date of counsel or when Defendants first contacted counsel. No evidence showed how Defendants incurred prejudice of any kind. No evidence reflected how Defendants did not receive a "fair" opportunity to retain counsel of their choosing.

¹⁷ The Solicitor's Closing made the following statement: "Once the Solicitor made out a *prima facie* case for contempt, the burden shifted to Defendants to establish their defense or inability to comply with the Order. But, here, Defendants did neither. They offered no proof—of anything. They advanced no defense. Nor did they claim they could not comply." (Solicitor's Closing, p. 9.) Moreover, under South Carolina law, the Solicitor's Closing correctly stated the burden

the Fifth Amendment. *See, e.g., Newell v. Slayton*, 468 F.2d 888, 1972 U.S. App. LEXIS 7284 (4th Cir. Va. 1972).¹⁸ Moreover, the Court heard the instant matter as a non-jury proceeding. Thus, here, the risk of jury confusion does not exist, since the Court can discern, and has adequately discerned, the difference between Defendants not testifying and their failure to offer any evidence by way of a defense.

The Court likewise finds no Due Process violations arose out of the Solicitor's redaction of the affiant's names in the affidavits supporting the Verified Petition.¹⁹ The Solicitor redacted the affiants' names before filing their affidavits in the public record because they also worked as undercover narcotics agents. (Hr'g Tr. at 58:14-15 & 86:3-8.) However, in the Verified Petition, the Solicitor offered to provide the affiants' names to Defendants if deemed necessary to the proceedings. (Hr'g Tr. at 12-13.)

The Solicitor's redactions did not violate Defendants' Due Process rights. South Carolina law allows the Solicitor to protect the names of confidential informants. *See State v. Humphries*, 354 S.C. 87, 90 (2003). The testimony of the affiants at the hearing tracked their affidavits and defense counsel vigorously cross-examined both at length. Additionally, in the five weeks prior to the hearing, Defendants never asked the Solicitor for the affiants' names, nor did they file a

shifted to Defendants once the petitioner established a *prima facie* case of contempt. *Widman v. Widman*, 557 S.E.2d 693, 705 (Ct. App. 2001); *Henderson v. Henderson*, 298 S.C. 190, 379 S.E.2d 125, 1989 S.C. LEXIS 79 (1989).

¹⁸ *See also United States v. Spriggs*, 452 Fed.Appx. 271, 272-73, 2011 WL 5252647 (4th Cir. 2011); *United States v. Jenkins*, 544 F.2d 180, 180-81 (4th Cir. 1976); *United States v. Jones*, 471 F.3d 535 (4th Cir. 2006); *United States v. Pena*, 2000 U.S. App. LEXIS 8244 (4th Cir. Va. Apr. 27, 2000); *United States v. Francis*, 82 F.3d 77, 78 (4th Cir. 1996); *United States v. Percy*, 765 F.2d 1199, 1204-05 (4th Cir. 1985).

¹⁹ Contrary to Defendants' arguments, *see* Hr'g Tr. at 11, the Court finds the Solicitor did verify the Petition. A copy of the verification exists in the Court's record and the acceptance of service document executed by the Defendants' attorney confirms their receipt of the same. (*See* Solicitor Closing, Ex. B.) An additional copy was supplied to defense counsel during the hearing. (*See* Hr'g Tr. at 12.)

motion seeking the same. Such a request is required under the common law of South Carolina before Defendants can raise it in a proceeding. *State v. Batson*, 261 S.C. 128, 136 (1973). Last, no evidence of record substantiates any prejudice resulted from Defendants' knowing the substance of affiants' testimony in advance but not their names.

The Court similarly rejects Defendants' claimed entitlement to a jury trial, which they assert as constitutionally guaranteed because Gaines faced incarceration of more than six months. (Def. Closing, pp. 1-2.) As indicated herein, the Court has not imposed incarceration as a penalty. Nor did the Solicitor seek incarceration exceeding six months. (Hr'g Tr. at 16:15-17:7; Solicitor's Closing, p. 40.) Accordingly, the Court finds the instant proceedings do not implicate Defendants' jury trial rights due to incarceration exceeding six months as Defendants contend. *See Curlee v. Howle*, 277 S.C. 377, 385, 287 S.E.2d 915, 919 (1982).²⁰

Defendants appear to characterize the 2015 Order as merely a "civil settlement agreement," for which the Court's contempt powers only half-operate. (*See, e.g.*, Def. Closing, pp. 3 & 14.) However, the Solicitor and Defendants did not execute a mere civil settlement agreement. The Parties negotiated and executed a consent order stating "willful violations" of its "terms and conditions...shall be punishable as contempt of Court." (2015 Order, p. 8, §§VIII & IX(A).) The 2015 Order is a valid and binding judgment²¹ of this Court and supported by its full contempt powers to ensure compliance. *See, e.g., Checker Yellow Cab Co. v. Checker Cab &*

²⁰ *See also Frank v. United States*, 395 U.S. 147, 150 (1969); *Int'l Union v. Bagwell*, 512 U.S. 821, 827 (1994).

²¹ *See also Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 440, 124 S. Ct. 899, 157 L. Ed. 2d 855 (2004); *Local No. 93, Int'l. Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 519, 106 S. Ct. 3063, 92 L. Ed. 2d 405 (1986); *Smyth v. Rivero*, 282 F.3d 268, 276 (4th Cir. 2002); *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983); *United States v. Kellum*, 523 F.2d 1284, 1287 (5th Cir. 1975); 46 Am.Jur.2d §186.

Parcel Service, Inc., 287 S.C. 608, 610 (Ct. App. 1986); *Rawcliffe Resorts, Inc. v. Matt Becker & Assocs.*, 2016 S.C. App. Unpub. LEXIS 122 (Ct. App. 2016).

Finally, Defendants' arguments under the 2015 Order lack merit. For example, Defendants complain they were entitled to notice of their violations and an accompanying right to cure the same.²² (Def. Reply, p. 11.) The Court rejects this argument. The 2015 Order only entitled Defendants to copies of the Independent Monitor reports detailing "instances of non-compliance." (2015 Order, p. 6, ¶V(B)(2).) The Order does not otherwise require notification of any kind. By way of defense, Defendants offered no evidence that the Solicitor failed to supply the Monitors' reports. Even so, the Court specifically inquired and the Solicitor confirmed the reports were, in fact, provided, which otherwise proves consistent with the evidence of record.²³ (Hr'g Tr. at 88:5-15.)

Nowhere does the 2015 Order's terms confer upon Defendants a right to cure. Of note, the 2015 Order substantially incorporates state law, local ordinance, and a 2002 Order of this Court. The Solicitor did not, and could not, grant Defendants the ability to violate but then cure their violations of state law, local ordinances, and a Court Order. The Court rejects Defendants' arguments in this regard.

Sanctions for Contempt

For the reasons set forth above, the Court imposes the following:

A. Criminal Contempt Sanctions:

²² Defendants also complain about how the Independent Monitors investigated Defendants' non-compliance when the 2015 Order imposes no such limitations.

²³ The Court does not mean to suggest the Solicitor shouldered a burden to prove the State's compliance with the Order. If Defendants wished to raise such issues as a defense, they had the opportunity to present such evidence but elected not to do so.

1. **Monetary Sanction.** As a sanction for Platinum Plus's criminal contempt, the Court imposes a one hundred thousand dollar (\$100,000.00) sanction against Platinum Plus.
 - a. In imposing this sanction, the Court is cognizant that in the 2015 Order, the parties agreed to Defendants making monetary payments in an aggregate sum of sixty-six thousand dollars (\$66,000.00). A portion was paid to the Solicitors' Office for attorney fees and costs and a portion was to be paid to a local non-profit organization.
 - b. Despite the imposition of such voluntary payments, the evidence of record demonstrated Platinum Plus resumed blatant and repeated conduct at the Subject Property in clear and repeated violation of the 2015 Order within only one week of re-opening. As a result, the Court finds an enhancement of what Platinum Plus should be sanctioned under this Order is appropriate to uphold the integrity of the Court's Order and to promote proper deterrence against a repeat in such conduct in the future.²⁴
 - c. In the present contempt action, the Solicitor does not seek attorney fees or costs. As such, the Court finds that the monetary sanction should inure to the benefit of the citizens of Greenville County since the Nuisance Statute this action is founded upon ultimately inures to the benefit of the public. Therefore, the Court finds that Platinum Plus shall pay the one hundred thousand dollars (\$100,000.00) in certified funds to the Clerk of Court within 30 days of this Order and that the monies shall be used by the Greenville County Sheriff's Office (the only local law enforcement agency with county-wide jurisdiction) in procuring body cameras for its uniform patrol officers. This will provide a benefit to the citizens of Greenville County, while also protecting our committed and dedicated law enforcement officers.
2. **Injunction Against Business Operations.** As a further sanction for Platinum Plus's criminal contempt, the Court enjoins Platinum Plus, as operated by Elephant, Inc., from continuing its business operations for a period of one-hundred and eighty (180) consecutive days ("Injunction Period"). This is the closure period sought by the State.
 - a. Platinum Plus, by and through Elephant, Inc., shall have fourteen (14) days following the issuance of this Order and its receipt by defense counsel to wind-down ("Wind-down Period") and cease Platinum Plus's operations, as operated by Elephant, Inc., at 805 Frontage Road in Greenville, South Carolina 29615 ("Subject Property").
 - b. Absent further Court Order, Platinum Plus shall remain closed and shall not resume operations at the Subject Property or any other location during the Injunction Period.

²⁴ Pursuant to an affidavit by Gaines dated 4/24/15, Platinum Plus served over 100,000 patrons annually, employed 53 full-time employees and, in 2014, "purchased more than \$3,000,000.00 in goods and services from the local economy." Clearly, Platinum Plus generates substantial sums of revenue and has the ability to pay the sanction.

- c. By five p.m. on the day after the Wind-Down Period expires ("Closure Date"), the Greenville County Sheriff's Office ("GCSO") shall post a laminated notice (size to be 11 x 14 inches) on all exterior doors of the Subject Property in substantially the same form as Attachment A.
 - d. By five p.m. on the Closure Date, GCSO shall take reasonable measures to secure all exterior doors of the Subject Property and limit ingress and egress to the Subject Property's parking lot. Beginning at nine a.m. on the Closure Date, Platinum Plus shall provide GCSO access to the Subject Property to commence implementing the directives of this Order.
 - e. Beginning on the Closure Date and continuing for the duration of the Injunction Period, no individual (except for routine/emergency maintenance) shall gain access to the Subject Property without written approval of the Solicitor's Office or written permission of the Court outlining the terms and conditions of the same.
 - f. Individuals found guilty of violating this Order shall be subject to the Court's contempt powers and subject to monetary fines, imprisonment, or both.
3. **Extension of Mandatory Monitoring.** As a sanction for Platinum Plus's criminal contempt, the Court extends the mandatory enhanced monitoring provisions set forth in the 2015 Order ("Extended Monitoring Period").
- a. After expiration of the Injunction Period, the Extended Monitoring Period shall commence upon the date when Platinum Plus re-opens to the public, if in fact it does, and shall continue for a period of twelve (12) months.
 - b. The terms and conditions applicable to the Extended Monitoring Period shall be the same as those set forth in Paragraph V(A) & (B) on pages 6 & 7 of the 2015 Order.
 - c. At least 30 days prior to any planned re-opening by Platinum Plus, and consistent with Paragraph V(B)(3), Platinum Plus shall pay the sum of six thousand five hundred (\$6500.00) into an escrow account designated by the GCSO to pay all costs and fees arising out of the work done by the Independent Monitors during this Extended Monitoring Period. The Court finds this to be an appropriate amount in that this is the same amount and term the parties agreed to in the 2015 Order.

B. Civil Contempt Sanctions:

- 1. The Court incorporates herein by reference Paragraph 2 (Injunction Against Business Operations) and Paragraph 3 (Extension of Enhanced Monitoring), above.

2. The Court alternatively re-imposes the sanctions set forth in Paragraphs 2 & 3 *verbatim* as appropriate sanctions for Platinum Plus's civil contempt.

a. In light of the fact that the State is a party to this action, the Court finds such sanctions serve the remedial purpose of delivering to the Solicitor the benefits contemplated by the 2015 Order, namely, upholding the integrity of this Court's Order, the abatement of the public nuisance at the Subject Property and compliance with state law, local ordinance, and prior order of this Court.

b. Platinum Plus's non-compliance with the 2015 Order deprived the State of such benefits.

c. The Court finds imposition of such sanctions, in this case, restores to the State, in remedial fashion, the agreed upon reciprocal benefits set forth in the 2015 Order, which Defendants failed to deliver and/or comply with.

C. Notice to Defendants Concerning Future Violations:

1. The Court provides notice to both Defendants that any future willful violations of the 2015 Order or interrelated Orders shall result in additional sanctions for contempt.

2. Such sanctions may include additional monetary sanctions, imprisonment, and a substantial likelihood that Platinum Plus will be permanently shut-down.

IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

ATTACHMENT A

PURSUANT TO COURT ORDER, THIS BUSINESS IS CLOSED UNTIL FURTHER ORDER. SEE, 2015-23-02597.

VIOLATION OF THIS ORDER MAY RESULT IN CONTEMPT OF COURT, INCLUDING MONETARY FINES, JAIL, OR BOTH.

A COPY OF THE COURT ORDER MAY BE OBTAINED FROM THE GREENVILLE COUNTY CLERK OF COURT, 305 EAST NORTH STREET GREENVILLE, SC 29601.



Greenville Common Pleas

Case Caption: South Carolina State Of vs. Elephant Inc , defendant, et al
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Type: Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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