

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
The Honorable Maite Murphy

Appellate Case No. 2016-001312

Lindsey Stewart, Personal Representative of the Estate of Shaun Robert Moore,..... Appellant,

v.

Green Apple, LLC, doing business as Applebee's, John/Jane Doe, Manager, and Stabler L.
Inabinet,.....Defendants.

Of Whom Green Apple, LLC, d/b/a Applebee's is the..... Respondent.

RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Maite Murphy

Case No. 2014-CP-38-003-2

Lindsey Stewart, Personal Representative of the Estate of Shaun Robert Moore, ... Appellant.

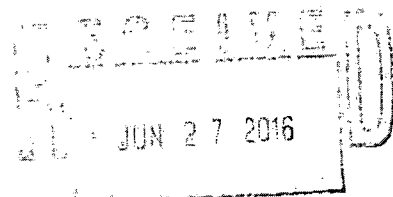
Green Apple, LLC, d/b/a Applebee's, John Jane Doe, Manager, and Stahler L. Inabini, ... Defendants.

Of Whom Green Apple, LLC, d/b/a Applebee's is the Respondent.

NOTICE OF APPEAL

Lindsey Stewart, Personal Representative of the Estate of Shaun Robert Moore, ("Appellant") appeals the Order of the Honorable Maite Murphy, dated August 3, 2015, and filed August 14, 2015, granting Green Apple, LLC, d/b/a Applebee's ("Respondent") motion for summary judgment, and the Order dated May 3, 2016, denying Appellant's Rule 59(e), SCRCP, Motion to Reconsider, Alter, or Amend. On May 18, 2016, Appellant received written notice of the signed Order denying the Rule 59(e), SCRCP, motion. This Notice is timely filed. A copy of the Orders appealed from are attached to this Notice.

[Signature block appears on the following page.]



BY: [Signature] JLS

Date:

June 13, 2012

BARNES LAW FIRM, LLC

By:

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Attorney for Respondent

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RECEIVED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

JUN 15 2016

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Maite Murphy

Case No. 2014-CP-38-00000

Lindsey Stewart, Personal Representative of the Estate of Shaun Robert Moore, Appellant,

Green Apple, LLC, d/b/a Applebee's, John Jane Doe, Manager, and Stabler L. Rubiner, Defendants,

Of Which Green Apple, LLC, d/b/a Applebee's is the Respondent.

NOTICE OF APPEAL

Lindsey Stewart, Personal Representative of the Estate of Shaun Robert Moore, Appellant, appeals the Order of the Honorable Maite Murphy dated August 3, 2015, and filed August 14, 2015, granting Green Apple, LLC, d/b/a Applebee's ("Respondent") motion for summary judgment, and the Order dated May 3, 2016, denying Appellant's Rule 59(e), SCRCP, Motion to Reconsider, Alter, or Amend. On May 18, 2016, Appellant received written notice of the signed Order denying the Rule 59(e), SCRCP, motion. This Notice is timely filed. A copy of the Orders appealed from are attached to this Notice.

[Signature block appears on the following page.]

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Date:

June 13, 2016

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Attorney for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative of
the Estate of Shaun Robert Moore,

Plaintiff,

v.

Green Apple, LLC, d/b/a Applebee's;
John/Jane Doe, and Stabler L. Inabinet,

Defendants.

IN THE COURT OF COMMON PLEAS

CASES NOS.:

2014-CP-38-00802
2014-CP-38-00803

2015 AUG 14

FILED
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

ORDER GRANTING
SUMMARY JUDGMENT TO
DEFENDANT GREEN APPLE,
LLC, D/B/A APPLEBEE'S

Defendant Green Apple, LLC, d/b/a Applebee's (hereinafter referred to as "Green Apple") moved for an order granting summary judgment to Green Apple pursuant to Rule 56 of the South Carolina Rules of Civil Procedure in the above-captioned litigation.

The Motion was heard in open court on May 15, 2015. Shane M. Burroughs of Lanier & Burroughs, LLC appeared on behalf of Plaintiff. Drew Hamilton Butler of Richardson, Plowden & Robinson, P.A. appeared on behalf of Green Apple. The Court had before it the pleadings and motions filed in the above-captioned litigation, including Green Apple's Motion for Summary Judgment, the accompanying Memorandum of Law in Support, and the Affidavit of Sandra Johnson.

Based upon this Court's review of the documents filed in this litigation and the testimony and other evidence presented at the hearing, the Court hereby grants Green Apple's Motion for Summary Judgment for the reasons set forth herein.

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

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I. FACTUAL FINDINGS AND PROCEDURAL HISTORY

Plaintiff, as the personal representative of the Estate of Shaun Robert Moore, filed a wrongful death and survival action against Green Apple. See Amended Complaints (2014-CP-38-802 [Wrongful Death]) and (2014-CP-38-803 [Survival Action]).

In her complaints against Green Apple, Plaintiff alleges that Moore was an employee of Green Apple d/b/a Applebee's. On October 18, 2012, Moore was terminated by the manager of Green Apple after allegedly consuming alcohol while working. Plaintiff asserts that Moore was forced to leave the premises even though Green Apple allegedly knew that Moore was "grossly intoxicated, did not have transportation and lived in St. Matthews, South Carolina, approximately 15 miles away from [Green Apple] and had no other way to get home, but to walk." Moore, while attempting to cross US-21 as a pedestrian, was struck and killed by Defendant Stabler L. Inabinet who was operating his motor vehicle and traveling north on US-21. See Amended Complaints, ¶¶ 6-9.

Plaintiff has alleged that Green Apple was negligent and grossly negligent in the following particulars:

1. In failing to maintain proper policies and procedures for intoxicated persons on [Green Apple's] premises as it relates to providing transportation to said persons;
2. In failing to operate a licensed drinking establishment in a proper manner and consistent with South Carolina laws;
3. In failing to call a cab for [Moore] even though [the manager] knew or should have known that he was grossly intoxicated and had to walk approximately fifteen (15) miles to get home; [and]
4. In forcibly removing an intoxicated person from Defendant Green Apple's premises without providing transportation.

Amended Complaints, ¶¶ 10-11.

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II. LAW AND ANALYSIS

Plaintiff's claims against Green Apple arise out of the alleged intoxication of Moore while on Green Apple's premises and Green Apple's alleged failure to protect Moore from his voluntary intoxication by preventing Moore from leaving the premises or providing proper transportation to Moore. South Carolina, however, does not recognize a first party cause of action against a tavern owner for injuries sustained by the intoxicated person, and accordingly, Plaintiff's claims against Green Apple fail as a matter of law. Tobias v. Sports Club, Inc., 332 S.C. 90, 504 S.E.2d 318 (1998).

Certain South Carolina statutory provisions prohibit the knowing sale of alcoholic beverages to an intoxicated person. Id. at 92, 504 S.E.2d at 319. In Tobias, the South Carolina Supreme Court recognized that a private cause of action for a violation of these statutes against a tavern owner who continues to serve an intoxicated person who later injures a third party promotes public safety and prevents an already intoxicated person from becoming more intoxicated and a greater risk to the public at large when he leaves the establishment. Id.

The Supreme Court, however, rejected the contention that an additional public policy of South Carolina's alcohol control statutes was to protect the intoxicated person himself from his own incompetence and helplessness and held instead that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." Id. The Court concluded that while a third party could bring a negligence action against a tavern owner for injuries caused by an intoxicated person, the intoxicated adult could not bring such an action for his own injuries. Id. at 92-93, 504 S.E.2d at 319; see also Marcum v. Bowden, 372 S.C. 452, 458-59, 643 S.E.2d 85, 88 (2007) (observing a commercial host is only liable to third parties for injuries caused by an intoxicated person).

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In Lydia v. Horton, 355 S.C. 36, 42-43, 583 S.E.2d 750, 754 (2003), the South Carolina Supreme Court held that an intoxicated adult could not recover on a first party negligent entrustment cause of action. In Lydia, the plaintiff was intoxicated when the defendant allowed the plaintiff to borrow his car. The plaintiff drove the car in his intoxicated state and wrecked the vehicle in a single-car accident which left him with severe injuries. The plaintiff brought suit against the defendant alleging that the defendant knew or should have known that the plaintiff was not competent to operate the vehicle. In holding that the plaintiff could not recover against the defendant on a first party negligent entrustment claim, the Court reaffirmed the principle articulated in Tobias that a plaintiff, who was voluntarily intoxicated when an accident occurred, cannot attempt to deflect the responsibility that should be imposed upon himself towards another for injuries sustained by the plaintiff. Id.

Tobias and Lydia preclude Plaintiff's first-party negligence action against Green Apple. Here, Plaintiff, as the personal representative of Moore, alleges that Moore consumed alcohol while working, became grossly intoxicated, and was forced to leave the premises and walk home. Plaintiff seeks to impose liability upon Green Apple for Moore's own helplessness and incompetence caused by his voluntary intoxication. Under the reasoning set forth in the Supreme Court's precedents in Tobias and Lydia, there was no duty of Green Apple to protect Moore who was voluntarily intoxicated. Under these facts, Green Apple is entitled to judgment as a matter of law where South Carolina law precludes liability upon Green Apple for Moore's voluntary intoxication and his resulting death from that intoxication.

In addition, while it is clear that Plaintiff's first party cause of action against Green Apple is prohibited under South Carolina law, liability in South Carolina upon a tavern owner for injuries caused by an intoxicated person is premised on the knowing sale of alcoholic beverages

to an intoxicated person. "At common law in American courts, a tavern owner could not be held civilly liable for injuries caused by an over served, intoxicated patron." Lydia, 355 S.C. at 41, 583 S.E.2d at 753. South Carolina courts ultimately recognized a limited cause of action against a seller of alcohol for injuries caused to third parties by a purchaser of alcohol when the commercial host knowingly sold alcoholic beverages to an intoxicated person in violation of the criminal statutes forbidding the sale of alcohol to intoxicated persons. Marcum, 372 S.C. at 458-59, 643 S.E.2d at 88.

To state a claim of negligence against a defendant tavern owner, a plaintiff's cause of action therefore must be predicated upon a showing that the commercial host violated South Carolina's alcohol control statutes which prohibit the sale of alcoholic beverages to intoxicated persons. Id. at 459, 643 S.E.2d at 88; S.C. CODE ANN. § 61-4-580 ("No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit: ... (2) *sell* beer or wine to an intoxicated person....") (emphasis added); § 61-6-2220 ("A person or establishment licensed to sell alcoholic liquors or liquor by the drink pursuant to this article may not *sell* these beverages to persons in an intoxicated condition") (emphasis added).

Plaintiff has not alleged in her complaints that Green Apple sold any alcoholic beverage to Moore. The sale of alcoholic beverages in violation of South Carolina's alcohol control statutes is a crucial element of a claim arising out of injuries caused by an intoxicated person. Where Plaintiff has not shown that Green Apple violated the applicable criminal statutes, Plaintiff cannot establish that Green Apple owed any common law duty to Moore. See Hartfield v. Getaway Lounge & Grill, Inc., 388 S.C. 407, 415, 417, 697 S.E.2d 558, 562-63 (2010)

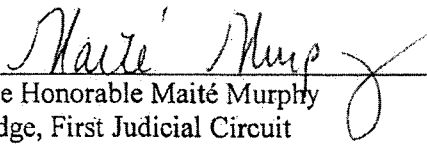
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(observing that because South Carolina does not have a Dram Shop Act, the civil remedy arises out of criminal statutes). The liability upon a commercial host to those injured by intoxicated persons flows from the host's violation of these alcohol control statutes, and without a violation of these applicable statutes, no duty of the host arises. Plaintiff, who does not allege that Green Apple sold any alcoholic beverages to Moore, has therefore failed to state a claim against Green Apple as a matter of law.

III. CONCLUSION

Plaintiff's allegations against Green Apple stem from Moore's voluntary intoxication and Green Apple's alleged failure to protect Moore from the consequences of his voluntary intoxication. Green Apple is entitled to judgment as a matter of law on these allegations because South Carolina does not recognize a first party cause of action against a commercial host for injuries sustained by the intoxicated person to his own person. Furthermore, any such liability only arises out of the host's violation of criminal statutes prohibiting the knowing sale of alcoholic beverages to an intoxicated person. Plaintiff makes no allegation in her complaints that Green Apple violated these statutes by selling alcoholic beverages to Moore. Where there is no allegation that Green Apple contributed to Moore's intoxicated condition by selling him alcoholic beverages, no duty was owed to Moore by Green Apple under South Carolina law.

THEREFORE IT IS ORDERED that the Motion for Summary Judgment filed by Green Apple be GRANTED for the reasons set forth herein.


The Honorable Maité Murphy
Judge, First Judicial Circuit

Aug 3, 2015.

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014- CP-38-0802

Lindsey Stewart, Personal Representative of the Estate of
Shaun Robert Moore

Green Apple, LLC, d/b/a Applebee's, John/Jane Done,
Manager, and Stabler L. Inabinet

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: Pursuant to this Court's authority under Rule 59 SCRC, the Defendant's Motion to Reconsider is dismissed without oral arguments and determined upon the briefs and other pleadings filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter. The Court's ruling in this matter is delayed due to the fact that the Court's copy of the motion was not received, although Counsel for Plaintiff provided documentation evidencing that the motion had been mailed.

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

Nate Murphy

2166

Judge Code

5/3/16

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-38-0803

Lindsey Stewart, Personal Representative of the Estate of
Shaun Robert Moore

Green Apple, LLC, d/b/a Applebee's, John/Jane Done,
Manager, and Stabler L. Inabinet

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: Pursuant to this Court's authority under Rule 59 SCRC, the Defendant's Motion to Reconsider is dismissed without oral arguments and determined upon the briefs and other pleadings filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter. The Court's ruling in this matter is delayed due to the fact that the Court's copy of the motion was not received, although Counsel for Plaintiff provided documentation evidencing that the motion had been mailed.

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

Circuit Court Judge

Judge Code

5/3/14
Date

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

CLERK OF COURT

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 ORANGEBURG)
)
Lindsey Stewart, Personal Representative)
of the Estate of Shaun Robert Moore)

Plaintiff,)

vs.)

Green Apple, LLC, doing business)
as Applebee's, John/Jane Doe, and)
Stabler L. Inabinet)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-38-00802

AMENDED COMPLAINT
(Jury Trial Demanded)
(Wrongful Death)

ATTEST: TRUE COPY

Wing E. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

The Plaintiff, Lindsey Stewart, as Personal Representative for the Estate of Shaun Robert Moore, complaining of the above named Defendants, would respectfully show unto this Honorable Court that:

PARTIES

1. That the Plaintiff is a citizen and resident of South Carolina and brings this action as the duly appointed Personal Representative of the Estate of Shaun Robert Moore pursuant to the S.C. Code Ann. 15-51-10, the Wrongful Death Act, and other applicable statutory and/or common law on behalf of the statutory beneficiaries.

2. The Defendant Green Apple, LLC (Green Apple) is, upon information and belief, a corporation with its principal place of business in the State of North Carolina. Green Apple owns property, conducts business, has agents for the transaction of business, and operates an establishment in Orangeburg County, South Carolina. Upon information and belief, Green Apple is a subsidiary of Applebee's.

3. Jane/John Doe, is upon information and belief, the Defendant, John/Jane Doe, is an unknown manager of Green Apple, who fired the decedent, Shaun Robert Moore (Moore) on October 18, 2012.

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4. That at all times relevant hereto, Jane/John Doe(s), was/were acting as an agent, servant, or employee of the Defendant Green Apple, and was acting within the course and scope of her/his service or employment so as to make the Defendants Green Apple liable for the acts or omissions of Jane Doe under the theory of *respondeat superior*.

5. That the Defendant, Stabler L. Inabinet (Inabinet) is, upon information and belief, a citizen and resident of the State of South Carolina.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

6. That on October 18, 2012, the decedent was an employee of Green Apple.

7. The decedent was fired by the manager, John/Jane Doe after consuming alcohol while working and was forced to leave the premises.

8. The defendant, John/Jane Doe knew that the Plaintiff/decedent was grossly intoxicated, did not have transportation and lived in St. Matthews, South Carolina, approximately 15 miles away from Green Apple and had no other way to get home, but to walk.

9. That on or about October 18, 2012, the decedent, while a pedestrian, in attempt to cross US-21 (Columbia Road) was struck by the Defendant Inabinet who was operating his motor vehicle and traveling North on US-21.

FOR A SECOND CAUSE OF ACTION
AS TO DEFENDANTS GREEN APPLE, LLC (GREEN APPLE) AND
JOHN/JANE DOE
(Negligence/Gross Negligence)

10. That Plaintiff reiterates the relevant allegations of the preceding paragraphs as fully as if repeated verbatim.

11. The Plaintiff is informed and believe that the Defendants were negligent, careless, reckless, wanton, and grossly negligent at the time and place herein above-mentioned in the

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following particulars:

- a) In failing to maintain proper policies and procedures for intoxicated persons on Defendant's premises as it relates to providing transportation to said persons;
- b) In failing to operate a licensed drinking establishment in a proper manner and consistent with South Carolina laws;
- c) In failing to call a cab for Decedent even though John/Jane Doe knew or should have known that he was grossly intoxicated and had to walk approximately fifteen (15) miles to get home;
- d) In forcibly removing an intoxicated person from the Defendant Green Apple's premises without providing transportation; and
- e) In such other and further particulars that the evidence in trial may show.

12. That as a direct and proximate result of the aforementioned negligence, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendant, the deceased Plaintiff's beneficiaries have suffered grief, sorrow, mental anguish, and all of the damages which accompany the loss of a loved one; the beneficiaries have suffered pecuniary loss, all to the Plaintiff's actual and punitive damages.

13. That by the foregoing reason, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of the Estate of the deceased Plaintiff, for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

FOR A FIRST CAUSE OF ACTION
AS TO DEFENDANT STABLER L. INABINET
(Negligence)

14. That Plaintiff reiterates the relevant allegations of the preceding paragraphs as fully as if repeated verbatim.

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15. That the aforementioned damage to the Plaintiff was a direct and proximate result of the Defendant Inabinet's negligent, careless, reckless, grossly negligent, wilful and wanton conduct at the time and place above mentioned in the following particulars to wit;

- a). In traveling too fast for conditions;
- b). In failing to maintain a proper lookout;
- c). In failing to apply his brakes, if any he had;
- d). In failing to take evasive action to avoid colliding with the decedent;
- e). In operating a motor vehicle while physically impaired or fatigued and in utter disregard for the safety of others on the highway, including the Plaintiff;
- f). In failing to exercise the degree of care that a reasonably prudent person would have exercised under the same or similar circumstances; and
- g). In such other and further particulars that the evidence in trial may show.

16. That as a direct and proximate result of the aforementioned negligence, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendant, the deceased Plaintiff's beneficiaries have suffered grief, sorrow, mental anguish, and all of the damages which accompany the loss of a loved one; the beneficiaries have suffered pecuniary loss, all to the Plaintiff's actual and punitive damages.

17. That by the foregoing reason, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of the Estate of the deceased Plaintiff, for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

All of which combined and concurred as a direct and proximate cause of the injuries and damages sustained by Plaintiff herein, said acts being in violation of the statutes and laws of the State of South Carolina.

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WHEREFORE, Plaintiffs respectfully pray for judgment against the Defendants for all actual damages, special damages, and punitive damages in an amount to be determined by the jury at the trial of this action, the costs and disbursements of this action and for such other and further relief as this court deems just and proper.

LANIER & BURROUGHS, L.L.C.

Shane M. Burroughs, Esquire
Attorneys for the Plaintiffs
Post Office Drawer 2789
250 Gibson Street
Orangeburg, South Carolina 29116
(803)268-9800

August 7, 2014

000019

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative
of the Estate of Shaun Robert Moore

Plaintiff,

vs.

Green Apple, LLC, doing business
as Applebee's, John/Jane Doe, and
Stabler L. Inabinet

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-38-00803

AMENDED SUMMONS

(Jury Trial Demanded)

(Survival Action)

(Negligence/Gross Negligence)

The Plaintiff, Lindsey Stewart, as Personal Representative for the Estate of Shaun Robert Moore, complaining of the above named Defendants, would respectfully show unto this Honorable Court that:

PARTIES

1. That the Plaintiff is a citizen and resident of South Carolina, and brings this action as the is the duly appointed Personal Representative of the Estate of Shaun Robert Moore and she brings this survival action pursuant to S.C. Code 15-5-90, and other applicable statutory and/or common law on behalf of the Estate for the conscious pain and suffering of the deceased for all damages authorized by said statute.

2. That, upon information and belief, the Defendant Green Apple, LLC (Green Apple) is, upon information and belief, a corporation with its principal place of business in the State of North Carolina. Green Apple owns property, conducts business, has agents for the transaction of business, and operates an establishment in Orangeburg County, South Carolina. Upon information and belief, Green Apple owns property, conducts business, has agents for the transaction of business, and operates an establishment in Orangeburg County, South Carolina.

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Upon information and belief, Green Apple is a subsidiary of Applebee's.

3. That, upon information and belief, the Defendant, Jane/John Doe, is an unknown manager of Green Apple, who fired the decedent, Shaun Robert Moore (Moore) on October 18, 2012.

4. That at all times relevant hereto, Jane/John Doe(s), was/were acting as an agent, servant, or employee of the Defendant Green Apple, and was acting within the course and scope of her/his service or employment so as to make the Defendants Green Apple liable for the acts or omissions of Jane Doe under the theory of *respondeat superior*.

5. That, upon information and belief, the Defendant, Stabler L. Inabinet (Inabinet) is a citizen and resident of the State of South Carolina.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

6. That on October 18, 2012, the decedent was an employee of Green Apple.

7. The decedent was fired by the manager, John/Jane Doe after consuming alcohol while working and was forced to leave the premises.

8. The defendant, John/Jane Doe knew that the Plaintiff/decedent was grossly intoxicated, did not have transportation and lived in St. Matthews, South Carolina, approximately 15 miles away from Applebee's and had no other way to get home, but to walk.

9. That on or about October 18, 2012, the decedent, while a pedestrian, in attempt to cross US-21 (Columbia Road) was struck by the Defendant Inabinet who was operating his motor vehicle and traveling North on US-21.

FOR A SECOND CAUSE OF ACTION
AS TO DEFENDANTS GREEN APPLE, LLC (GREEN APPLE) AND
JOHN/JANE DOE
(Negligence/Gross Negligence)

10. That Plaintiff reiterates the relevant allegations of the preceding paragraphs as fully as if repeated verbatim.

11. The Plaintiff is informed and believe that the Defendants were negligent, careless, reckless, wanton, and grossly negligent at the time and place herein above-mentioned in the following particulars:

- a) In failing to maintain proper policies and procedures for intoxicated persons on Defendant's premises as it relates to providing transportation to said persons;
- b) In failing to operate a licensed drinking establishment in a proper manner and consistent with South Carolina laws;
- c) In failing to call a cab for Decedent even though John/Jane Doe knew or should have known that he was grossly intoxicated and had to walk approximately fifteen (15) miles to get home;
- d) In forcibly removing an intoxicated person from the Defendant Green Apple's premises without providing transportation;
- e) In such other and further particulars that the evidence in trial may show.

12. That as a direct and proximate cause of the aforementioned negligence, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff suffered grave and severe injuries prior to his death; he suffered conscious pain and suffering and mental anguish prior to his death; his estate has incurred funeral expenses.

13. That by the reason of the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of the Estate of the deceased Plaintiff, for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may beset and determined by the trier of fact in this matter.

FOR A FIRST CAUSE OF ACTION
AS TO DEFENDANT STABLER L. INABINET
(Negligence)

14. That Plaintiff reiterates the relevant allegations of the preceding paragraphs as fully as if repeated verbatim.

15. That the aforementioned damage to the Plaintiff was a direct and proximate result of the Defendant Inabinet's negligent, careless, reckless, grossly negligent, wilful and wanton conduct at the time and place above mentioned in the following particulars to wit;

- a) In traveling too fast for conditions;
- b) In failing to maintain a proper lookout;
- c) In failing to apply his brakes, if any he had;
- d) In failing to take evasive action to avoid colliding with the decedent;
- e) In operating a motor vehicle while physically impaired or fatigued and in utter disregard for the safety of others on the highway, including the Plaintiff;
- f) In failing to exercise the degree of care that a reasonably prudent person would have exercised under the same or similar circumstances; and
- g) In such other and further particulars that the evidence in trial may show.

16. That as a direct and proximate cause of the aforementioned negligence, reckless, wilful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff suffered grave and severe injuries prior to his death; he suffered conscious pain and suffering and mental anguish prior to his death; his estate has incurred funeral expenses.

17. That by the reason of the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of the Estate of the deceased Plaintiff, for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may beset

and determined by the trier of fact in this matter.

All of which combined and concurred as a direct and proximate cause of the injuries, death and damages sustained by Plaintiff herein, said acts being in violation of the statutes and laws of the State of South Carolina.

WHEREFORE, Plaintiffs prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

LANIER & BURROUGHS, L.L.C.

Shane M. Burroughs, Esquire
Attorneys for the Plaintiffs
Post Office Drawer 2789
250 Gibson Street
Orangeburg, South Carolina 29116
(803)268-9800

August 4, 2014

000024

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative of
the Estate of Shaun Robert Moore.

Plaintiff.

Green Apple, LLC, d/b/a Applebee's;
JohnLare Do.; and Stabler L. Inabinet.

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-38-00852

DEFENDANT GREEN APPLE,
LLC D/B/A APPLEBEE'S
ANSWER TO PLAINTIFF'S
COMPLAINT

Defendant Green Apple, LLC, d/b/a Applebee's (herein, "Green Apple") files this Answer to Plaintiff's Amended Complaint and would respectfully show unto the Court:

1. Each and every allegation of the Plaintiff's Amended Complaint which is not hereinafter specifically admitted is denied.

2. With respect to Paragraph 1 of the Plaintiff's Amended Complaint, Green Apple has no knowledge of the Plaintiff's residence and cannot confirm or deny whether she has been duly appointed as Personal Representative of the Estate of Shaun Moore and therefore denies the same at the present time.

3. Green Apple admits the allegations in Paragraph 2.

4. Paragraphs 3, 4 and 5 of the Plaintiff's Amended Complaint assert no allegations against Green Apple for which a response is required. To the extent that Paragraphs 3, 4 and 5 require a response from this Defendant, the allegations are denied and strict proof is required at trial.

5. As to Paragraph 6 through 9 of the Plaintiff's Amended Complaint, Green Apple admits that Shaun Robert Moore was originally an employee of Green Apple, LLC and was

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observed consuming alcoholic beverages while on the job which led to his termination on or about October 18, 2012. Green Apple is informed and believes that Shaun Moore was observed making a telephone call for transportation from the Applebee's restaurant after his termination. Green Apple is further informed and believes that Shaun Moore was observed consuming more alcohol at two other establishments known as The Liquid Center and Locals Pub after leaving the Applebee's restaurant. Green Apple is further informed that Shaun Moore was observed by motorists later that evening walking in the roadway and that at least one motorist stopped his vehicle and attempted to escort Shaun Moore off of the roadway before the accident at issue, but that Shaun Moore refused to leave the roadway and subsequently attempted to cross U.S. 21 by walking in front of an oncoming vehicle operated by Defendant Inabinet. To the extent that Paragraphs 6 through 9 require a more detailed response from this Defendant, the allegations are denied and strict proof is required at trial. It is specifically denied that the Green Apple allowed Mr. Moore to leave the premises in an automobile with knowledge that he was intoxicated or a danger to himself or others.

6. Green Apple denies the allegations contained in Paragraphs 10 through 13 that are directly attributable to the Green Apple. To the extent that Paragraphs 10 through 13 require a more detailed response from this Defendant, the allegations are denied and strict proof is required at trial. It is specifically denied that the Green Apple caused or contributed to the Plaintiff's injuries.

7. That the allegations in Paragraphs 14 through 17 are directed to another Defendant, and Green Apple neither admits nor denies those allegations. To the extent that Paragraphs 14 through 17 require a more detailed response from this Defendant, the allegations are denied and strict proof is required at trial.

8. Green Apple denies the Plaintiff's Prayer for Relief.

FOR A SECOND DEFENSE

9. Green Apple asserts that the Plaintiff's Amended Complaint, in whole or in part, fails to state a claim upon which relief may be granted against Green Apple and should, therefore, be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

10. Green Apple asserts insufficiency of process and insufficiency of service of process pursuant to Rule 4(d) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

11. If it is determined that Green Apple was negligent as alleged in the Plaintiff's Complaint, which is expressly denied, then the negligence of Green Apple and any other's negligence, including the Decedent, should be compared, and the damages awarded to the Plaintiff, if any, should be apportioned by the amount of each party's fault and negligence in accordance with the Comparative Negligence Law of this State.

FOR A FIFTH DEFENSE

12. Green Apple would show that the Plaintiff's alleged injuries and damages were caused by concurring, superseding and/or intervening causes.

FOR A SIXTH DEFENSE

13. Green Apple would show that the Plaintiff's alleged injuries and damages were not caused by any departure or deviation from any applicable standards of care owed by Green Apple, if any.

FOR A SEVENTH DEFENSE

15. Green Apple asserts that the injuries and damages sustained by the Plaintiff, if any, were proximately caused by the intervening and superseding negligence, carelessness, gross negligence, willfulness, wantonness, recklessness and/or intentional conduct of others, which

was the sole and proximate cause of the matters alleged in the Plaintiff's Complaint, and without which the same would not have occurred.

FOR AN EIGHTH DEFENSE

16. Green Apple asserts that the injuries and damages sustained by the Plaintiff, if any, were solely and proximately caused by the negligence, carelessness, gross negligence, willfulness, wantonness, recklessness and/or intentional conduct of others over whom Green Apple had no control and for whose unforeseeable actions Green Apple is not liable.

FOR A NINTH DEFENSE

17. That no acts or omissions on the part of Green Apple were the proximate cause or cause in fact of the alleged injuries and damages.

FOR A TENTH DEFENSE

18. Plaintiff's receipt of benefits or entitlement to benefits may entitle Green Apple to a reduction, set-off and/or credit against any judgment that might be entered against it in this action.

FOR AN ELEVENTH DEFENSE

19. In the event Plaintiff has already, or in the future, enters into settlement or compromise with, or execute any release or covenant of, any present or future Defendant, Third-Party Defendant or any non-party, for any of Plaintiff's alleged injuries and damages, Green Apple is entitled to a credit or set-off of: (a) the amount of consideration to be received by Plaintiff in such settlement or for such release or covenant; and (b) the proportionate or pro rata share of liability of the settling or released party or non-party.

FOR A TWELFTH DEFENSE

20. The Plaintiff knowingly, and voluntarily, assumed the risk of sustaining any alleged injury, damages, or loss referenced in the Plaintiff's Amended Complaint by walking in

the roadway on the night of the incident and, therefore, any recovery by Plaintiff is barred by the doctrine of assumption of the risk.

FOR A THIRTEENTH DEFENSE

21. Green Apple owed no duty to the Decedent as alleged in the Plaintiff's Complaint. In the alternative, Green Apple asserts that the alleged breach of any duty owed to the Decedent was not a proximate cause of the Decedent's demise or the Plaintiff's alleged damages.

FOR A FOURTEENTH DEFENSE

22. Green Apple asserts that an award of damages, if any, is subject to and limited by the applicable provisions of S.C. Code Ann. § 15-38-10, et seq.

FOR A FIFTEENTH DEFENSE

23. Green Apple would show that the Plaintiff's claim for punitive damages is violative of both the United States Constitution and the South Carolina Constitution and is, therefore, barred.

FOR A SIXTEENTH DEFENSE

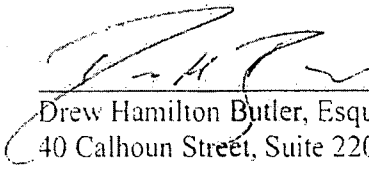
24. Punitive damages are inappropriate in this case since Green Apple did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages could be based.

FOR A SEVENTEENTH DEFENSE

25. Green Apple pleads the limitations on damage awards pursuant to S.C. Code Ann. § 15-32-510 et. seq. and requests bifurcation in accordance with these statutes.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, Defendant Green Apple, LLC prays for a jury trial, that Plaintiff take nothing by this cause and that it recover its costs. This Defendant prays for such other and further relief, both general and special, legal and equitable, to which it may be justly entitled.

RICHARDSON, PLOWDEN & ROBINSON, P.A.



Drew Hamilton Butler, Esquire
40 Calhoun Street, Suite 220
Charleston, SC 29401
dbutler@richardsonplowden.com
Phone: 843-805-6550
Fax: 843-805-6599
Attorneys for Green Apple, LLC d/b/a Applebee's

This the 2nd day of October, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, Jennifer G. Hladek, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Green Apple, LLC d/b/a Applebee's do hereby certify that I have served the attached pleading, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on October 2, 2014.

Shane M. Burroughs, Esquire
Lanier & Burroughs, LLC
PO Drawer 2789
Orangeburg, SC 29116
Attorney for Plaintiff

Johnston Cox, Esquire
Gallivan, White & Boyd, PA
PO Box 7368
Columbia, SC 29201



Jennifer G. Hladek

000030

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative of
the Estate of Shaun Robert Moore,

Plaintiff,

v.

Green Apple, LLC, d/b/a Applebee's;
John/Jane Doe, and Stabler L. Inabinet,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-38-00803

**DEFENDANT GREEN APPLE,
LLC D/B/A APPLEBEE'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

Defendant Green Apple, LLC, d/b/a Applebee's (herein, "Green Apple") files this Answer to Plaintiff's Amended Complaint and would respectfully show unto the Court:

1. Each and every allegation of the Plaintiff's Amended Complaint which is not hereinafter specifically admitted is denied.

2. With respect to Paragraph 1 of the Plaintiff's Amended Complaint, Green Apple has no knowledge of the Plaintiff's residence and cannot confirm or deny whether she has been duly appointed as Personal Representative of the Estate of Shaun Moore and therefore denies the same at the present time.

3. Green Apple admits the allegations in Paragraph 2.

4. Paragraphs 3, 4 and 5 of the Plaintiff's Amended Complaint assert no allegations against Green Apple for which a response is required. To the extent that Paragraphs 3, 4 and 5 require a response from this Defendant, the allegations are denied and strict proof is required at trial.

5. As to Paragraph 6 through 9 of the Plaintiff's Amended Complaint, Green Apple admits that Shaun Robert Moore was originally an employee of Green Apple, LLC and was

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observed consuming alcoholic beverages while on the job which led to his termination on or about October 18, 2012. Green Apple is informed and believes that Shaun Moore was observed making a telephone call for transportation from the Applebee's restaurant after his termination. Green Apple is further informed and believes that Shaun Moore was observed consuming more alcohol at two other establishments known as The Liquid Center and Locals Pub after leaving the Applebee's restaurant. Green Apple is further informed that Shaun Moore was observed by motorists later that evening walking in the roadway and that at least one motorist stopped his vehicle and attempted to escort Shaun Moore off of the roadway before the accident at issue, but that Shaun Moore refused to leave the roadway and subsequently attempted to cross U.S. 21 by walking in front of an oncoming vehicle operated by Defendant Inabinet. To the extent that Paragraphs 6 through 9 require a more detailed response from this Defendant, the allegations are denied and strict proof is required at trial. It is specifically denied that the Green Apple allowed Mr. Moore to leave the premises in an automobile with knowledge that he was intoxicated or a danger to himself or others.

6. Green Apple denies the allegations contained in Paragraphs 10 through 13 that are directly attributable to the Green Apple. To the extent that Paragraphs 10 through 13 require a more detailed response from this Defendant, the allegations are denied and strict proof is required at trial. It is specifically denied that the Green Apple caused or contributed to the Plaintiff's injuries.

7. That the allegations in Paragraphs 14 through 17 are directed to another Defendant, and Green Apple neither admits nor denies those allegations. To the extent that Paragraphs 14 through 17 require a more detailed response from this Defendant, the allegations are denied and strict proof is required at trial.

8. Green Apple denies the Plaintiff's Prayer for Relief.

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FOR A SECOND DEFENSE

9. Green Apple asserts that the Plaintiff's Amended Complaint, in whole or in part, fails to state a claim upon which relief may be granted against Green Apple and should, therefore, be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

10. Green Apple asserts insufficiency of process and insufficiency of service of process pursuant to Rule 4(d) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

11. If it is determined that Green Apple was negligent as alleged in the Plaintiff's Complaint, which is expressly denied, then the negligence of Green Apple and any other's negligence, including the Decedent, should be compared, and the damages awarded to the Plaintiff, if any, should be apportioned by the amount of each party's fault and negligence in accordance with the Comparative Negligence Law of this State.

FOR A FIFTH DEFENSE

12. Green Apple would show that the Plaintiff's alleged injuries and damages were caused by concurring, superseding and/or intervening causes.

FOR A SIXTH DEFENSE

13. Green Apple would show that the Plaintiff's alleged injuries and damages were not caused by any departure or deviation from any applicable standards of care owed by Green Apple, if any.

FOR A SEVENTH DEFENSE

15. Green Apple asserts that the injuries and damages sustained by the Plaintiff, if any, were proximately caused by the intervening and superseding negligence, carelessness, gross negligence, willfulness, wantonness, recklessness and/or intentional conduct of others, which

was the sole and proximate cause of the matters alleged in the Plaintiff's Complaint, and without which the same would not have occurred.

FOR AN EIGHTH DEFENSE

16. Green Apple asserts that the injuries and damages sustained by the Plaintiff, if any, were solely and proximately caused by the negligence, carelessness, gross negligence, willfulness, wantonness, recklessness and/or intentional conduct of others over whom Green Apple had no control and for whose unforeseeable actions Green Apple is not liable.

FOR A NINTH DEFENSE

17. That no acts or omissions on the part of Green Apple were the proximate cause or cause in fact of the alleged injuries and damages.

FOR A TENTH DEFENSE

18. Plaintiff's receipt of benefits or entitlement to benefits may entitle Green Apple to a reduction, set-off and/or credit against any judgment that might be entered against it in this action.

FOR AN ELEVENTH DEFENSE

19. In the event Plaintiff has already, or in the future, enters into settlement or compromise with, or execute any release or covenant of, any present or future Defendant, Third-Party Defendant or any non-party, for any of Plaintiff's alleged injuries and damages, Green Apple is entitled to a credit or set-off of: (a) the amount of consideration to be received by Plaintiff in such settlement or for such release or covenant; and (b) the proportionate or pro rata share of liability of the settling or released party or non-party.

FOR A TWELFTH DEFENSE

20. The Plaintiff knowingly, and voluntarily, assumed the risk of sustaining any alleged injury, damages, or loss referenced in the Plaintiff's Amended Complaint by walking in

the roadway on the night of the incident and, therefore, any recovery by Plaintiff is barred by the doctrine of assumption of the risk.

FOR A THIRTEENTH DEFENSE

21. Green Apple owed no duty to the Decedent as alleged in the Plaintiff's Complaint. In the alternative, Green Apple asserts that the alleged breach of any duty owed to the Decedent was not a proximate cause of the Decedent's demise or the Plaintiff's alleged damages.

FOR A FOURTEENTH DEFENSE

22. Green Apple asserts that an award of damages, if any, is subject to and limited by the applicable provisions of S.C. Code Ann. § 15-38-10, et seq.

FOR A FIFTEENTH DEFENSE

23. Green Apple would show that the Plaintiff's claim for punitive damages is violative of both the United States Constitution and the South Carolina Constitution and is, therefore, barred.

FOR A SIXTEENTH DEFENSE

24. Punitive damages are inappropriate in this case since Green Apple did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages could be based.

FOR A SEVENTEENTH DEFENSE

25. Green Apple pleads the limitations on damage awards pursuant to S.C. Code Ann. § 15-32-510 et. seq. and requests bifurcation in accordance with these statutes.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, Defendant Green Apple, LLC prays for a jury trial, that Plaintiff take nothing by this cause and that it recover its costs. This Defendant prays for such other and further relief, both general and special, legal and equitable, to which it may be justly entitled.

RICHARDSON, PLOWDEN & ROBINSON, P.A.


Drew Hamilton Butler, Esquire

40 Calhoun Street, Suite 220

Charleston, SC 29401

dbutler@richardsonplowden.com

Phone: 843-805-6550

Fax: 843-805-6599

Attorneys for Green Apple, LLC d/b/a Applebee's

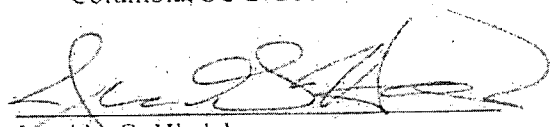
This the 2nd day of October, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, Jennifer G. Hladek, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Green Apple, LLC d/b/a Applebee's do hereby certify that I have served the attached pleading, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on October 2, 2014

Shane M. Burroughs, Esquire
Lanier & Burroughs, LLC
PO Drawer 2789
Orangeburg, SC 29116
Attorney for Plaintiff

Johnston Cox, Esquire
Gallivan, White & Boyd, PA
PO Box 7368
Columbia, SC 29201


Jennifer G. Hladek

000030

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

Lindsey Stewart, Personal Representative of)
the Estate of Shaun Robert Moore.)

Plaintiff.)

v.)

Green Apple, LLC, d/b/a Applebee's;)
John/Jane Doe, and Stabler L. Inabinet,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-38-00802

CASE NO.: 2014-CP-38-00803

DEFENDANT GREEN APPLE,
LLC d/b/a APPLEBEE'S
MOTION FOR SUMMARY
JUDGMENT

FILED FOR RECORD
WINNIE A. P. CLARK
CLERK OF COURT
COUNTY OF ORANGEBURG, SC

2015 MAR 19 AM 11:33

TO: PLAINTIFFS AND HER ATTORNEY OF RECORD, SHANE M. BURROUGHS,
ESQUIRE

YOU WILL PLEASE TAKE NOTICE that the Defendant, Green Apple, LLC d/b/a Applebee's, by and through its undersigned counsel, will ten (10) days from the date of service hereof or as soon thereafter as counsel may be heard, move before this honorable Court for an Order granting summary judgment on Plaintiff's claims against Green Apple, LLC d/b/a Applebee's, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

The grounds for this Motion are as follows: (1) South Carolina does not recognize a first party cause of action against a tavern owner by an intoxicated person predicated on the alleged violation of alcohol control statutes; and (2) that Plaintiff has failed to state a claim against Green Apple, where a cause of action against a seller of alcohol is only available when the seller knowingly sells alcoholic beverages to an intoxicated person.

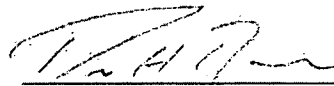
This Motion is based upon the facts stated in the memorandum accompanying this motion, as well as any pleadings and/or affidavits which may be filed and served prior to the hearing on this

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Motion, and the legal and factual arguments which counsel will present to this honorable Court. Defendant prays for such other relief, both general and special, legal and equitable to which he may be justly entitled.

Respectfully submitted this 16th day of March, 2015.

RICHARDSON PLOWDEN & ROBINSON, P.A.



Drew Hamilton Butler, Esquire
40 Calhoun Street, Suite 220
Charleston, South Carolina 29402
(843) 805-6055
dbutler@richardsonplowden.com

Attorneys for Green Apple, LLC d/b/a Applebee's

CERTIFICATE OF SERVICE

I, Jennifer G. Hladek, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Green Apple, LLC d/b/a Applebee's do hereby certify that I have served the attached pleading, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on March 16, 2015.

Shane M. Burroughs, Esquire
Lanier & Burroughs, LLC
PO Drawer 2789
Orangeburg, SC 29116
Attorney for Plaintiff

Johnston Cox, Esquire
Gallivan, White & Boyd, PA
PO Box 7368
Columbia, SC 29201



Jennifer G. Hladek

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

Lindsey Stewart, Personal Representative of)
the Estate of Shaun Robert Moore,)

Plaintiff.)

v.)

Green Apple, LLC, d/b/a Applebee's;)
John/Jane Doe, and Stabler L. Inabinet,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASES NOS.:

2014-CP-38-00802

2014-CP-38-00803

MEMORANDUM IN SUPPORT
OF MOTION FOR
SUMMARY JUDGMENT OF
DEFENDANT GREEN APPLE,
LLC, D/B/A APPLEBEE'S

FILED FOR
CLERK OF
COURT
OF
SOUTH CAROLINA
ORANGEBURG COUNTY

2015 MAR 19 AM 11:33

Defendant Green Apple, LLC, d/b/a Applebee's (hereinafter referred to as "Green Apple") has moved for an order granting summary judgment to Green Apple pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Specifically, Green Apple argues that Plaintiff has failed to state a claim against Green Apple pursuant to Tobias v. Sports Club, Inc., 332 S.C. 90, 504 S.E.2d 318 (1998), as South Carolina does not recognize a first party cause of action against a tavern owner by an intoxicated person predicated on the alleged violation of alcohol control statutes. Furthermore, Plaintiff has failed to state a claim against Green Apple where a cause of action against a seller of alcohol is only available when the seller knowingly sells alcoholic beverages to an intoxicated person. In this case, Green Apple did not sell any alcoholic beverages to decedent Shaun Robert Moore.

In support of its motion, Green Apple states as follows:

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FACTUAL BACKGROUND

Plaintiff, as the personal representative of the Estate of Shaun Robert Moore, has filed a wrongful death and survival action against Green Apple. See Amended Complaints (2014-CP-38-802 [Wrongful Death]) and (2014-CP-38-803 [Survival Action]).

In her complaints against Green Apple, Plaintiff alleges that Moore was an employee of Green Apple. On October 18, 2012, Moore was terminated by the manager of Green Apple after allegedly consuming alcohol while working. Plaintiff asserts that Moore was forced to leave the premises even though Green Apple allegedly knew that Moore was "grossly intoxicated, did not have transportation and lived in St. Matthews, South Carolina, approximately 15 miles away from [Green Apple] and had no other way to get home, but to walk." Moore, while attempting to cross US-21 as a pedestrian, was struck and killed by Defendant Stabler L. Inabinet who was operating his motor vehicle and traveling north on US-21. See Amended Complaints, ¶¶ 6-9.

Plaintiff has alleged that Green Apple was negligent and grossly negligent in the following particulars:

1. In failing to maintain proper policies and procedures for intoxicated persons on [Green Apple's] premises as it relates to providing transportation to said persons;
2. In failing to operate a licensed drinking establishment in a proper manner and consistent with South Carolina laws;
3. In failing to call a cab for [Moore] even though [the manager] knew or should have known that he was grossly intoxicated and had to walk approximately fifteen (15) miles to get home; [and]
4. In forcibly removing an intoxicated person from Defendant Green Apple's premises without providing transportation.

Amended Complaints, ¶¶ 10-11.

ANALYSIS

Plaintiff's claims against Green Apple arise out of the alleged intoxication of Moore while on Green Apple's premises and Green Apple's alleged failure to protect Moore from his voluntary intoxication by preventing Moore from leaving the premises or providing proper transportation to Moore. South Carolina, however, does not recognize a first party cause of action against a tavern owner for injuries sustained by the intoxicated person, and accordingly, Plaintiff's claims against Green Apple fail as a matter of law. Tobias v. Sports Club, Inc., 332 S.C. 90, 504 S.E.2d 318 (1998).

Certain South Carolina statutory provisions prohibit the knowing sale of alcoholic beverages to an intoxicated person. Id. at 92, 504 S.E.2d at 319. In Tobias, the South Carolina Supreme Court recognized that a private cause of action for a violation of these statutes against a tavern owner who continues to serve an intoxicated person who later injures a third party promotes public safety and prevents an already intoxicated person from becoming more intoxicated and a greater risk to the public at large when he leaves the establishment. Id.

The Supreme Court, however, rejected the contention that the another public policy of South Carolina's alcohol control statutes was to protect the intoxicated person himself from his own incompetence and helplessness and held that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." Id. The Court held that while a third party could bring a negligence action against a tavern owner for injuries caused by an intoxicated person, the intoxicated adult could not bring such an action for his own injuries. Id. at 92-93, 504 S.E.2d at 319; see also Marcum v. Bowden, 372 S.C. 452, 458-59, 643 S.E.2d 85, 88 (2007) (observing a commercial host is only liable to third parties for injuries caused by an intoxicated person).

criminal statutes forbidding the sale of alcohol to intoxicated persons Marcum, 372 S.C. at 458-59, 643 S.E.2d at 88.

To state a claim of negligence against a defendant tavern owner, a plaintiff's cause of action therefore must be predicated upon a showing that the commercial host violated South Carolina's alcohol control statutes which prohibit the sale of alcoholic beverages to intoxicated persons. Id. at 459, 643 S.E.2d at 88; S.C. CODE ANN. § 61-4-580 ("No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit: ... (2) *sell* beer or wine to an intoxicated person....") (emphasis added); § 61-6-2220 ("A person or establishment licensed to sell alcoholic liquors or liquor by the drink pursuant to this article may not *sell* these beverages to persons in an intoxicated condition") (emphasis added).

Plaintiff has not alleged in her complaints that Green Apple sold any alcoholic beverage to Moore. The sale of alcoholic beverages in violation of South Carolina's alcohol control statutes is a crucial element of a claim arising out of injuries caused by an intoxicated person. Where Plaintiff has not shown that Green Apple violated the applicable criminal statutes, Plaintiff cannot establish that Green Apple owed any common law duty to Moore. See Hartfield v. Getaway Lounge & Grill, Inc., 388 S.C. 407, 415, 417, 697 S.E.2d 558, 562-63 (2010) (observing that because South Carolina does not have a Dram Shop Act, the civil remedy arises out of criminal statutes). The liability upon a commercial host to those injured by intoxicated persons flows from the host's violation of these alcohol control statutes, and without a violation of these applicable statutes, no duty of the host arises. Plaintiff, who does not allege that Green

Apple sold any alcoholic beverages to Moore, has therefore failed to state a claim against Green Apple as a matter of law.

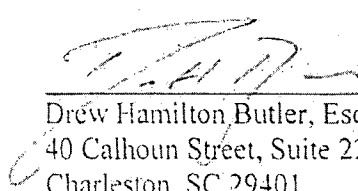
CONCLUSION

Plaintiff's allegations against Green Apple stem from Moore's voluntary intoxication and Green Apple's alleged failure to protect Moore from the consequences of his voluntary intoxication. Green Apple is entitled to judgment as a matter of law on these allegations because first and foremost, South Carolina does not recognize a first party cause of action against a commercial host for injuries sustained by the intoxicated person to his own person. Second, any such liability only arises out of the host's violation of criminal statutes prohibiting the knowing sale of alcoholic beverages to an intoxicated person. Plaintiff makes no allegation in her complaints that Green Apple violated these statutes by selling alcoholic beverages to Moore. Where there is no allegation that Green Apple contributed to Moore's intoxicated condition by selling him alcoholic beverages, no duty was owed to Moore by Green Apple under South Carolina law.

For these reasons, Plaintiff has failed to state a claim against Green Apple. Green Apple accordingly requests this Court to grant Green Apple summary judgment on the claims asserted against it by Plaintiff in both the wrongful death and survival actions.

Respectfully submitted this 16th day of March, 2015.

RICHARDSON, PLOWDEN & ROBINSON, P.A.



Drew Hamilton Butler, Esquire
40 Calhoun Street, Suite 220
Charleston, SC 29401
dbutler@richardsonplowden.com
Phone: 843-805-6550
Fax: 843-805-6599

Attorneys for Green Apple, LLC d/b/a Applebee's

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative of
the Estate of Shaun Robert Moore.

Plaintiff.

Green Apple, LLC, d/b/a Applebee's;
John/Jane Doe, and Stabler L. Inabinet,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-38-00802
2014-CP-38-00803

AFFIDAVIT OF SANDRA
JOHNSON

2015 MAR 27 AM 11:35

PERSONALLY APPEARED BEFORE ME Sandra Johnson, who being duly sworn
deposes and states as follows:

1. That I am above the age of eighteen (18) and am competent to declare the facts
stated herein.
2. That I am aware of Plaintiff's Complaints and Claims against Green Apple, LLC
d/b/a Applebee's regarding the above captioned matters.
3. That I was employed at the Applebee's in Orangeburg, South Carolina for six (6)
years and working as an assistant manager for five (5) years at the time of the incident.
4. That on October 18, 2012, I was working as the manager on duty, and Shaun
Moore started his shift as a server at 4:36p.m.
5. That Mr. Moore did not appear, in any way, intoxicated when he started his shift
on the day of the incident.
6. That I believed Mr. Moore to have consumed two alcoholic drinks while on duty,
for which he was relieved from his position as server at Applebee's.

ATTEST: TRUE COPY
Wingie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

000045

7 That as an employee and manager of Applebee's, I have completed training in recognizing the signs of intoxicated patrons.

8 That at all times where Mr. Moore was in the Applebee's establishment, he did not appear to show any signs of intoxication. Mr. Moore did not slur his words while conversing, was able to count his "end of shift" money thoroughly and correctly, and showed no change in his gait before leaving the property.

9. That I witnessed Mr. Moore using the telephone to call for a ride home, after his employment was terminated.

10. That at all time, I acted in accordance with the Applebee's Policies and Procedures.

FURTHER THE AFFIANT SAYETH NOT.

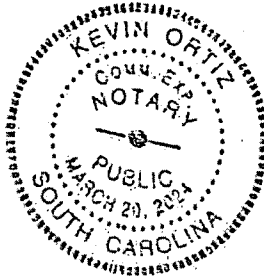
Sandra Johnson

Sandra Johnson

SWORN to and subscribed before me
this 19 day of March 2015.

Kevin Ortiz
Notary Public for the State of South Carolina

My Commission Expires: 3/20/24



000646

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-38-00802
2014-CP-38-00803

Lindsey Stewart, Personal Representative)
of the Estate of Shaun Robert Moore)
)
Plaintiff,)

vs.)

Green Apple, LLC, doing business)
as Applebee's, John/Jane Doe, and)
Stabler L. Inabinet)
)
Defendants.)

PLAINTIFF'S MOTION TO COMPEL
DEFENDANT, GREEN APPLE, LLC, d/b/a
APPLEBEE'S AND JOH/JANE DOE'S
COMPLETE DISCOVERY ANSWERS
AND RESPONSE

**TO THE DEFENDANTS GREEN APPLE, LLC, d/b/a APPLEBEE'S AND JOHN/JANE
DOE AND THEIR ATTORNEY DREW HAMILTON BUTLER, ESQUIRE:**

YOU ARE HEREBY NOTIFIED that the undersigned attorney for the Plaintiff will move ten (10) days after service of this Notice of Motion and Motion for an Order to compelling the Defendants Green Apple, LLC, d/b/a Applebee's and John/Jane Doe to provide full and complete responses to Plaintiff's discovery requests. This motion is made in accordance with Rules 26 and 37 of the South Carolina Rules of Civil Procedure, and upon the grounds that these discovery requests were served on October 24, 2014. Please see attached Exhibit A. Defendant has not produced the following:

Interrogatory # 5: Set forth a list of photographs, videos, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

Interrogatory #16: Identify all policies and procedures for Applebee's with regard to training employees.

Interrogatory # 18: Identify all policies and procedures for Applebee's with regard to the service of alcohol to individuals."

Request for Production # 7: Please produce any and all documents setting out policies and/or procedures for maintaining the Defendant's premises.

Request for Production #8: Please produce any and all documents setting out policies and/or procedures for screening and/or hiring employees.

Request for Production # 9: Please produce any and all documents setting out policies and/or procedures with regard to training employees.

000047

Request for Production # 10: Please produce any and all documents setting out policies and/or procedures with regard to supervising employees.

Request for Production # 11: Please produce any and all documents setting out policies and/or procedures with regard to the services of alcohol on Defendant's premises.

Request for Production # 12: Please produce any and all documents setting out policies and/or procedures with regard to dealing with intoxicated individuals.

Defendants' responses that were provided on March 25, 2015, were incomplete and insufficient. Copies of the above-referenced discovery is attached as Exhibit A.

<u>Exhibit</u>	<u>Document</u>	<u>Answered</u>
A	Defendant's Answers Plaintiff's 1 st Set of Interrogatories	03/25/2015
B	Defendant's Response to Plaintiff's 1 st Set of Request for Production of Documents	03/25/2015

In order for this case to be made ready for mediation in a timely manner, Plaintiff requires complete answers and document responses. The Plaintiff further requests, pursuant to Rule 37 (a) for an Order of the Court requiring Defendants Green Apple, LLC, d/b/a Applebee's and John/Jane Doe pay the Plaintiff reasonable costs and attorney's fees incurred with the filing and arguing of this Motion.

LANIER & BURROUGHS, LLC

Shane M. Burroughs, Esquire
Justin T. Bamberg, Esquire
Attorney for the Plaintiff
Post Office Drawer 2789
250 Gibson Street
Orangeburg, SC 29116
Phone: (803)268-9800

May 19, 2015

2015 MAY 20

12

9:30

10

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EXHIBIT A

000049

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative
of the Estate of Shaun Robert Moore

Plaintiff,

vs.

Green Apple, LLC, doing business
as Applebee's, John/Jane Doe, and
Stabler L. Inabinet

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011 CLP 33 67 802

DEFENDANT GREEN
APPLE, LLC D.B/A
APPLEBEE'S ANSWERS
TO PLAINTIFF'S
INTERROGATORIES
(Wrongful Death).

TO: PLAINTIFF AND HER COUNSEL OF RECORD, SHANE BURROUGHS, ESQUIRE

Comes now Defendant, Green Apple, LLC, doing business as Applebee's, by and through its counsel, and answers Plaintiff's First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, reserving and not waiving the attorney-client work product, or any other privilege or immunity from disclosure which may attach to the information called for or responsive to these interrogatories and reserving all pertinent objections there at trial or any subsequent proceeding as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case.

ANSWER:

- a. Lindsey Stewart, PR of the Estate of Shaun Moore
C/O Shane M. Burroughs, Esquire
Laanier & Burroughs, LLC
PO Drawer 2789
Orangeburg, SC 29116

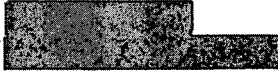
Ms. Stewart is expected to testify as to the Claims stated in her Complaint. Upon information and belief, there is no written or recorded testimony at this time.

b. Stabler L. Inabinet
C/O Johnson Cox, Esquire
Gallivan, White & Boyd, PA
PO Box 7368
Columbia, SC 29201

Mr. Inabinet is expected to testify as to his involvement in the incident, which is the subject of this action. To this Defendant's knowledge, there is one video recorded statement of Mr. Inabinet following the incident taken by the Orangeburg County Police Department. Additionally, counsel for Defendant Inabinet has produced a written Affidavit of Lee Stabler Inabinet.

c. Mr. James McLean


Mr. McLean is expected to testify as to his eye witness account of the incident. To this Defendant's knowledge, there is one video recorded statement of Mr. McLean following the incident taken by the Orangeburg County Police Department. Additionally, counsel for Defendant Inabinet has produced a written Affidavit of James McLean.

d. Ms. Patricia Sloop


Ms. Sloop is expected to testify as to her eye witness account of the incident. Upon information and belief, no written or recorded statements have been taken at this time.

e. Ms. Sandra Johnson
C/O Richardson Plowden & Robinson
40 Calhoun Street, Suite 220
Charleston, SC 29401

Ms. Johnson is a former employee of Applebee's, who was the manager on duty on the night of the incident. Ms. Johnson is expected to testify as to her interactions with Shaun Moore prior to and on the night of the incident. Upon information and belief, there is a written statement of Sandra Johnson and an Affidavit previously produced to all counsel.

f. Ms. Andrea Rucker
C/O Richardson Plowden & Robinson
40 Calhoun Street, Suite 220
Charleston, SC 29401

Ms. Rucker is a former employee of Applebee's, who was a bartender on duty on the night of the incident. Ms. Rucker is expected to testify as to her interactions with

Shaun Moore prior to and on the night of the incident. Upon information and belief, there is no written or recorded statement at this time.

g. Ms. Nicole Swann
C/O Richardson Plowden & Robinson
40 Calhoun Street, Suite 220
Charleston, SC 29401

Ms. Swann is a former employee of Applebee's, who was a bartender on duty on the night of the incident. Ms. Swann is expected to testify as to her interactions with Shaun Moore prior to and on the night of the incident. There is a recorded statement of Ms. Swann taken on March 3, 2011, produced with this Defendant's responses to Plaintiff's Request for Production.

h. Representative(s) from Applebee's
2360 Chestnut Street
Orangeburg, SC 29115

Representative(s) of the Applebee's, where Mr. Moore was employed, are expected to testify as to his employment and details surrounding the night of the incident and the events leading up to his dismissal from the establishment. This Defendant is still researching the employees from the night of the incident and their interactions with Mr. Moore and reserves the right to produce a more definitive witness list at a later date and time.

Discovery in this matter is ongoing and this Defendant reserves the right to supplement this list. Additionally, this Defendant reserves the right to call any witness identified by any other party to this action, including Expert witnesses and Plaintiff's witnesses.

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: Please see the Answer to Interrogatory No. 1.

3. To your knowledge, information or belief, has any statement or report, written, taped, or otherwise been made by any person concerning the occurrence complained of? If so, please describe each statement or report, giving as to each such statement or report the following:

a) the name of the person giving the statement or report and the date and place of same:

- b) The names, business addresses, and business telephone numbers of the person present when it was made; and
- c) The form, whether oral, written, recorded, taped, and the subject of each statement or report.

ANSWER: Please see the Answer to Interrogatory No. 1.

4. Identify all agents, servants, employees, representatives, private investigators or others who made any investigation into this incident on the party's behalf.

ANSWER: Upon information and belief, none.

5. Set forth a list of photographs, videos, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: This Defendant is in possession of documents produced by other parties as well as the following:

- Neighborhood University – training CD for Applebee's employees
- Orangeburg County Coroner's Report and Toxicology
- MAIT Report
- Employee Punch Report
- Written statement of Sandra Johnson
- Applebee's Sales Receipts
- Personnel file of Sandra Johnson
- ServSafe Alcohol Awareness Policies and Worksheets
- Recorded statement of Nicole Swann

6. Set forth names and addresses of all insurance companies which have liability insurance coverage and/or other forms of insurance relating to this matter.

ANSWER: First Mercury Insurance Company
126600 Telegraph Road
Southfield, MI 48033

At this time, policy information has been requested, and this Defendant reserves the right to supplement this interrogatory at a later date and time.

7. Set forth the number or numbers of the insurance policies involved and the amount or amounts of coverage provided in each policy.

ANSWER: Please refer to the answer to Interrogatory No. 6.

8. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: This Defendant has not retained an expert at this time, but reserves the right to do so at a later date.

9. In connection with the expert witness, give the following information:

- a) state the subject matter on which the expert is expected to testify;
- b) State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

ANSWER: Please refer to the Answer to Interrogatory No. 8.

10. If Defendant has ever been involved in any other legal action, whether criminal or civil, either as a plaintiff or defendant, give the Court, case number, names of the other parties, names of counsel for parties, description of the action, and the disposition of each.

ANSWER: This Defendant objects to this interrogatory and deems it overly broad and unduly burdensome. Furthermore, the answer to this interrogatory is of public record and, therefore, can be made available to Plaintiff at any time.

11. Have there been incidents that have occurred subsequent to the incident set forth in the Complaint herein or before the incident complained of in the Plaintiff's Complaint and if so, where did each such incident occur, including in your answer:

- a) The names of any other persons involved; and
- b) The damages sustained

ANSWER: Upon information and belief, none.

12. Has Green Apple, LLC or Applebee's been the subject of any litigation involving Plaintiff, and if so, please list the time, place and occurrence of these matters, including any incident reports prepared by the Defendant and investigation of these incidents.

ANSWER: Upon information and belief, no.

13. Identify the relationship between Green Apple, LLC and Applebee's.

ANSWER: Green Apple, LLC is a franchisee company and owner of the Applebee's restaurant located in Orangeburg, South Carolina.

14. Have you filed annual statements for your corporation during the past three (3) years? If so, please provide copies of the annual statement presented at the annual stockholder meeting.

ANSWER: The present request calls for the production of financial statements that are premature until a finding of liability against this Defendant. Green Apple, LLC can confirm that it is well insured with liability limits in excess of the value of the present claim.

15. Identify all policies and procedures for Applebee's with regard to screening and/or hiring employees.

ANSWER: To the extent this Defendant possesses information relevant to this request, please refer to the documents produced in its responses to Plaintiff's Request for Production.

16. Identify all policies and procedures for Applebee's with regard to training employees.

ANSWER: To the extent that this Defendant has any information regarding any training of employees, it is contained in the "Neighborhood University" CD, which can be viewed at a mutually agreed upon time at the law offices of Richardson, Plowden and Robinson, P.A.

17. Identify all policies and procedures for Applebee's with regard to supervising employees.

ANSWER: Please refer to the Answer to Interrogatory No. 16.

18. Identify all policies and procedures for Applebee's with regard to the service of alcohol to individuals.

ANSWER: Upon information and belief, the Applebee's training CD contains the following items:

- Verify Legal Drinking Age - Video

- Identify Intoxication Signs - Video
- Involve Your Manager - Video
- Proper Training for Team Members - Video
- Role Model - Video
- Coaching and Reinforcement - Video
- Getting Involved - Video
- RSOA team member quiz
- RSOA team member test
- Manager RSOA quiz
- Manager RSOA test
- Alcohol Law and Your Responsibility - Manager and Team Member
- Recognizing and Preventing Intoxication - Manager and Team Member
- Checking Identification - Manager and Team Member
- Handling Difficult Situations - Manager and Team Member

19. Identify all policies and procedures for Applebee's with regard to dealing with intoxicated individuals

ANSWER: Please refer to the Answer to Interrogatory No. 18.

20. Provide a list of all employees working for Defendant six (6) months prior to the incident alleged in the Complaint.

ANSWER: This Defendant is in possession of the "Employee Punch Report" for October 18, 2012, included in this Defendant's responses to Plaintiff's Request for Production. This Defendant objects to the request to provide six months of employee lists as it would be unduly burdensome.

21. Identify which employees are current employees of Defendant

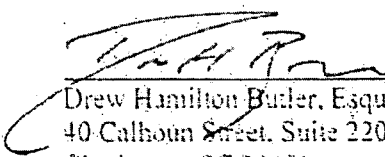
ANSWER: Upon information and belief, fact witness Andrea Rucker is a current employee. However, this Defendant is still working to determine which additional employees listed on the "Employee Punch Report," if any, are current employees of the Applebee's in Orangeburg, SC.

Discovery is ongoing and this Defendant reserves the right to supplement the Answer to these Interrogatories at a later date and time, should more information become available.

These Interrogatories shall be deemed continuing so as to require supplemental answers and amendments promptly. If you or your attorney obtains further information between the time answers are served and the time of trial.

Respectfully submitted this 25th day of March, 2015.

RICHARDSON, PLOWDEN & ROBINSON, P.A.



Drew Hamilton Butler, Esquire

40 Calhoun Street, Suite 220

Charleston, SC 29401

dbutler@richardsonplowden.com

Phone: 843-805-6550

Fax: 843-805-6599

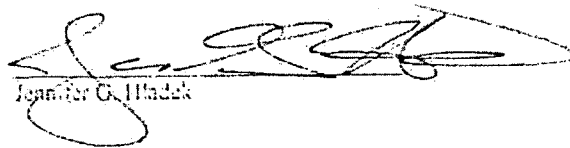
Attorneys for Green Apple, LLC d/b/a Applebee's

CERTIFICATE OF SERVICE

I, Jennifer G. Hladek, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Green Apple, LLC d/b/a Applebee's do hereby certify that I have served the attached pleading, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on March 25, 2015.

Shane M. Burroughs, Esquire
Lanier & Burroughs, LLC
PO Drawer 2789
Orangeburg, SC 29116
Attorney for Plaintiff

Johnston Cox, Esquire
Gallivan, White & Boyd, PA
PO Box 7363
Columbia, SC 29201
Attorney for Defendant Inabinet



Jennifer G. Hladek

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative
of the Estate of Shaun Robert Moore

Plaintiff,

vs.

Green Apple, LLC, doing business
as Applebee's, John/Jane Doe, and
Stabler L. Inabinet

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-38-0080

DEFENDANT GREEN
APPLE, LLC D/B/A
APPLEBEE'S ANSWERS
TO PLAINTIFF'S
INTERROGATORIES
(Survival Action)

TO: PLAINTIFF AND HER COUNSEL OF RECORD, SHANE BURROUGHS, ESQUIRE

Comes now Defendant, Green Apple, LLC, doing business as Applebee's, by and through its counsel, and answers Plaintiff's First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, reserving and not waiving the attorney-client work product, or any other privilege or immunity from disclosure which may attach to the information called for or responsive to these interrogatories and reserving all pertinent objections there at trial or any subsequent proceeding as follows:

I. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case.

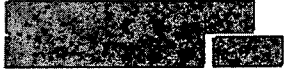
ANSWER:

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C/O Shane M. Burroughs, Esquire
Lanier & Burroughs, LLC
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Orangeburg, SC 29116

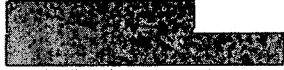
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 Gallivan, White & Boyd, PA
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 Columbia, SC 29201

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Orangeburg, SC 29115

Representative(s) of the Applebee's, where Mr. Moore was employed, are expected to testify as to his employment and details surrounding the night of the incident and the events leading up to his dismissal from the establishment. This Defendant is still researching the employees from the night of the incident and their interactions with Mr. Moore and reserves the right to produce a more definitive witness list at a later date and time.

Discovery in this matter is ongoing and this Defendant reserves the right to supplement this list. Additionally, this Defendant reserves the right to call any witness identified by any other party to this action, including Expert witnesses and Plaintiff's witnesses.

- 2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: Please see the Answer to Interrogatory No. 1.

- 3. To your knowledge, information or belief, has any statement or report, written, taped, or otherwise been made by any person concerning the occurrence complained of? If so, please describe each statement or report, giving as to each such statement or report the following:

- a) the name of the person giving the statement or report and the date and place of same;

b) The names, business addresses, and business telephone numbers of those persons present when it was made; and

c) The form, whether oral, written, recorded, taped, and the subject of each statement or report.

ANSWER: Please see the Answer to Interrogatory No. 1.

4 Identify all agents, servants, employees, representatives, private investigators or others who made any investigation into this incident on the party's behalf.

ANSWER: Upon information and belief, none.

5 Set forth a list of photographs, videos, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: This Defendant is in possession of documents produced by other parties as well as the following:

- Neighborhood University – training CD for Applebee's employees
- Orangeburg County Coroner's Report and Toxicology
- MAIT Report
- Employee Punch Report
- Written statement of Sandra Johnson
- Applebee's Sales Receipts
- Personnel file of Sandra Johnson
- ServSafe Alcohol Awareness Policies and Worksheets
- Recorded statement of Nicole Swann

6. Set forth names and addresses of all insurance companies which have liability insurance coverage and/or other forms of insurance relating to this matter.

ANSWER: First Mercury Insurance Company
126600 Telegraph Road
Southfield, MI 48033

At this time, policy information has been requested, and this Defendant reserves the right to supplement this interrogatory at a later date and time.

7. Set forth the number or numbers of the insurance policies involved and the amount or amounts of coverage provided in each policy.

ANSWER: Please refer to the answer to Interrogatory No. 6.

8. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: This Defendant has not retained an expert at this time, but reserves the right to do so at a later date.

9. In connection with the expert witness, give the following information.

- a) state the subject matter on which the expert is expected to testify;
- b) State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

ANSWER: Please refer to the Answer to Interrogatory No. 8.

10. If Defendant has ever been involved in any other legal action, whether criminal or civil, either as a plaintiff or defendant, give the Court, case number, names of the other parties, names of counsel for parties, description of the action, and the disposition of each.

ANSWER: This Defendant objects to this interrogatory and deems it overly broad and unduly burdensome. Furthermore, the answer to this interrogatory is of public record and, therefore, can be made available to Plaintiff at any time.

11. Have there been incidents that have occurred subsequent to the incident set forth in the Complaint herein or before the incident complained of in the Plaintiff's Complaint and if so, where did each such incident occur, including in your answer:

- a) The names of any other persons involved, and
- b) The damages sustained.

ANSWER: Upon information and belief, none.

12. Has Green Apple, LLC d/b/a Applebee's had any history of complaints similar to that of the Plaintiff, and if so, please list the time, place and occurrence of these matters, including any incident reports prepared by the Defendant and investigation of those incidents.

ANSWER: Upon information and belief, no.

13. Identify the relationship between Green Apple, LLC and Applebee's.

ANSWER: Green Apple, LLC is a franchisee company and owner of the Applebee's restaurant, located in Orangeburg, South Carolina.

14. Have you filed annual statements for your corporation during the past three (3) years? If so, please provide copies of the annual statement presented at the annual stockholder meeting.

ANSWER: The present request calls for the production of financial statements that are premature until a finding of liability against this Defendant. Green Apple, LLC can confirm that it is well insured with liability limits in excess of the value of the present claim.

15. Identify all policies and procedures for Applebee's with regard to screening and/or hiring employees.

ANSWER: To the extent this Defendant possesses information relevant to this request, please refer to the documents produced in its responses to Plaintiff's Request for Production.

16. Identify all policies and procedures for Applebee's with regard to training employees.

ANSWER: To the extent that this Defendant has any information regarding any training of employees, it is contained in the "Neighborhood University" CD, which can be viewed at a mutually agreed upon time at the law offices of Richardson, Plowden and Robinson, P.A.

17. Identify all policies and procedures for Applebee's with regard to supervising employees.

ANSWER: Please refer to the Answer to Interrogatory No. 16.

18. Identify all policies and procedures for Applebee's with regard to the service of alcohol to individuals.

ANSWER: Upon information and belief, the Applebee's training CD contains the following items:

- Verify Legal Drinking Age - Video

Identify Intoxication Signs - Video

Involve Your Manager - Video

- Proper Training for Team Members - Video
- Role Model - Video
- Coaching and Reinforcement - Video
- Getting Involved - Video
- RSOA team member quiz
- RSOA team member test
- Manager RSOA quiz
- Manager RSOA test
- Alcohol Law and Your Responsibility - Manager and Team Member
- Recognizing and Preventing Intoxication - Manager and Team Member
- Checking Identification - Manager and Team Member
- Handling Difficult Situations - Manager and Team Member

19 Identify all policies and procedures for Applebee's with regard to dealing with intoxicated individuals.

ANSWER: Please refer to the Answer to Interrogatory No. 18.

20 Provide a list of all employees working for Defendant six (6) months prior to the incident alleged in the Complaint.

ANSWER: This Defendant is in possession of the "Employee Punch Report" for October 18, 2012, included in this Defendant's responses to Plaintiff's Request for Production. This Defendant objects to the request to provide six months of employee lists as it would be unduly burdensome.

21 Identify which employees are current employees of Defendant.

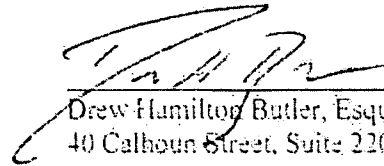
ANSWER: Upon information and belief, fact witness Andrea Rucker is a current employee. However, this Defendant is still working to determine which additional employees listed on the "Employee Punch Report," if any, are current employees of the Applebee's in Orangeburg, SC.

Discovery is ongoing and this Defendant reserves the right to supplement the Answers to these Interrogatories at a later date and time, should more information become available.

These Interrogatories shall be deemed continuing so as to require supplemental answers and action if and promptly, if you or your attorney obtains further information between the time answers are served and the time of trial.

Respectfully submitted this 25th day of March, 2015.

RICHARDSON, PLOWDEN & ROBINSON, P.A.



Drew Hamilton Butler, Esquire
40 Calhoun Street, Suite 220
Charleston, SC 29401
dbutler@richardsonplowden.com
Phone: 843-805-6550
Fax: 843-805-6599

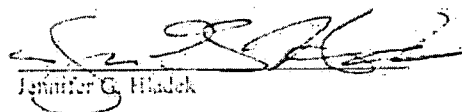
Attorneys for Green Apple, LLC d/b/a Applebee's

CERTIFICATE OF SERVICE

I, Jennifer G. Hladek, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Green Apple, LLC d/b/a Applebee's do hereby certify that I have served the attached pleading, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of record as indicated below on March 25, 2015.

Shane M. Burroughs, Esquire
Lanter & Burroughs, LLC
PO Drawer 2739
Orangeburg, SC 29116
Attorney for Plaintiff

Johnston Cox, Esquire
Gallivan, White & Boyd, PA
PO Box 7363
Columbia, SC 29201
Attorney for Defendant Defendant



Jennifer G. Hladek

EXHIBIT B

000066

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative
of the Estate of Shaun Robert Moore

Plaintiff

vs

Green Apple, LLC, doing business
as Applebee's, John/Jane Doe, and
Stabler L. Inabinet

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2014CP-380862

DEFENDANT GREEN
APPLE, LLC d/b/a
APPLEBEE'S
RESPONSES TO
PLAINTIFF'S REQUEST
FOR PRODUCTION
(Wrongful Death)

TO: PLAINTIFF AND HER COUNSEL OF RECORD, SHANE BURROUGHS, ESQUIRE

Comes now Defendant Green Apple, LLC d/b/a Applebee's, by and through its counsel, responds to Plaintiff Lindsey Stewart's, Personal Representative of the Estate of Shaun Robert Moore, First Requests for Production, pursuant to Rule 34 of the South Carolina Rules for Civil Procedure, specifically reserving and not waiving the attorney-client work product, or any other privilege or immunity from disclosure which may attach to the documents and information called for and/or response to, these quests for production, and reserving, and not waiving or intending to waive, all objections and questions as to the competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of any documents referred to, provided, or answers given, or the subject matter thereof, in the trial of this action or in any subsequent action or proceeding, and specifically reserving the right at any time to revise and/or correct any of the answers set forth herein, as follows:

1. Please provide copies of any and all statements given by either eye witnesses or other witnesses to the incidents and matters complained of herein which are in the possession of the

Defendant or the Defendant's attorney, whether written or recorded or on a tape recorder, computer disk, or diskette.

RESPONSE: To the extent that this Defendant has any information relative to this request, please refer to the Documents labeled Applebee's 001 through Applebee's 242, produced herein.

2. Please provide copies or permit the Plaintiff's attorney to inspect, to photograph or otherwise copy any and all photographs, plats or diagrams which the Defendant or their attorney may have which relate to the matters alleged herein, including but not limited to, the photographs, plats or diagrams of the scene of the accident to include negatives of such photographs.

RESPONSE: Please refer to the Response to Request No. 1.

3. Please produce any and all reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' report.

RESPONSE: This Defendant has not named an expert at this time, but reserves the right to do so at a later date.

4. Please produce any and all documents listed or referred to in your Answers to Interrogatories.

RESPONSE: Please refer to the Response to Request No. 1.

5. Please produce any documents received by way of Subpoena or FOIA requests.

RESPONSE: Please refer to the Response to Request No. 1.

6. Please produce any and all documents setting out the policies and or procedures for maintaining the Defendant's premises.

RESPONSE: Please refer to the Response to Request No. 1. Additionally, this Defendant is in possession of a CD titled "Neighborhood University," of which cannot be duplicated or its contents printed. Counsel for the Plaintiff may view this CD at a mutually agreed upon date and time at the law offices of Richardson, Plowden & Robinson, P.A.

7. Please produce any and all documents setting out the policies and/or procedures for maintaining the Defendant's property.

RESPONSE: Please refer to the Response to Request No. 1. Additionally, this Defendant is in possession of a CD titled "Neighborhood University," of which cannot be duplicated or its contents printed. Counsel for the Plaintiff may view this CD at a mutually agreed upon date and time at the law offices of Richardson, Plowden & Robinson, P.A.

8. Please produce any and all documents setting out the policies and/or procedures for screening and/or hiring employees.

RESPONSE: Please refer to the Response to Request No. 1. Additionally, this Defendant is in possession of a CD titled "Neighborhood University," of which cannot be duplicated or its contents printed. Counsel for the Plaintiff may view this CD at a mutually agreed upon date and time at the law offices of Richardson, Plowden & Robinson, P.A.

9. Please produce any and all documents setting out the policies and/or procedures with regard to training employees.

RESPONSE: Please refer to the Response to Request No. 1. Additionally, this Defendant is in possession of a CD titled "Neighborhood University," of which cannot be duplicated or its contents printed. Counsel for the Plaintiff may view this CD at a mutually agreed upon date and time at the law offices of Richardson, Plowden & Robinson, P.A.

10. Please produce any and all documents setting out the policies and/or procedures with regard to supervising employees.

RESPONSE: Please refer to the Response to Request No. 1. Additionally, this Defendant is in possession of a CD titled "Neighborhood University," of which cannot be duplicated or its contents printed. Counsel for the Plaintiff may view this CD at a mutually agreed upon date and time at the law offices of Richardson, Plowden & Robinson, P.A.

11. Please produce any and all documents setting out the policies and/or procedures with regard to the service of alcohol on Defendant's premises.

RESPONSE: Please refer to the Response to Request No. 1. Additionally, this Defendant is in possession of a CD titled "Neighborhood University," of which cannot be duplicated or its contents printed. Counsel for the Plaintiff may view this CD at a mutually agreed upon date and time at the law offices of Richardson, Plowden & Robinson, P.A.

12. Please produce any and all documents setting out the policies and/or procedure with regard to dealing with intoxicated individuals.

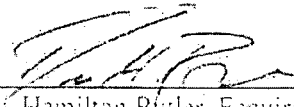
RESPONSE: Please refer to the Response to Request No. 1. Additionally, this Defendant is in possession of a CD titled "Neighborhood University," of which cannot be duplicated or its contents printed. Counsel for the Plaintiff may view this CD at a mutually agreed upon date and time at the law offices of Richardson, Plowden & Robinson, P.A.

13. Please produce all documents that were requested to be preserved in Plaintiff's October 29, 2012 spoliation letter.

RESPONSE: This Defendant has preserved the written statements, policy worksheets, and training materials related to the present claim. Green Apple is not aware of any documents that have been deleted or destroyed following notice of the claim.

Respectfully submitted this 25th day of March, 2015.

RICHARDSON, PLOWDEN & ROBINSON, P.A.

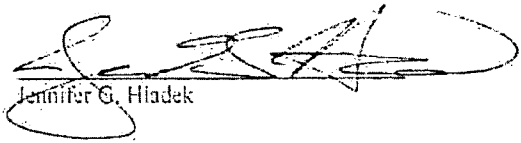

Drew Hamilton Butler, Esquire
40 Calhoun Street, Suite 220
Charleston, SC 29401
dbutler@richardsonplowden.com
Phone: 843-805-6550
Fax: 843-805-6599
Attorneys for Green Apple, LLC d/b/a Applebee's

CERTIFICATE OF SERVICE

I, Jennifer G. Hladek, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Green Apple, LLC d/b/a Applebee's do hereby certify that I have served the attached pleading, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on March 25, 2015.

Shane M. Burroughs, Esquire
Lanier & Burroughs, LLC
PO Drawer 2739
Orangeburg, SC 29116
Attorney for Plaintiff

Johnston Cox, Esquire
Gallivan, White & Boyd, P.A.
PO Box 7368
Columbia, SC 29201
Attorney for Defendant Inahinet


Jennifer G. Hladek

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative
of the Estate of Shaun Robert Moore,

Plaintiff,

vs.

Green Apple, LLC, doing business
as Applebee's, John/Jane Doe, and
Stabler L. Anabinet

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2011 CP-33-00892

DEFENDANT GREEN
APPLE, LLC D/B/A
APPLEBEE'S
RESPONSES TO
PLAINTIFF'S REQUEST
FOR PRODUCTION
(Survival Action)

TO: PLAINTIFF AND HER COUNSEL OF RECORD, SHANE BURROUGHS, ESQUIRE

Comes now Defendant Green Apple, LLC d/b/a Applebee's, by and through its counsel, responds to Plaintiff, Lindsey Stewart's, Personal Representative of the Estate of Shaun Robert Moore, First Requests for Production, pursuant to Rule 34 of the South Carolina Rules for Civil Procedure, specifically reserving and not waiving the attorney-client work product, or any other privilege or immunity from disclosure which may attach to the documents and information called for and/or response to, these requests for production, and reserving, and not waiving or intending to waive, all objections and questions as to the competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of any documents referred to, provided, or answers given, or the subject matter thereof, in the trial of this action or in any subsequent action or proceeding, and specifically reserving the right at any time to revise and/or correct any of the answers set forth herein, as follows.

1. Please provide copies of any and all statements given by either eye witnesses or other witnesses to the incidents and matters complained of herein which are in the possession of the

Defendant or the Defendant's attorney, whether written or recorded or on a tape recorder, computer disk, or diskette.

RESPONSE: To the extent that this Defendant has any information relative to this request, please refer to the documents labeled Applebee's 001 through Applebee's 242, produced herein.

2. Please provide copies or permit the Plaintiff's attorney to inspect, to photograph or otherwise copy any and all photographs, plats or diagrams which the Defendant or their attorney may have which relate to the matters alleged herein, including but not limited to, the photographs, plats or diagrams of the scene of the accident to include negatives of such photographs.

RESPONSE: Please refer to the Response to Request No. 1.

3. Please produce any and all reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' report.

RESPONSE: This Defendant has not named an expert at this time, but reserves the right to do so at a later date.

4. Please produce any and all documents listed or referred to in your Answers to Interrogatories.

RESPONSE: Please refer to the Response to Request No. 1.

5. Please produce any documents received by way of Subpoena or FOIA requests.

RESPONSE: Please refer to the Response to Request No. 1.

6. Please produce any and all documents setting out the policies and/or procedures for maintaining the Defendant's premises.

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8. Please produce any and all documents setting out the policies and/or procedures for screening and/or hiring employees.

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9. Please produce any and all documents setting out the policies and/or procedures with regard to training employees.

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10. Please produce any and all documents setting out the policies and/or procedure with regard to supervising employees.

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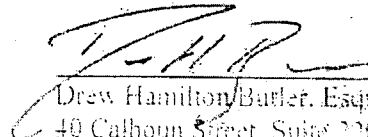
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13. Please produce all documents that were requested to be preserved in Plaintiff's October 29, 2012 spoliation letter.

RESPONSE: This Defendant has preserved the written statements, policy worksheets, and training materials related to the present claim. Green Apple is not aware of any documents that have been deleted or destroyed following notice of the claim.

Respectfully submitted this 25th day of March, 2015.

RICHARDSON, PLOWDEN & ROBINSON, P.A.


Drew Hamilton Butler, Esquire
40 Calhoun Street, Suite 220
Charleston, SC 29401
dbutler@richardsonplowden.com
Phone: 843-805-6550
Fax: 843-805-6599
Attorneys for Green Apple, LLC d/b/a Applebee's

CERTIFICATE OF SERVICE

I, Jennifer G. Hladek, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Green Apple, LLC d/b/a Applebee's do hereby certify that I have served the attached pleading, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on March 25, 2015.

Shane M. Burroughs, Esquire
Lanier & Burroughs, LLC
PO Drawer 2789
Orangeburg, SC 29116
Attorney for Plaintiff

Johnston Cox, Esquire
Gallivan, White & Boyd, PA
PO Box 7363
Columbia, SC 29201
Attorney for Defendant Lanabiet


Jennifer G. Hladek

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative
of the Estate of Shaun Robert Moore

Plaintiff,

vs.

Green Apple, LLC, doing business
as Applebee's, John/Jane Doe, and
Stabler L. Inabinet

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-38-00802

2014-CP-38-00803

AFFIDAVIT OF

ELIZABETH A. TRENDOWSKI

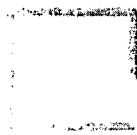
FILED TRUE COPY

Wingja B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

000077



DRAM SHOP FORENSICS

AFFADAVIT OF ELIZABETH A. TRENDOWSKI

May 19, 2015

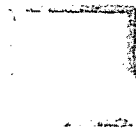
I, Elizabeth Trendowski, do hereby depose and say:

1. I am over the age of eighteen years and believe in the obligation of an oath.
2. I was retained to review this matter as whether Green Apple, LLC (Applebee's) met the industry standard of care regarding their general liability duties by allowing Shaun Robert Moore to leave the premises in an intoxicated condition after firing him.
3. I have extensive education, training, and experience in the field of hospitality, including restaurant and bar operations teaching safe alcohol service, bar operations, managing establishments, owning a liquor wholesale business, and being an Adjunct Professor in the Business School of University of New Haven. A complete copy of my curriculum vitae is attached as Exhibit 1.
4. I am the founder and principal of Dram Shop Forensics, LLC, located in Ponte Vedra Beach, Florida.
5. As a professional hospitality expert, I am often called upon to analyze, interpret, and apply various regulations, statutes and general liability issues as well as National Safety Standards to liquor permit premises.
6. I have over 25 years of experience in dealing the hospitality industry as well as the policies and procedures executing the service and hospitality operation.
7. Shaun Moore was an employee of Applebee's on October 18, 2012 and was fired by Applebee's manager for consuming alcohol while he was working.
8. At the time Mr. Moore was fired, he was grossly intoxicated and unable to make safe decisions.
9. Mr. Moore was forced to leave the Applebee's premises without any alternatives to safely transport him home.
10. Mr. Moore lived approximately 15 miles away.
11. Mr. Moore was unable to physically walk home in a safe manner due to his gross intoxication.
12. Applebee's was negligent in failing to find alternative transportation for Mr. Moore to safely get home.
13. Applebee's failed to take reasonable steps to protect Mr. Moore from foreseeable danger and to exercise reasonable care by allowing Mr. Moore to walk 15 miles in a grossly intoxicated condition.
14. Applebee's had notice of the dangerous condition they put Mr. Moore in by identifying his grossly intoxicated condition.
15. While walking home, Mr. Moore attempt to cross US-21 (Columbus Road), Mr. Moore was struck by a vehicle driven by Stabler Inabinet and killed.
16. This matter is a general liability case based upon my education, knowledge and experience in the hospitality industry.

WITEST, TRUE & CORRECT

Wing B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SC



DRAM SHOP FORENSICS

17. Based on the information provided to me, it is my opinion that Applebee's was negligent in this matter of general liability and as such did not meet the industry standard of care.

Mrs. Trendowski's opinions as enumerated above are based upon her education, experience, training and review of pertinent documents and materials. Ms. Trendowski's opinions are given within the bounds of reasonable and professional certainty, and subject to change if additional information becomes available.

Elizabeth Trendowski

Date

JAL C. TRENDOWSKI, CSR
COMMISSIONER SUPERIOR COURT

Date

Liz@liztrendowski.com

Ph. 904.686.1346

Cell. 860.304.7593

3110 S. Ponte Vedra Blvd.

Ponte Vedra Beach, FL 32082

www.dramshopforensics.com

000079

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative
of the Estate of Shaun Robert Moore

Plaintiff,

vs.

Green Apple, LLC, doing business
as Applebee's, John/Jane Doe, and
Stabler L. Inabinet

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-38-00802

2014-CP-38-00803

AFFIDAVIT OF DAVID A. HILL

1. My name is David A. Hill, I am over the age of eighteen, of sound mind and otherwise competent to make this Affidavit, which I make based upon my background, education, training and experience. This Affidavit is also based upon my own personal knowledge.

2. I am a certified accident reconstructionist and have been certified in this area since 1996.

3. I have actual professional knowledge and experience in my area of Accident Reconstruction. My ACTAR number is 912.

4. I have been asked to reconstruct the accident in the above captioned matter and to render opinions concerning my investigations and the actions of Defendant Stabler L. Inabinet.

5. After reviewing the Trooper's report and photographs and witnesses' statements, Mr. Inabinet was operating his 2002 Acura Legend with headlamps in poor condition at the time of the collision of October 18, 2012.

6. The condition of the headlamps severely reduced the illumination distance.

7. With proper headlamps, the first witness Patricia Sloop clearly observed the Plaintiff in an intoxicated or confused state while passing the Plaintiff and turned around and returned to the scene to assist the Plaintiff.

8. If Mr. Inabinet would have maintained his headlamps in a proper condition, and maintain a proper lookout, he would have been able to see the Plaintiff and avoid the collision by reducing his speed or sounding his horn.

9. According to South Carolina Code of Laws § 56-5-3230, Defendant Inabinet failed to exercise due care by failing to keep a proper lookout, slow down and/or sound his horn as to warn the Plaintiff and avoid the collision.

TESTED TRUE
Wing
CLERK OF
ORANGEBURG

000080

10. I am informed and believe that discovery has not yet been completed in this case and I reserve to amend my opinions at the conclusion of the discovery process.

David A. Hill
David A. Hill

SWORN to me this 27th day of May, 2015.

Deina Huera
Notary Public for the State of SC
My Commission Expires May 8, 2023

000081

~~CONFIDENTIAL~~

COLUMBIA COUNTY, SOUTH CAROLINA
COLUMBIA COUNTY CLERK OF COURT

MYRTLE BEACH COUNTY, SOUTH CAROLINA
MYRTLE BEACH COUNTY CLERK OF COURT

CHARLESTON COUNTY, SOUTH CAROLINA
CHARLESTON COUNTY CLERK OF COURT

Richardson Plowden & Robinson, P.A.

Reply To: Charleston
dbutler@RichardsonPlowden.com

July 24, 2015

The Honorable Maité Murphy
P.O. Box 802
St. George, SC 29477

Re: *Lindsey Stewart, PR of the Estate of Shaun Robert Moore v. Apple J, L.P., et al*
Civil Action No. 2014-CP-38-0802
Lindsey Stewart, PR of the Estate of Shaun Robert Moore v. Apple J, L.P., et al
Civil Action No. 2014-CP-38-0803

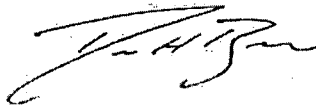
Dear Judge Murphy:

Per your request, please find enclosed the proposed Order Granting Green Apple, LLC d/b/a Applebee's Motion for Summary Judgment regarding the above referenced matters. I have also provided a word version via email should you wish to make any revisions. Thank you for your kind attention to this matter, and do not hesitate to contact me with any questions or concerns.

With kind regards, I remain

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.



Drew Hamilton Butler

DHB/jgh
Enclosures

cc: Counsel of Record (via email)

000082

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

Lindsey Stewart, Personal Representative of)
the Estate of Shaun Robert Moore,)

Plaintiff,)

v.)

Green Apple, LLC, d/b/a Applebee's;)
John/Jane Doe, and Stabler L. Inabinet,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASES NOS.:

2014-CP-38-00802

2014-CP-38-00803

**ORDER GRANTING
SUMMARY JUDGMENT TO
DEFENDANT GREEN APPLE,
LLC, D/B/A APPLEBEE'S**

Defendant Green Apple, LLC, d/b/a Applebee's (hereinafter referred to as "Green Apple") moved for an order granting summary judgment to Green Apple pursuant to Rule 56 of the South Carolina Rules of Civil Procedure in the above-captioned litigation.

The Motion was heard in open court on May 15, 2015. Shane M. Burroughs of Lanier & Burroughs, LLC appeared on behalf of Plaintiff. Drew Hamilton Butler of Richardson, Plowden & Robinson, P.A. appeared on behalf of Green Apple. The Court had before it the pleadings and motions filed in the above-captioned litigation, including Green Apple's Motion for Summary Judgment, the accompanying Memorandum of Law in Support, and the Affidavit of Sandra Johnson.

Based upon this Court's review of the documents filed in this litigation and the testimony and other evidence presented at the hearing, the Court hereby grants Green Apple's Motion for Summary Judgment for the reasons set forth herein.

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I. FACTUAL FINDINGS AND PROCEDURAL HISTORY

Plaintiff, as the personal representative of the Estate of Shaun Robert Moore, filed a wrongful death and survival action against Green Apple. See Amended Complaints (2014-CP-38-802 [Wrongful Death]) and (2014-CP-38-803 [Survival Action]).

In her complaints against Green Apple, Plaintiff alleges that Moore was an employee of Green Apple d/b/a Applebee's. On October 18, 2012, Moore was terminated by the manager of Green Apple after allegedly consuming alcohol while working. Plaintiff asserts that Moore was forced to leave the premises even though Green Apple allegedly knew that Moore was "grossly intoxicated, did not have transportation and lived in St. Matthews, South Carolina, approximately 15 miles away from [Green Apple] and had no other way to get home, but to walk." Moore, while attempting to cross US-21 as a pedestrian, was struck and killed by Defendant Stabler L. Inabinet who was operating his motor vehicle and traveling north on US-21. See Amended Complaints, ¶¶ 6-9.

Plaintiff has alleged that Green Apple was negligent and grossly negligent in the following particulars:

1. In failing to maintain proper policies and procedures for intoxicated persons on [Green Apple's] premises as it relates to providing transportation to said persons;
2. In failing to operate a licensed drinking establishment in a proper manner and consistent with South Carolina laws;
3. In failing to call a cab for [Moore] even though [the manager] knew or should have known that he was grossly intoxicated and had to walk approximately fifteen (15) miles to get home; [and]
4. In forcibly removing an intoxicated person from Defendant Green Apple's premises without providing transportation.

Amended Complaints, ¶¶ 10-11.

II. LAW AND ANALYSIS

Plaintiff's claims against Green Apple arise out of the alleged intoxication of Moore while on Green Apple's premises and Green Apple's alleged failure to protect Moore from his voluntary intoxication by preventing Moore from leaving the premises or providing proper transportation to Moore. South Carolina, however, does not recognize a first party cause of action against a tavern owner for injuries sustained by the intoxicated person, and accordingly, Plaintiff's claims against Green Apple fail as a matter of law. Tobias v. Sports Club, Inc., 332 S.C. 90, 504 S.E.2d 318 (1998).

Certain South Carolina statutory provisions prohibit the knowing sale of alcoholic beverages to an intoxicated person. Id. at 92, 504 S.E.2d at 319. In Tobias, the South Carolina Supreme Court recognized that a private cause of action for a violation of these statutes against a tavern owner who continues to serve an intoxicated person who later injures a third party promotes public safety and prevents an already intoxicated person from becoming more intoxicated and a greater risk to the public at large when he leaves the establishment. Id.

The Supreme Court, however, rejected the contention that an additional public policy of South Carolina's alcohol control statutes was to protect the intoxicated person himself from his own incompetence and helplessness and held instead that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." Id. The Court concluded that while a third party could bring a negligence action against a tavern owner for injuries caused by an intoxicated person, the intoxicated adult could not bring such an action for his own injuries. Id. at 92-93, 504 S.E.2d at 319; see also Marcum v. Bowden, 372 S.C. 452, 458-59, 643 S.E.2d 85, 88 (2007) (observing a commercial host is only liable to third parties for injuries caused by an intoxicated person).

In Lydia v. Horton, 355 S.C. 36, 42-43, 583 S.E.2d 750, 754 (2003), the South Carolina Supreme Court held that an intoxicated adult could not recover on a first party negligent entrustment cause of action. In Lydia, the plaintiff was intoxicated when the defendant allowed the plaintiff to borrow his car. The plaintiff drove the car in his intoxicated state and wrecked the vehicle in a single-car accident which left him with severe injuries. The plaintiff brought suit against the defendant alleging that the defendant knew or should have known that the plaintiff was not competent to operate the vehicle. In holding that the plaintiff could not recover against the defendant on a first party negligent entrustment claim, the Court reaffirmed the principle articulated in Tobias that a plaintiff, who was voluntarily intoxicated when an accident occurred, cannot attempt to deflect the responsibility that should be imposed upon himself towards another for injuries sustained by the plaintiff. Id.

Tobias and Lydia preclude Plaintiff's first-party negligence action against Green Apple. Here, Plaintiff, as the personal representative of Moore, alleges that Moore consumed alcohol while working, became grossly intoxicated, and was forced to leave the premises and walk home. Plaintiff seeks to impose liability upon Green Apple for Moore's own helplessness and incompetence caused by his voluntary intoxication. Under the reasoning set forth in the Supreme Court's precedents in Tobias and Lydia, there was no duty of Green Apple to protect Moore who was voluntarily intoxicated. Under these facts, Green Apple is entitled to judgment as a matter of law where South Carolina law precludes liability upon Green Apple for Moore's voluntary intoxication and his resulting death from that intoxication.

In addition, while it is clear that Plaintiff's first party cause of action against Green Apple is prohibited under South Carolina law, liability in South Carolina upon a tavern owner for injuries caused by an intoxicated person is premised on the knowing sale of alcoholic beverages

to an intoxicated person. "At common law in American courts, a tavern owner could not be held civilly liable for injuries caused by an over served, intoxicated patron." Lydia, 355 S.C. at 41, 583 S.E.2d at 753. South Carolina courts ultimately recognized a limited cause of action against a seller of alcohol for injuries caused to third parties by a purchaser of alcohol when the commercial host knowingly sold alcoholic beverages to an intoxicated person in violation of the criminal statutes forbidding the sale of alcohol to intoxicated persons. Marcum, 372 S.C. at 458-59, 643 S.E.2d at 88.

To state a claim of negligence against a defendant tavern owner, a plaintiff's cause of action therefore must be predicated upon a showing that the commercial host violated South Carolina's alcohol control statutes which prohibit the sale of alcoholic beverages to intoxicated persons. Id. at 459, 643 S.E.2d at 88; S.C. CODE ANN. § 61-4-580 ("No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit: ... (2) *sell* beer or wine to an intoxicated person....") (emphasis added); § 61-6-2220 ("A person or establishment licensed to sell alcoholic liquors or liquor by the drink pursuant to this article may not *sell* these beverages to persons in an intoxicated condition") (emphasis added).

Plaintiff has not alleged in her complaints that Green Apple sold any alcoholic beverage to Moore. The sale of alcoholic beverages in violation of South Carolina's alcohol control statutes is a crucial element of a claim arising out of injuries caused by an intoxicated person. Where Plaintiff has not shown that Green Apple violated the applicable criminal statutes, Plaintiff cannot establish that Green Apple owed any common law duty to Moore. See Hartfield v. Getaway Lounge & Grill, Inc., 388 S.C. 407, 415, 417, 697 S.E.2d 558, 562-63 (2010)

(observing that because South Carolina does not have a Dram Shop Act, the civil remedy arises out of criminal statutes). The liability upon a commercial host to those injured by intoxicated persons flows from the host's violation of these alcohol control statutes, and without a violation of these applicable statutes, no duty of the host arises. Plaintiff, who does not allege that Green Apple sold any alcoholic beverages to Moore, has therefore failed to state a claim against Green Apple as a matter of law.

III. CONCLUSION

Plaintiff's allegations against Green Apple stem from Moore's voluntary intoxication and Green Apple's alleged failure to protect Moore from the consequences of his voluntary intoxication. Green Apple is entitled to judgment as a matter of law on these allegations because South Carolina does not recognize a first party cause of action against a commercial host for injuries sustained by the intoxicated person to his own person. Furthermore, any such liability only arises out of the host's violation of criminal statutes prohibiting the knowing sale of alcoholic beverages to an intoxicated person. Plaintiff makes no allegation in her complaints that Green Apple violated these statutes by selling alcoholic beverages to Moore. Where there is no allegation that Green Apple contributed to Moore's intoxicated condition by selling him alcoholic beverages, no duty was owed to Moore by Green Apple under South Carolina law.

THEREFORE IT IS ORDERED that the Motion for Summary Judgment filed by Green Apple be GRANTED for the reasons set forth herein.

The Honorable Maité Murphy
Judge, First Judicial Circuit

_____, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Lindsey Stewart, Personal Representative of
the Estate of Shaun Robert Moore.

Plaintiff,

Green Apple, LLC, doing business as
Applebee's, John Jane Doe, Manager, and
Stabler L. Inabinet

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NOS. 2014-CP-38-802, -803

PLAINTIFF'S RULE 59(e), SCRPC,
MOTION TO RECONSIDER, ALTER,
OR AMEND.

CLERK OF COURT
ORANGEBURG COUNTY, S.C.

Lindsey Stewart, Personal Representative of the Estate of Shaun Robert Moore, ("Plaintiff") moves this Court under Rule 59(e), SCRPC, to reconsider, alter, or amend its August 3, 2015 Order granting Green Apple, LLC's ("Green Apple") motion for summary judgment. This Motion is based on the memorandum of law below and exhibits filed along with this Motion, the pleadings, and applicable law, as well as any other evidence or memorandum of law that Plaintiff may submit to the Court at or prior to a hearing on this Motion. For the reasons stated below, Plaintiff requests the Court reconsider its Order and deny Green Apple's motion.

STANDARD

"For summary judgment purposes, a court must view the facts in the light most favorable to the non-moving party." *Metts v. Mims*, 384 S.C. 491, 500, 682 S.E.2d 813, 818 (2009). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Moore v. Weinberg*, 373 S.C. 209, 216, 644 S.E.2d 740, 744 (Ct. App. 2007) (internal citation

omitted). "Generally, negligence claims are not susceptible of summary adjudication because of the many questions normally present in such cases concerning the reasonableness of a party's conduct, foreseeability, and proximate cause." *Folkens v. Hum*, 290 S.C. 194, 199, 348 S.E.2d 839, 842 (Ct. App. 1986).

BACKGROUND

On October 18, 2012, Green Apple, employed Shaun Robert Moore at Applebee's Restaurant in Orangeburg, South Carolina. (Am. Cmplt. ¶ 6; Ans. of Green Apple ¶ 5). Mr. Moore began his shift around 4:30 pm. (Aff. of Johnson, ¶ 4). After observing Mr. Moore consume alcohol while at work, Green Apple terminated his employment prior to the end of his shift and forced him to leave the premises. (Am. Cmplt. ¶ 7; Ans. of Green Apple ¶ 5). Plaintiff alleges, due to Mr. Moore's employment relationship with Green Apple for a number of months, Green Apple knew Mr. Moore had no form of transportation and no cellphone, and lived approximately 15 miles from the restaurant. (Am. Cmplt. ¶ 8). After Green Apple forced Mr. Moore to leave the premises in an intoxicated state, Defendant Inabinet's vehicle struck and killed Mr. Moore, a pedestrian, on U.S. Highway 421. (Am. Cmplt. ¶ 9; Ans. of Green Apple ¶ 5).

On August 5, 2014, Plaintiff filed Amended Complaints asserting wrongful death and survival actions against Defendants. Plaintiff asserted a negligence action against Green Apple based on its failures to maintain proper policies for intoxicated persons on its premises, to operate a licensed drinking establishment properly, to call a cab for Mr. Moore, and for forcibly removing Mr. Moore from the premises without transportation. (Am. Cmplt. ¶ 11).

On March 19, 2015, Defendant Green Apple, LLC, filed a motion for summary judgment with two bases—(1) South Carolina does not recognize a first party dram shop cause of action and (2) Green Apple did not sell alcohol to Mr. Moore. (Mot. p. 1). On May 20, 2015, Plaintiff filed

(Motion to Compel discovery responses from Green Apple and John Lane Doe, Manager. Despite Plaintiff's service of a spoliation letter to Green Apple, Plaintiff never received Mr. Moore's personnel file and is advised "that personnel file no longer exists," leaving Green Apple in a superior position as to important evidence at the time of its summary judgment motion. (Exh. 1, Tr. p. 28 lns. 10-18). Plaintiff explained to the Court that she did not take any depositions prior to the hearing because she was waiting to receive full discovery responses from Green Apple. (Exh. 1, Tr. pp. 14, 19).

The Court held a hearing on Green Apple's motion for summary judgment on June 1, 2015.¹ At the hearing, Plaintiff argued the motion for summary judgment is not ripe due to the outstanding motion to compel and the fact that no depositions occurred as of the hearing date. (Exh. 1, Tr. pp. 12, 14-16, 19, 28-29, 33). Plaintiff presented the affidavit of Elizabeth A. Trendowski, a founder of Dram Shop Forensics, LLC, and person with "extensive education, training, and experience in the field of hospitality, including restaurant and bar operations teaching safe alcohol service, bar operations, [and] managing establishments." (Exh. 2, Aff. of Trendowski).² Plaintiff's counsel explained to the Court that her case is not a dram shop liability case pursuant to South Carolina statutes but, instead, is a general negligence case. (Exh. 1, Tr. p. 28, 32-33). Ms. Trendowski's affidavit states:

At the time Mr. Moore was fired, he was grossly intoxicated and unable to make safe decisions.

Mr. Moore was forced to leave the Applebee's premises without any alternatives to safely transport him home.

Mr. Moore lived approximately 15 miles away.

¹ Defendant Inabinet filed a motion for summary judgment, which the Court also heard on June 1, 2015.

² Plaintiff also presented the Court with the affidavit of accident reconstruction expert David Hill

Mr. Moore was unable to physically walk home in a safe manner due to his gross intoxication.

Applebee's was *negligent* in failing to find alternative transportation for Mr. Moore to safely get home.

Applebee's failed to take *reasonable* steps to protect Mr. Moore from *foreseeable* danger and to *exercise reasonable care* by allowing Mr. Moore to walk 15 miles in a grossly intoxicated condition.

Applebee's had notice of the dangerous condition they put Mr. Moore in by identifying his grossly intoxicated condition. . . .

This matter is a general liability case based upon my education, knowledge and experience in the hospitality industry.

Based on the information provided to me, it is my opinion that Applebee's was *negligent in this matter of general liability* and as such did not meet the industry standard of care.

(Exh. 2, Aff. of Trendowski) (emphasis added). At the time of the hearing, Plaintiff did not have Mr. Moore's personnel file or the requested policies and procedures from Green Apple. (Exh. 1, Tr. p. 23, 30).

On August 3, 2015, the Court signed an Order granting Green Apple's motion for summary judgment. (Exh. 3). Plaintiff received a copy of the filed Order via email on August 19, 2015. This Motion to Reconsider is timely filed.

In its Order, the Court made two rulings: (1) South Carolina does not recognize a first party cause of action against a tavern owner for injuries sustained by an intoxicated person and (2) dram shop liability arises only when the plaintiff alleges the defendant sold alcohol to the plaintiff, which Plaintiff in this action did not allege. The Court did not address or rule on Plaintiff's arguments regarding incomplete discovery or the proper characterization of this case as a general negligence action rather than a dram shop liability action. Plaintiff moves the Court to reconsider and alter its Order for the reasons stated below.

ARGUMENT

I. Discovery is Not Complete

The Court's Order does not address Plaintiff's argument that summary judgment is inappropriate because discovery is not complete. (Exh. 1, Tr. pp. 12, 14-16, 19, 28-29, 33). "Since it is a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baughman v. AT&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (internal quotation marks and citation omitted); see also *Doe v. Batson*, 345 S.C. 316, 321, 543 S.E.2d 854, 857 (2001) (holding "the trial court abused its discretion in granting summary judgment before Doe had a full and fair opportunity to complete discovery").

Plaintiff promptly served discovery requests on Green Apple on October 24, 2014. (Mot. to Compel). Green Apple did not serve any response until March 25, 2015. (Exh. A to Mot. to Compel). Green Apple filed its motion for summary judgment on March 19, 2015, six days prior to responding to Plaintiff's discovery requests. (Mot. p. 1). At the hearing, Plaintiff argued summary judgment is premature because written discovery is incomplete and, consequently, the parties have yet to take a deposition in this case. (Exh. 1, Tr. pp. 14, 19). The Court did not rule on this argument.

Plaintiff demonstrated that further discovery will uncover additional evidence relevant to the issue of Green Apple's liability in this case. (Exh. 1, Tr. pp. 29-31). Plaintiff stated at the hearing that Green Apple failed to produce Mr. Moore's personnel file and that "[t]here are witnesses who will testify that they didn't see [Mr. Moore] make the phone call. They saw him get forced to leave the premises." (Exh. 1, Tr. p. 29 lns. 15-17). Plaintiff also stated that Sandra

Johnson, an assistant manager who took part in Mr. Moore's termination, received low scores on her alcohol training, which raises a question as to her credibility. (Exh. 1, Tr. p. 31). Plaintiff presented the expert affidavit of Ms. Trendowski, who opined "that Applebee's was negligent in this matter of general liability and as such did not meet the industry standard of care" and stated her opinion is "subject to change if additional information becomes available." (Exh. 2).

The Court erred by not considering Plaintiff's argument that summary judgment is premature because discovery is incomplete.

II. This is a General Negligence Action, Not a Dram Shop Liability Action

The Court's holdings are based on an incorrect characterization of this case as a dram shop liability action. Plaintiff alleges a general negligence action. These two causes of action are legally and factually distinct. The Order does not address Plaintiff's argument that the case should be analyzed as pled—as a general negligence action—rather than as Green Apple improperly characterizes it—as a dram shop liability action. *See, e.g., Chavis v. Fld. Warranty Servs.*, 415 F. Supp. 2d 620, 627 (D.S.C. 2006) ("It is well established that the plaintiff is the master of his complaint.") (internal quotation marks omitted); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, Op. No. 27532, 24 (Sup. Ct. June 17, 2015) (Shearouse Adv. Sh. No. 23) ("The effect of this order is to prevent the Morrows from being *architects of their own complaint*, and deprives them of bringing their case against the defendant of their own choosing." (emphasis added)); *Chester v. S.C. Dep't of Pub. Safety*, 388 S.C. 343, 345, 698 S.E.2d 559, 560 (2010) ("It is well-settled that a plaintiff has the sole right to determine which co-tortfeasor(s) she will sue.")

Dram shop liability originates in the Courts "recognizing a private cause of action for a *violation of . . . statutes*" that prohibit the *sale* of alcohol to *an already intoxicated person*. *Tobias v. Sports Club*, 332 S.C. 90, 92, 504 S.E.2d 318, 319 (1998) (citing S.C. Code Ann. §§ 61-4-

580(2), 61-6-2220) (emphasis added). A dram shop action “[i]mpos[es] liability on a tavern owner for continuing to serve an intoxicated person who later injures others.” *Id.* at 92, 504 S.E.2d at 319 (emphasis added). “Dram shop liability is based on statutory duties imposed on establishments licensed to sell alcoholic beverages that prohibit them from serving minors or intoxicated persons.” Michael G. Sullivan & Douglas S. MacGregor, Elements of Civil Causes of Action § 15.C.1, 118 (4th ed. 2009) (emphasis added).

Plaintiff’s action is not based on statutory duties or allegations that Green Apple sold or continued to serve Mr. Moore after he became intoxicated. Plaintiff’s action alleges Green Apple was negligent in forcing a person it knew to be intoxicated to leave the premises with no transportation, cell phone, or other means to get to a home Green Apple knew is located 15 miles from the restaurant. (Am. Cmplt ¶ 11).

Three of the four cases cited in the Court’s order involve factual allegations of the continued sale or serving of alcohol to an intoxicated or underage person. *Tobias*, 323 S.C. at 347, 474 S.E.2d at 451 (“Tobias alleged he was served intoxicating liquors at a bar in the Ramada Hotel . . . when he was already noticeably intoxicated.”); *Murcum v. Bowden*, 372 S.C. 452, 456-57, 643 S.E.2d 85, 87 (2007) (“The decedent, aged 19, attended the party where alcoholic beverages were available to all guests.”); *Hartfield v. Getaway Lounge & Grill, Inc.*, 388 S.C. 407, 415-16, 697 S.E.2d 558, 562 (2010) (affirming the trial court’s denial of a directed verdict on the basis that the plaintiff presented sufficient evidence the defendant knew of the driver’s intoxication when it sold him beer). Plaintiff does not seek to impose liability on Green Apple based on the continued sale or serving of alcohol to an intoxicated person. Rather, she seeks to impose liability for Green Apple’s conduct in knowingly forcing Mr. Moore to leave the premises prior to the end of his shift, without transportation, without a cell phone, with knowledge of his intoxication, and with

knowledge that he lived approximately 15 miles from the restaurant. There is no evidence that Mr. Moore actually obtained any means of transportation when Green Apple forced him to leave the premises while intoxicated. The issue is not the fault for Mr. Moore's intoxication, but the fault for his location in harm's way at the time of the fatal impact. Green Apple intentionally and knowingly abandoned Mr. Moore, an employee until terminated that night, in an intoxicated state with no transportation and no means of communication. The reasonableness of that conduct is a question for the jury to determine.

In the fourth case cited by the Court, *Lydia v. Horton*, 355 S.C. 36, 586 S.E.2d 750 (2003), the Supreme Court declined to recognize a first party negligent *entrustment* action where the defendant allowed the intoxicated plaintiff to drive his vehicle. *Id.* at 39, 586 S.E.2d at 752. This is not a negligent entrustment case. It is a general negligence case. These causes of action have different elements of proof. Compare *McAllister v. Graham*, 287 S.C. 455, 458, 339 S.E.2d 154, 156 (Ct. App. 1986) (listing elements of "negligent entrustment" as "(1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking, (2) that the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver"), with *Shan v. City of Charleston*, 351 S.C. 32, 40, 567 S.E.2d 530, 534 (Ct. App. 2002) ("To establish a cause of action for negligence, a plaintiff must prove the following three elements: (1) a duty owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damages proximately resulting from the breach."). Therefore, *Lydia* is not applicable to the facts of this case or the negligence action at issue.

The dram shop liability cases cited in the Court's Order are factually distinguishable from this general negligence case. The Court erred in analyzing this case as a dram shop liability action

simply because it involves an intoxicated plaintiff. That a case involves intoxication does not make it a dram shop liability case. A plaintiff is entitled to bring the causes of action she chooses. Green Apple should not be permitted to characterize Plaintiff's complaint to its advantage. Green Apple's entire motion is based upon its incorrect characterization of the action as a dram shop case rather than a general negligence action. The Court should reconsider its Order and analyze Green Apple's summary judgment motion as applied to the general negligence allegations in the Amended Complaint.

Finally, the Order misinterprets *Tobias* as standing for the proposition that South Carolina "does not recognize a first party cause of action against a tavern owner for injuries sustained by the intoxicated person." (Order p. 3). In *Tobias*, the Supreme Court held "South Carolina does not recognize a 'first party' cause of action against the tavern owner by an intoxicated adult *predicated on* an alleged violation of S.C. Code Ann. §§ 61-5-30 and or 61-9-410 (1990)." 332 S.C. at 91, 504 S.E.2d at 319 (emphasis added). The Supreme Court did not hold in either *Tobias* or *Lydia* that an intoxicated plaintiff can never have a cause of action against a tavern owner based on allegations other than statutory violations. The fact that a person is intoxicated does not mean that no one may ever owe him a duty of due care.

CONCLUSION

For the reasons stated above, Plaintiff requests the Court reconsider, alter, or amend its Order, and deny Green Apple's motion for summary judgment.

[Signature block appears on the following page.]

Dated: 8-26-15

LANIER & BURROUGHS, LLC

By:

Shane M. Burroughs
Justin T. Bamberg
Post Office Drawer 2789
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803-268-9800
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	DOCKET NO. 2014-CP-38-0802
	)	2014-CP-38-0803
	)	
	)	
LINDSEY STEWART	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
GREEN APPLE, LLC, et al	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 1, 2015
Orangeburg, South Carolina

B E F O R E:

THE HONORABLE MAITE D. MURPHY, JUDGE

A P P E A R A N C E S:

SHANE MORRIS BURROUGHS, ESQ.
Attorney for the Plaintiff

DREW HAMILTON BUTLER, ESQ.
Attorney for Defendant Applebee's

ALFRED JOHNSTON COX, ESQ.
Attorney for Defendant Inabinet

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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MOTION FOR SUMMARY JUDGMENT

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No exhibits were introduced

PROCEEDINGS

THE COURT: The next case is Lindsey Stewart versus Green Apple, LLC. All right gentlemen, what do we have here?

MR. COX: Your Honor, we are here today in two cases actually. The plaintiff has filed a wrongful death and survival action in separate lawsuits; in separate complaints. So our motions if it's okay, Judge would apply to both cases. We are here; both defendants are here on summary judgment, asking the court to grant summary judgment in this case.

I have prepared a brief if you don't mind that I would like to hand up. Thank you.

[Whereupon, Mr. Cox provides documents to the court]

MR. COX: And if you don't mind Judge I'd like to go through just a little bit about what this case is about. This case arises out of an automobile accident that occurred on October 18th, 2012. The plaintiff, Mr. Sean Moore, who is deceased, was an employee of Applebee's in Orangeburg.

And earlier on the night of the accident involving my client Mr. Stabler Inabinet, a good name Stabler Inabinet; I like that name, he was working at Applebee's and he was fired for stealing liquor essentially. He was serving himself drinks as he was working at Applebee's

1 and writing onto phantom tickets so he was fired from
2 that job. Sometime later at least I can't remember if it
3 is an hour and a half or two hours later he is walking
4 down Highway 21 and is involved in an accident with my
5 client on Highway 21. Those are just the brief facts.
6 I'm sure that Mr. Butler who is representing Applebee's
7 would like to go into more detail about the facts
8 regarding his defense.

9 But as far as my defense goes or my claim for
10 summary judgment it is undisputed factually that at the
11 time of this accident that the plaintiff, Mr. Sean Moore
12 was grossly intoxicated. The plaintiff has alleged that
13 and he has admitted it in his request to admit. And in
14 fact one of the affidavits from his experts that he
15 submitted in opposition to Applebee's claim is that he
16 was so grossly intoxicated it was unsafe for him to be
17 walking. That's pretty drunk okay; undisputed.

18 Undisputed that he was wearing dark clothing at the
19 time, that is was dark out on Highway 21 where this
20 accident occurred. Undisputed that he stepped directly
21 into the front of my client's vehicle as he was going
22 down Highway 21; undisputed. He stepped right out in
23 front of him bam and was hit. Undisputed there is no
24 cross-walk in that area, that it was just out on Highway
25 21 and no cross-walk at all. And it's undisputed that

1 dressed in black from head to toe and we couldn't see him
2 and we were relatively sure that other vehicles couldn't
3 see him either.

4 She goes on to say there was absolutely nothing he
5 could have done. I don't think he even saw him. The man
6 ran directly out. He was running towards us on the side
7 of the road and when he saw the vehicle coming he ran out
8 right in front of him almost like dead center in the
9 middle of his vehicle as if he is going to attack and
10 fight the car. There was absolutely nothing that that
11 driver could have done.

12 Now it's from this affidavit that Mr. Hill who says
13 he is an accident reconstructionist somehow gets that Mr.
14 Inabinet wasn't maintaining his headlights. There is
15 nothing in the accident report that he reviewed that
16 indicates there was anything wrong with Mr. Inabinet's
17 headlights. In fact there is an actual space if you
18 look at the back where they say factors leading to
19 accident. And there is a section where the Trooper could
20 have marked headlights and it's not marked. In fact what
21 is marked is improper crossing; not by Mr. Inabinet.

22 Your Honor, so for that reason we would ask that
23 number one there is no competent evidence of any
24 negligence on the part of Mr. Inabinet. This is an
25 unfortunate accident one brought completely on by the

1 plaintiff unfortunately. Second, this affidavit you
2 should strike it and not consider it because it's just
3 not reliable under Watson v Ford because there is no
4 basis for it whatsoever. It's just an attempt to get
5 around summary judgment.

6 Third position is that even if you do find somewhere
7 in this record some evidence of Mr. Inabinet's
8 negligence, that he was negligent somehow that under
9 Hopkins v Clary and Bloom v Ravoir this is the poster
10 child case for a situation where as a matter of law the
11 plaintiff is more than 50 percent negligent in causing
12 his own injuries.

13 In the Bloom case, it was a case down in Charleston
14 and the evidence was the plaintiff said I stepped out in
15 the road. There was no cross-walk there. Both parties
16 it was undisputed that immediately as he stepped out in
17 the road he was hit. And it was within a step or two of
18 the curb. Both said, the plaintiff and defendant said I
19 didn't ever see the car and the car said I never saw this
20 guy.

21 And even in that situation the Supreme Court I
22 believe, maybe the Supreme Court or the Court of Appeals;
23 I'm not sure upheld the grant of summary judgment for
24 more than 50 percent because there was no cross-walk
25 there and the fellow failed to yield the right of way.

1 In this case -- in this situation we have the added
2 situation where he is voluntarily intoxicated which is
3 gross negligence. His own expert said he was so grossly
4 intoxicated he shouldn't have even been walking much less
5 driving or doing anything else. And that intoxication is
6 what led to his death as a matter of law. And therefore
7 we would ask that you grant Mr. Inabinet's motion for
8 summary judgment.

9 THE COURT: Mr. Butler?

10 MR. BURROUGHS: Your Honor, can I just respond to
11 them separately?

12 THE COURT: Sure.

13 MR. BURROUGHS: Would that make it easier? It
14 would make it easier for me but I'll do whatever Your
15 Honor would like.

16 THE COURT: If it's easier for you that's fine.

17 MR. BURROUGHS: Okay. Your Honor, may it please
18 the court? Shane Burroughs on behalf of the estate of
19 the plaintiff. Sean Moore, the decedent was a 31 year
20 old male who was a father, who was a boyfriend, and was a
21 son. He has a three year old child Natalie and as I'll
22 get into the facts later with him employment with
23 Applebee's was fired that night for reasons that they
24 seem to know, the defense seems to know, but I don't
25 because there is a motion to compel outstanding because

1 discovery is not complete. Your Honor, this case isn't
2 ripe for summary judgment as our Supreme Court has noted
3 in Doe v Batson summary judgment is a drastic remedy
4 which should be cautiously invoked so that no person will
5 be improperly deprived of a trial disputed factual issue.

6 Summary judgment must not be granted until opposing
7 party has had full and fair opportunity to complete
8 discovery. Now I was under the impression that these
9 cases had been consolidated for the purposes of
10 discovery. Mr. Butler tells me that they -- we talked
11 about it but I don't think we formally did it and so
12 discovery is not complete.

13 There is a motion to compel outstanding which is
14 numbers 19 and 20 I think but Mr. Butler as we will
15 advise the court have agreed to postpone that so
16 discovery is not even complete yet. So it's just not
17 ripe procedurally to have this motion. However, if the
18 court would like to proceed on the merits I would like to
19 address the same.

20 It is ironic that opposing counsel says that Mr.
21 David Hill's affidavit is devoid of rising to the level
22 of admissibility for an accident reconstructionist. But
23 I would like to go through Mr. Hill's affidavit. Do you
24 have a copy, Your Honor?

25 THE COURT: I'm not sure if I do or not.

1 MR. BURROUGHS: May I approach?

2 THE COURT: You may.

3 [Whereupon, Mr. Burroughs provides documents to the
4 court]

5 MR. BURROUGHS: They were filed Thursday but I
6 don't know that they made it to the file and for that
7 reason. I apologize.

8 THE COURT: You may proceed.

9 MR. BURROUGHS: So Mr. Hill's affidavit he is a
10 certified accident reconstructionist and has been
11 certified in this area since 1996. He was asked -- he
12 has actual professional knowledge and experience in the
13 area of accident reconstruction. He has an ACTAR number
14 912. He was asked to reconstruct this accident by me so
15 he's not been deposed yet. So the fact that defense
16 counsel says that he's done nothing is mind-boggling to
17 me.

18 Number five he says after reviewing the Trooper's
19 report and photographs and witness statements Mr.
20 Inabinet was operating his 2002 Acura Legend with
21 headlamps in poor condition. Your Honor, the photographs
22 are what they are. We have plenty of photographs that
23 were taken that night or either the following day and
24 they allow him to render this opinion. So it clearly
25 meets the standard of admissibility. Now it may go to

1 the weight that is given to his testimony but we're as we
2 go through this affidavit I'll show you why discovery
3 needs to be completed before this is even ripe.

4 Number six, he viewed the photographs. Mr. Hill can
5 see and he viewed the photographs and it says the
6 condition of the headlamps severely reduced the
7 elimination distance. He's charged with the duties and
8 responsibilities if he is going to render an opinion to
9 be able to articulate what distance is needed. We're not
10 here yet because we don't have all the information. We
11 haven't taken any depositions. We still have motions to
12 compel. Once he is deposed this will be fleshed out.

13 He also says in number seven with proper headlamps
14 the first witness Patricia Slupe's vehicle clearly
15 observed and were able to avoid the plaintiff. Now Ms.
16 Slupe's affidavit says that she was talking to the driver
17 and so forth but we haven't taken her deposition yet to
18 see exactly what she remembers and what she saw that
19 night.

20 But clearly they passed the plaintiff okay and they
21 did not collide with the plaintiff who was I will tell
22 you grossly intoxicated from all the evidence that I
23 have, Your Honor, for reasons that we will talk about
24 later. So when Slupe's vehicle passed the plaintiff
25 without colliding and they turned around to come back and

1 render assistance; and that's when this wreck occurred
2 with Mr. Inabinet. It also states in number eight if Mr.
3 Inabinet would have maintained his headlamps in proper
4 conditions and maintained a proper lookout he would have
5 been able to see the plaintiff and avoid the collision by
6 reducing his speed or sounding his horn. Number nine
7 says according to S.C. Code of laws 56-5-3230 defendant
8 Inabinet failed to exercise due care by failing to keep a
9 proper lookout, slow down, and or sound his horn as to
10 warn the plaintiff and avoid the collision.

11 Your Honor 56-5-3230 states that as a motorist you
12 have a duty not only to keep a proper lookout but to see.
13 And if you see a child, an obviously incapacitated,
14 intoxicated or confused person you have I think I submit
15 Your Honor a heightened duty of care to slow down, to
16 stop, or to sound your horn.

17 Either Mr. Inabinet couldn't see because he failed
18 to maintain his headlamps or he did see and because of
19 his speed and because of his inattention he failed to
20 slow down, he failed to stop, or he failed to sound his
21 horn or all three; all in violation of the statute, Your
22 Honor. Mr. Hill also goes on to state that I believe --
23 I am informed and believe that discovery has not yet been
24 completed in this case and I reserve the right to amend
25 my opinions at the conclusion of the discovery process.

1 So he does reserve the right to amend. We haven't
2 produced any expert discovery, except for these
3 affidavits that I have submitted Thursday in the
4 abundance of caution because as I stated earlier these
5 motions in my opinion Your Honor are not ripe.

6 But what is ironic is that opposing counsel asked
7 Your Honor to be the gatekeeper for expert testimony yet
8 he seeks to qualify McLain a witness who I know nothing
9 about. I don't know if he is qualified to testify as to
10 what someone saw, what someone did or what someone would
11 have done. But I don't have an expert designation in
12 this discovery because why? It's not complete. I don't
13 have an expert affidavit from Mr. McLain. He also seeks
14 to qualify Ms. Slupe who I have no idea what kind of
15 business she is in or whether she is qualified to testify
16 about anything.

17 Furthermore, Your Honor, it appears that the defense
18 is trying to qualify Trooper James and Trooper Rowe who
19 neither have been qualified as an accident
20 reconstructionist; neither one of them. And I would like
21 to point to your attention the and I don't know that this
22 is before the court and if Your Honor needs a copy of the
23 accident report I can provide it, but it seems to me the
24 defense, defendant Inabinet is relying upon this accident
25 report for much of the opinions and reasons why there is

1 no material issue of fact and summary judgment is needed.
2 But I would like to point out on the front page of any
3 accident report in South Carolina all accident reports,
4 and it has been this way for a considerable period of
5 time it says notice the TR-310 is for statistical
6 reporting purposes only and is a reflection of the
7 officer's best knowledge, opinion, and belief covering
8 the collision but no warrant is made as to the factual
9 accuracy thereof; no warrant is made as to the factual
10 accuracy thereof.

11 So speeds, what happened, who contributed to the
12 accident, what were the contributing factors; all that
13 there is no warrant as to the factual accuracy thereof
14 and it's for statistical purposes only. That's it. And
15 that's why we hire experts to reconstruct our accidents.
16 That's why I hired David Hill in this case to reconstruct
17 this accident.

18 And based on his opinions which were gathered based
19 on reviewing the photographs, reviewing the statements
20 while discovery is not complete it is his opinion that
21 either Mr. Inabinet failed to maintain his vehicle and
22 headlamps so he could see, which he has a duty to do, or
23 if he did he violated statute 56-5-3230 by failing to
24 slow down, stop, or sound his horn or all three. Your
25 Honor, I've got a case. This is Dawson v South Carolina

1 Power Company, Your Honor. A Supreme Court case Your
2 Honor it's from 1951. And while the statute has 56-5-
3 3230 has been amended to include intoxicated persons at
4 that point in time our Supreme Court articulated the
5 standard for a motorist who collides with a pedestrian.

6 And it says every driver shall, every driver of a
7 vehicle shall exercise due care to avoid colliding with
8 any pedestrian upon any roadway and shall give warning by
9 sounding the horn when necessary and shall exercise
10 proper precaution upon observing any child or any
11 confused or incapacitated person upon the roadway.

12 While a driver of a motor vehicle is not required to
13 anticipate that a pedestrian seen in a place of safety
14 will leave it and get in the danger zone until some
15 demonstration or movement on his part reasonably
16 indicates that fact he must give warning to one on a
17 highway or in close proximity to it and not on a
18 sidewalk, which we've established there was no sidewalk
19 here who was apparently oblivious of the approach of the
20 car or one whom the driver in the exercise of ordinary
21 care may reasonably anticipate will come into his way.
22 It is his duty to sound his horn in order that a
23 pedestrian unaware of his approach may have timely
24 warning. Your Honor, in the discovery and I can submit
25 this to the court, Mr. Inabinet and just through the

1 basic interrogatories says he was traveling 40 miles per
2 hour, he saw the plaintiff and struck the plaintiff with
3 the passenger side of his vehicle. His affidavit seems
4 to dictate otherwise, Your Honor, but I have not taken
5 his deposition yet because I was trying to get the paper
6 discovery from both sides before doing so. We have not
7 had an opportunity to do that.

8 Your Honor, discovery is not complete, it's not ripe
9 according to Doe v Batson -- and Madame Court Reporter
10 Doe v Batson is 345 S.C. 316. And according to Dawson v
11 South Carolina Power Company if the court would like to
12 proceed on the merits which is 220 S.C. 26 and according
13 to 56-5-3230 and according to the affidavit of David Hill
14 Your Honor summary judgment is not ripe. I feel that
15 more than a mere scintilla of evidence has been presented
16 to withstand this motion for summary judgment.

17 Even if we continue -- even if the court were to
18 consider it on its merits I don't think it is
19 procedurally ripe but on the merits I still think Mr.
20 Inabinet failed to maintain his vehicle and or headlamps
21 and if he didn't and he saw him then he violated 56-5-
22 3230 and as such summary judgment ought to be denied.

23 THE COURT: Any reply?

24 MR. COX: Yes, Your Honor, thank you. This case is
25 almost a year old. I mean when are we going to get

1 we do think it's timely. It's a timely motion and it's
2 time for this to end for Mr. Inabinet quite frankly.
3 There is no evidence and I didn't hear Mr. Burroughs say
4 anything about the fact that it is undisputed that my
5 client was driving under the speed limit.

6 It is undisputed that the plaintiff stepped and
7 jumped right out in front of his car. It's undisputed.
8 Nothing about any headlights is ever going to change
9 that. And the statute that he cited was for people who
10 are unaware of an approaching vehicle. The evidence we
11 have is this fellow was very aware of approaching
12 vehicles. And in fact that he was somehow like trying to
13 fight them or something.

14 And so for that reason Judge we would ask that the
15 court grant our summary judgment whether it is on the
16 basis there is no evidence of negligence because this is
17 an unreliable affidavit or that as a matter of law
18 looking at the facts of this case that the plaintiff who
19 was grossly intoxicated jumping out in front of cars and
20 wearing dark clothing at night on Highway 21 where there
21 is no cross-walk was more than 50 percent negligent in
22 that alone.

23 THE COURT: Thank you counsel. Mr. Butler?

24 MR. BUTLER: Good afternoon, Your Honor.

25 THE COURT: Good afternoon.

1 MR. BUTLER: Drew Butler here for Green Apple, LLC
2 doing business as Applebee's. I previously handed up --
3 or previously handed opposing counsel a copy of my memo.

4 [Whereupon, Mr. Butler provides documents to the
5 court]

6 MR. BUTLER: One has been filed but that may the
7 court some context for some of my arguments here today.
8 Your Honor, just some housekeeping matters so that we
9 make sure the record is clear there are two civil action
10 numbers in this case. 802 is the wrongful death action
11 and 803 is the survival action. It is a personal injury
12 case arising out of the death of Sean Moore on October
13 18th, 2012. The plaintiff is the personal
14 representative. She has filed suit against Green Apple,
15 LLC doing business as Applebee's as well as Mr. Inabinet.

16 The only cause of action that is alleged in both
17 cases is one of negligence and gross negligence; that's
18 it. Both motions for summary judgment are attacking
19 those causes of action. So this would be dispositive of
20 the case. Your Honor, what I think I may do just to
21 speed this along is just incorporate my memo into the
22 record.

23 THE COURT: Certainly.

24 MR. BUTLER: That will give you the case law and
25 citations. To expand on the fact somewhat from the angle

1 of Applebee's if the court will bear with me. Sean Moore
2 was an employee of Applebee's in October of 2012. He was
3 a waiter. During that time he was working at the
4 Applebee's right here in Orangeburg.

5 He was observed by a bartender ringing up a liquor
6 drink and assigning that liquor drink to a table that did
7 not exist; there weren't people at the table. The
8 bartender noticed it and thought it was suspicious
9 because there wasn't anyone at the table and brought it
10 to the manager's attention.

11 At that point the manager observed Mr. Moore, Sean
12 Moore, ringing up a drink and assigning it to a table of
13 a mother and child that obviously wasn't consuming
14 alcohol. The manager at that point when she saw Mr.
15 Moore assign that drink to the table and consume that
16 drink she pulled Mr. Moore aside. She brought him back
17 into her manager's office, she spoke with him, she had
18 him count out his cash, his tips.

19 She let him know that that was against policy. She
20 gave him an opportunity to make a telephone call and
21 observed him making a telephone call at that time. And
22 then after making that telephone call she discharged him
23 and watched him walk out the back door. Those are the
24 facts as we understand them. Your Honor, an hour and 45
25 minutes later and let me make sure the record is clear on

1 this to give the court some context tab number two shows
2 when he clocked out. You'll see that where I've
3 highlighted tab number two shows Sean Moore clocked out
4 at 9:06. Tab number three is the accident report that
5 we've been referring to so much today.

6 And in the top right hand corner you'll see that the
7 time of the accident when it was called in because I
8 think that's more appropriate is when it was called in
9 was 10:44. So we're talking about an hour and 45 minutes
10 later Sean Moore was observed running into the roadway
11 attacking at cars. We know that where he was jumping and
12 lunging at cars was in the proximity of two other bars
13 one called the Locals Pub and the other one called the
14 Liquid Center; that's on the last tab you'll see noted
15 there on tab number six their location.

16 An hour and 45 minutes later he stepped in front of
17 Mr. Inabinet's vehicle and was struck. He died from his
18 injuries and as the coroner report shows, Your Honor, and
19 that's on tab number four you'll see that he had a .381
20 ethanol rating at that time.

21 Location and time we believe are important just to
22 give the court context because of such a passage of time
23 in him leaving. Also with the affidavit of my client
24 saying that he counted money, had a conversation, made a
25 phone call and was able to walk out; we all believe those

1 go to the weight. But more importantly, Your Honor, this
2 is a matter of law that no discovery can cure. And I
3 think that's what Mr. Burroughs is up against is that I
4 recognize that plaintiff's counsel and defense counsel
5 for that matter often raise the time issue of discovery
6 in motions for summary judgment.

7 But when we deal with issues of law that are so
8 clear discovery sometimes cannot cure them and I believe
9 that is the issue that is in front of you here today.
10 Mr. Moore, the plaintiff in this case, has filed suit.
11 This is not a third party. This is not a case where Mr.
12 Moore got into a car and drove away and struck an
13 innocent party. This is a first party claim. And as you
14 know here in South Carolina our courts have said that
15 South Carolina does not recognize first party causes of
16 action against the tavern owner for injuries sustained by
17 intoxicated persons.

18 So while I went through the facts as to the time and
19 the location and the fact there were other bars and
20 things of that nature what Sean Moore's family cannot
21 overcome nor Mr. Burroughs cannot overcome no matter how
22 much discovery he does is the fact that there is no cause
23 of action in South Carolina against a tavern owner for
24 injuries sustained by an intoxicated person. The tab
25 that I have marked as exhibit number five are the cases

1 you can rely upon when writing that order, Your Honor,
2 the first being the Tobias case. That was an older one
3 back in 1998 but the court revisited in the matter in I
4 believe 2003 in the Lydia case.

5 And again came to the conclusion that in this
6 situation where a plaintiff seeks to impute liability to
7 a bar or a restaurant, Applebee's, based on Mr. Moore's,
8 the plaintiff's, helplessness or his voluntary
9 intoxication that our courts have said that you cannot do
10 that and there is no cause of action. Applebee's isn't
11 there to hold Mr. Moore and the facility against his
12 will. There is no testimony that he was falling down or
13 stumbling.

14 Your Honor, I had another point that I found in
15 researching this that I found intriguing and that was
16 that the second ground that Your Honor might be able to
17 rely upon in this very difficult case. As I noted the
18 dram shop statutes here in South Carolina are really
19 based on statutory law that make it illegal for a tavern
20 owner to sell liquor to an intoxicated person.

21 Sell is the key term right. When they are selling
22 this liquor to someone is when that liability is
23 triggered and that's South Carolina code 61-4-580. In
24 this situation Mr. Moore didn't buy liquor from
25 Applebee's; he stole it. And when he was observed taking

1 that drink, that one drink as many as perhaps two if we
2 believe that he consumed the first one, when he stole
3 those two drinks they discharged him, they fired him.
4 Again all this is outlined in my memo. But to us Your
5 Honor when you do not sell that drink you do not trigger
6 those liabilities that Mr. Burroughs is relying upon for
7 his causes of action.

8 Finally Your Honor I believe Mr. Cox did an
9 excellent job of pointing out the comparative negligence
10 arguments; the ones that are listed in Bloom v Ravoira
11 and Hopkins v Cleary. And I think that's what makes this
12 such a difficult case is when you see these cases of
13 terrible injuries and you have to recognize that the
14 plaintiff played such a significant role into his
15 injuries greater than 51 percent it makes it difficult
16 and I understand that.

17 But our case law is such that the court can rule as
18 a matter of law that Mr. Moore, the plaintiff's action
19 are the cause of this injury and his eventual death. And
20 to that end Your Honor we believe that this case is
21 appropriate for summary judgment.

22 THE COURT: Thank you Mr. Butler. Mr. Burroughs?

23 MR. BURROUGHS: Thank you, Your Honor. May it
24 please the court? May I approach?

25 THE COURT: Yes, sir.

1 [Whereupon, Mr. Burroughs provides documents to the
2 court]

3 MR. BURROUGHS: Another affidavit, this is from Liz
4 Trendowski and she is the plaintiff's expert as it
5 relates to the causes of action against Apple J and Green
6 Apple, LLC doing business as Applebee's.

7 Your Honor, may it please the court? Obviously I
8 can rearticulate the reasons why this isn't ripe. But I
9 don't have the documents that Mr. Butler is relying on to
10 recite the facts of what happened. I sent a spoliation
11 letter immediately upon being retained. None of those
12 documents, his personnel file or anything was provided to
13 me.

14 They still haven't been provided to me as of last
15 week. Mr. Butler advises that that personnel file no
16 longer exists so it doesn't look like I'll be receiving
17 any of that information to determine what happened prior
18 to being discharged. We do have some witnesses that were
19 there that night and can testify but Your Honor I agree
20 with Mr. Butler. If this is a first party dram shop case
21 in South Carolina it's a loser; but that's not what this
22 is. And if I could just take you through Ms.
23 Trendowski's affidavit briefly. She is a professional
24 hospitality expert and has been for 25 years and she
25 testifies on various regulation statutes and general

1 liability issues as well as national safety standards to
2 liquor permit premises. At the time Mr. Moore was fired
3 he was grossly intoxicated and unable to make safe
4 decisions. Your Honor there is no doubt that -- I have
5 no reason to doubt that his B.A. level at the time of his
6 death was somewhere around .381 which is almost four
7 times the legal limit Your Honor.

8 The passage and time and the location of bars Your
9 Honor I don't know where that plays in. I've been given
10 no evidence that he went to another bar or that he
11 consumed alcohol anywhere. The only evidence that I have
12 before me in the limited discovery that I have is that he
13 consumed alcohol while at Applebee's while an employee
14 and he was fired and he was forced to leave.

15 There are witnesses who will testify that they
16 didn't see him make the phone call. They saw him get
17 forced to leave the premises. And the timing of this
18 Your Honor I don't know exactly what time this wreck
19 occurred because we really haven't taken -- we haven't
20 taken any depositions.

21 So I do have a statement collision summary which is
22 you know everybody is talking about this accident report
23 but there is a complete fatality package that is
24 completed by the highway patrol anytime someone dies.
25 And as part of the fatality package is a statement slash

1 collision summary continued. And I think -- it says on
2 October 18, 2012 at approximately 20:45 -- I think 20:45
3 -- I wasn't in the military I think is 8:45. They say he
4 was fired at 9:06. They say the wreck occurred sometime
5 an hour and a half, an hour 45 after he was fired so the
6 timing of this we don't know yet and it hasn't been
7 determined. That in and of itself I think is an issue
8 for a jury or at least an issue to be fleshed out by
9 discovery.

10 To get back to Ms. Trendowski she states that Mr.
11 Moore was forced to leave Applebee's premises without any
12 alternatives to safely transport him -- this is based on
13 the information that we have which is very limited at
14 this time -- and she says Applebee's was negligent in
15 failing to find alternative transportation for Mr. Moore
16 to safely get him home. She says Applebee's failed to
17 take reasonable steps to protect Mr. Moore from
18 foreseeable danger and to exercise reasonable care by
19 allowing Mr. Moore to walk 15 miles in a grossly
20 intoxicated situation.

21 What's different about this from being a first party
22 dram shop case and the Tobias case and distinguish it is
23 the knowledge. Here you've got a manager and a bartender
24 apparently trying to set this guy up. And the limited
25 policies and procedures I have from Applebee's states

1 that -- well, I'll tell you the manager, there is an
2 affidavit submitted, she states that she knows how to
3 recognize someone who is intoxicated. She knows how to
4 do all the things that are associated with her capacity
5 as a manager at Applebee's in determining whether someone
6 is intoxicated.

7 On all her proficiency examinations that I saw in
8 the year leading up to 2012 it says: Teaches specific
9 alcohol knowledge every day. She got a two on one. The
10 code on that means needs improvement. Behavior
11 effectiveness and results often missed standards. On
12 another one she had a one. Unsuccessful. Behavior and
13 results completely missed standards. Not effective.

14 So I don't know if she doesn't know or she doesn't
15 know how to properly train but someone doesn't know how
16 to handle a situation when there is an intoxicated
17 individual. So we've got a situation where someone is
18 being set up, they're consuming alcohol and instead of
19 calling the cops, calling a cab providing transportation
20 they remove him from the premises.

21 The knowledge is important here. They knew this
22 guy. He had worked at two other Applebee's. This was
23 his third one and from what I can gather Applebee's did
24 not frown upon having a shot or a drink with a customer
25 at least from the limited information that I have. And

1 maybe Orangeburg did but the Lancaster and the Rock Hill
2 area Applebee's did not according to the information I
3 have.

4 But they knew he didn't have a vehicle. He got
5 dropped off for work and he was picked up. I submit that
6 he didn't have a cell phone either, which they also knew.
7 So instead of providing transportation or allowing him to
8 make a phone call, Mr. Butler says he was allowed to make
9 a phone call; I don't have any information that supports
10 that. He was removed from the premises with no other
11 means of transportation but to walk in a grossly
12 intoxicated state.

13 So that's what I think is the difference between a
14 first party dram shop liability case which doesn't exist
15 in South Carolina and a general liability case which is
16 what we have according to the facts that I have presented
17 and according to Liz Trendowski. She also states Your
18 Honor Applebee's had notice of the dangerous condition
19 they put Mr. Moore in by identifying his grossly
20 intoxicated condition. This matter is a general
21 liability case based upon my education, knowledge and
22 experience in the hospitality industry. Based upon the
23 information provided to me it's my opinion that
24 Applebee's was negligent in this matter of general
25 liability and as such did not meet the industry standard

1 of care. This is not about over serving someone and them
2 getting in a car and causing injuries. This is about
3 removing someone from the premises who is obviously
4 incapacitated without allowing them to have an
5 opportunity to make a phone call and without an
6 opportunity to provide adequate transportation for them.

7 Your Honor, it is a difficult case and the case law
8 for first party dram shop is not good in South Carolina.
9 That's why this is not that type of case because of the
10 reasons that hopefully I've articulated as well as Ms.
11 Trendowski and the special relationship between the
12 decedent, 31 year old Sean Moore father of a three year
13 old and the employer who had all this information and
14 apparently still has some information I haven't seen.

15 That is the distinguishing factors or those are the
16 distinguishing factors that I see currently before me
17 without having full disclosure of discovery which I would
18 like, Your Honor. So I don't think it's ripe but on the
19 merits I think it survives summary judgment and based on
20 what Ms. Trendowski has opined and the reason I've
21 articulated summary judgment ought to be denied.

22 THE COURT: Thank you Mr. Burroughs. Any reply?

23 MR. BUTLER: Briefly, Your Honor. The first part
24 to comment on Mr. Burroughs statement this is not a dram
25 shop case. He relies upon Ms. Trendowski's affidavit

1 which as you will note at the top of that affidavit she
2 claims to be a dram shop forensic expert. I'm not quite
3 sure why he does not believe it is a dram shop case as
4 his pleadings as they are articulated all state that it
5 is based on his intoxication, Mr. Moore's intoxication,
6 and his ability to navigate; walk around the facility
7 after leaving the bar.

8 The only statement we get from Ms. Trendowski that
9 appears to relate to my client of any substance is number
10 eight in her affidavit where she states that Mr. Moore
11 was grossly intoxicated at the time he was fired and
12 unable to make safe decisions. There is nothing to back
13 that up. There is no scientific or forensic data to back
14 that up. It just appears to be a conclusory statement
15 that is not based on any evidence of this -- for some
16 context.

17 I did subpoena all the local bars and even looked
18 for Mr. Moore's cash receipts in his records to see what
19 he had spent his money on for bank accounts. He did not
20 maintain a bank account at the time. We believe that
21 when he cashed out his tips he just used cash that day.
22 There is no record at Locals Pub or Liquid Center of him
23 actually purchasing anything with a credit card or
24 anything along those lines. So I don't have that. Mr.
25 Burroughs is right; we do believe he used cash in those

1 locations if he did go indeed. There was some reference
2 about the fact that Mr. Moore was unable to use a phone
3 call or unable to make a phone call before he left for a
4 ride.

5 What we do know the evidence before this court is
6 that there is an affidavit from Mr. Moore's manager,
7 Sandra Jones that is included in my packet where she
8 states that she observed him making a telephone call
9 before he left and presumably for a ride.. That is not
10 disputed anywhere else in the record.

11 It's just noted there in her affidavit so that's the
12 only evidence before the court. Your Honor, I will
13 continue to stand on my comparative negligence arguments
14 from earlier as well.

15 THE COURT: Thank you gentlemen. I'll take the
16 matter under advisement and notify you of my decision.

17 MR. BUTLER: Thank you, Judge.

18 MR. COX: Thank you, Judge.

19 MR. BURROUGHS: Thank you.

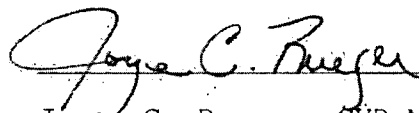
20 *****END OF TRANSCRIPT OF RECORD*****
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Orangeburg County, South
Carolina on the 1st day of June, 2015.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

July 26, 2015



Joyce C. Rueger, CVR-M

Court Reporter

623 - Orangeburg Employee Punch Report for 10/18/2012

Employee	Employee #	SSN	Job	Shift Begin	Shift End	Hours	Pay Rate	Amount	Decl	Tips
AMAKER, LIN	1111		Kitchen	8:57 AM	4:43 PM	7.77	10.25	79.64	0.00	
Employee Total						7.77		79.64	0.00	
CALVERT, KATELYN	2351		Servers	3:54 PM	1:07 AM	9.22	2.13	19.64	38.00	
Employee Total						9.22		19.64	38.00	
CHAVIS, JEANNIE	8543		Servers	6:47 PM	12:15 AM	5.47	2.13	11.65	25.00	
Employee Total						5.47		11.65	25.00	
CHAVIS, RALPH	3420		Kitchen	8:44 AM	4:27 PM	7.72	10.00	77.20	0.00	
Employee Total						7.72		77.20	0.00	
COVINGTON, KINANA	3271		Servers	4:55 PM	11:58 PM	7.05	2.13	15.02	36.00	
Employee Total						7.05		15.02	36.00	
ETHEREDGE, PAMELA	2934		Servers	11:32 AM	3:20 PM	3.80	2.13	8.09	55.00	
Employee Total						3.80		8.09	55.00	
FIELDS, ANASTASIA	9353		FOH Train	10:04 AM	11:07 AM	1.05	7.25	7.61	0.00	
FIELDS, ANASTASIA	9353		Host	11:07 AM	3:22 PM	4.25	5.00	21.25	0.00	
Employee Total						5.30		28.86	0.00	
FRINK, JASMINE	2605		Servers	6:07 PM	1:07 AM	7.00	2.13	14.91	50.00	
Employee Total						7.00		14.91	50.00	
GREEN, BENJARETTA	130		Host	7:05 PM	12:14 AM	5.15	6.00	30.90	0.00	
Employee Total						5.15		30.90	0.00	
GUINYARD, MARCUS	4797		Kitchen	5:52 PM	12:53 AM	7.02	7.50	52.65	0.00	
Employee Total						7.02		52.65	0.00	
HAGGWOOD, DWAYNE	4362		Bartender	10:04 AM	4:00 PM	5.93	5.00	29.65	25.00	
Employee Total						5.93		29.65	25.00	
HARVIN, LYNETTE	3748		Servers	4:32 PM	12:11 AM	7.66	2.13	16.32		
HARVIN, LYNETTE	3748		Servers	12:11 AM	12:30 AM	0.31	5.75	1.78	60.00	
Employee Total					Overtime	7.97		18.10	60.00	
MACK, DOROTHY	7162		Kitchen	5:01 PM	11:09 PM	6.13	8.50	52.11	0.00	
Employee Total						6.13		52.11	0.00	
MITCHELL, BELTON	6508		Kitchen	3:49 PM	1:03 AM	9.23	8.00	73.84	0.00	
Employee Total						9.23		73.84	0.00	
MOORE, SHAUN	3122		Servers	4:36 PM	9:06 PM	4.50	2.13	9.59	25.00	
Employee Total						4.50		9.59	25.00	
NUCKOLLS, JESSICA	3110		FOH Train	7:59 AM	8:01 AM	0.03	7.25	0.22	0.00	
Employee Total						0.03		0.22	0.00	
OWENS, PHYLLICIA	8205		Bar/ide	5:57 PM	9:23 PM	3.43	4.50	15.44	12.00	
Employee Total						3.43		15.44	12.00	
RUCKER, ANDREA	9812		Bartender	3:56 PM	12:15 AM	8.32	4.50	37.44	44.00	
Employee Total						8.32		37.44	44.00	
SHANAHAN, KAREN	2581		Servers	9:46 AM	3:42 PM	5.93	2.13	12.63	23.00	
Employee Total						5.93		12.63	23.00	
SPIRES, SAVANNAH	7000		Host	4:53 PM	8:48 PM	3.92	5.50	21.56	0.00	
Employee Total						3.92		21.56	0.00	
SUTTON, BRANTLEY	6410		Kitchen	8:58 AM	4:32 PM	7.57	7.75	58.67	0.00	
Employee Total						7.57		58.67	0.00	
SWANN, NICOLE	5228		Bartender	7:14 PM	1:06 AM	5.87	4.25	24.95	40.00	

APPLEBEE'S 0140

Employee Punch Report

Page 2 of 2

Employee Total				5.87		24.95	40.00
SWANN, SAMANTHA	6610	Servers	12:33 PM 12:15 AM	11.70	2.13	24.92	82.00
Employee Total				11.70		24.92	82.00
WILES, TRAVIS	2975	Servers	11:15 AM 4:33 PM	5.30	2.13	11.29	45.00
Employee Total				5.30		11.29	45.00
Orangeburg Total for 24 Employees				151.33		728.97	560

Reports » Payroll » Reports » Employee Punch Report
Copyright © 1998, 2014 Rosnet. (01132015 14.18.09) 5434905

APPLEBEE'S 0141

02/19/2013 4:55:34 PM Batch: 4294715

ORIGINAL-CORRECTED										FATAL									
SOUTH CAROLINA DPS/15 & DMV USE ONLY										SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM									
Page 1 of 1										TR-310 (Rev. 7/2010)									
Date		Time of Collision		County		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- PP		Collision Location (Rt # / Name)		1- Main 2- Alternate 3- Spur		6- Connection 7- Business 8- Other		Miles: Dir.		In (Near) City or Town of:	
10-18-2012		2239		38						521 / COLUMBIA RD		Main		Connection		.43		ORANGEBURG	
Lane # / Dir.		Distance		Direction		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- Other		Base Intersection (Rt # / Name)		1- Main 2- Alternate 3- Spur		6- Connection 7- Business 8- Other		GPS COORDINATES 00 00 00.00		DEGREES/MINUTES/SECONDS	
1- 2 / S W		.01		N E						2095 / ANYAMANDA LN		Main		Connection		33 32 09.74			
R.R. Id.		From		Ramp Only		To		1- Interstate 2- US Primary 3- SC Primary		Second Intersection (Rt # / Name)		1- Main 2- Alternate 3- Spur		6- Connection 7- Business 8- Other		Latitude		Longitude	
		N E		1- Entrance		N E				920 / SIFLY RD		Main		Connection		80 51 46.89			
E-398220										E-398594									
Driver/Pedestrian's Full Name										Driver/Pedestrian's Full Name									
INABINET, L STABLER										MOORE, SHAUN ROBERT									
Unit #		Sex		Race		Street/R.F.D.		City, State, & Zip		Unit #		Sex		Race		Street/R.F.D.		City, State, & Zip	
01		M		W		63 TULIP LN		SAINT MATTHEWS, SC 291357355		02		M		W		621 OLD FRIENDSHIP RD		ROCK HILL, SC 29730	
Birth Date										Birth Date									
1										1									
State		Driver's License #		Class		Insurance Company				State		Driver's License #		Class		Insurance Company			
SC				D		STATE FARM				SC				UNKNOWN					
Year		Body		Vehicle Make		VIN #				Year		Body		Vehicle Make		VIN #			
2002		49		ACUR						2002		49		ACUR					
State		Year		License Plate #		Owner's D.L. #				State		Year		License Plate #		Owner's D.L. #			
SC		2013		001225718		001225718				SC		2013		001225718		001225718			
Home Telephone		Owner's Full Name								Home Telephone		Owner's Full Name							
(803) 8540444		INABINET, L STABLER								(803) 8540444		INABINET, L STABLER							
Bus. Telephone		Street/R.F.D.								Bus. Telephone		Street/R.F.D.							
(803) 8743122		63 TULIP LN								(803) 8743122		63 TULIP LN							
Contributed To Collision		City, State, & Zip								Contributed To Collision		City, State, & Zip							
Yes		SAINT MATTHEWS, SC 291357355								Yes		ROCK HILL, SC 29730							
Estimated Speed		Speed Limit		C.D.L. Req. Yes (No)		T/B S Req. Yes (No)		Alc/Dry Info (see back): Yes (No)		Estimated Speed		Speed Limit		C.D.L. Req. Yes (No)		T/B S Req. Yes (No)		Alc/Dry Info (see back): Yes (No)	
45		45		Yes (No)		Yes (No)		Yes (No)		45		45		Yes (No)		Yes (No)		Yes (No)	
Summons #		Code		Summons #		Code		Towed Yes (No)		Summons #		Code		Summons #		Code		Towed Yes (No)	
Driver/Pedestrian's Full Name										State Year License Plate # Owner's D.L. #									
INABINET, L STABLER										SC 2013 001225718 001225718									
Unit #		Sex		Race		Street/R.F.D.		City, State, & Zip		Home Telephone		Owner's Full Name							
01		M		W		63 TULIP LN		SAINT MATTHEWS, SC 291357355		(803) 8540444		INABINET, L STABLER							
Birth Date										Bus. Telephone		Street/R.F.D.							
1										(803) 8743122		63 TULIP LN							
State		Driver's License #		Class		Insurance Company				Contributed To Collision		City, State, & Zip							
SC				D		STATE FARM				Yes		SAINT MATTHEWS, SC 291357355							
Year		Body		Vehicle Make		VIN #				Estimated Speed		Speed Limit		C.D.L. Req. Yes (No)		T/B S Req. Yes (No)		Alc/Dry Info (see back): Yes (No)	
2002		49		ACUR						45		45		Yes (No)		Yes (No)		Yes (No)	
Summons #		Code		Summons #		Code		Towed Yes (No)		Summons #		Code		Summons #		Code		Towed Yes (No)	
Dir. of Travel: Unit 1: (N) S E W Unit 2: N (S) E W Unit 3: N S E W										Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam. 2									
										UNIT 1 WAS TRAVELING NORTH ON US 21. UNIT 2 WAS WALKING SOUTH ON US 21. UNIT 2 IMPROPERLY CROSSED OVER US 21 COLLIDING INTO THE PASSENGER SIDE FRONT OF UNIT 1. UNIT 2 WAS UNDER THE INFLUENCE OF ALCOHOL. ON 12-17-2012 UNIT 2 DRIVERS LICENSE NUMBER, STATE AND CLASS WERE REMOVED.									
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.										Property Owner (Witness) MCLEAN JAMES SLOOP PATRICIA Address: ORANGEBURG State Zip Phone State Zip Phone SC 29115 SC 29115 Photo Describe What Happened (Refer to Units by Number) Y (N)									
Investigating Officer's Name Rank Badge # Jurisdiction Code Review Date JAMES - HF TFC T 934 H P 07 12-20-2012										Reviewer's Name Rank Internal Agency Code J H Burtles Cpl 123W205389									

APPLEBEE'S 012

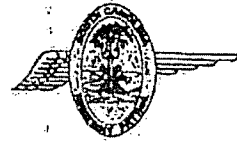
000132

000133

02/19/2013 4:55:36 PM Batch: 4294715



SOUTH CAROLINA HIGHWAY PATROL
ADVANCED COLLISION INVESTIGATION

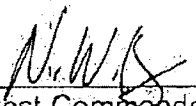


Packet Approval Form

Investigating Officer's Name:	TFC H. F. James
County of Incident:	ORANGEBURG (38)
Location:	US 21 just north of Secondary 2095
Date of Incident:	10/18/2012

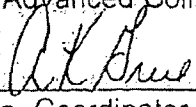
I have reviewed the attached Major Investigation Packet for verification of accuracy and completeness:


Team Supervisor or Designee Signature 10-23-12
Date


Post Commander or Designee 10-29-12
Date

Comments:

This Advanced Collision Investigation Packet has been reviewed and approved:

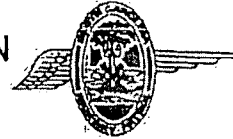

Troop Coordinator 10/31/12
Date

APPLEBEE'S 014

000134



SOUTH CAROLINA HIGHWAY PATROL ADVANCED COLLISION INVESTIGATION COVER SHEET



Date: 10/18/2012 Time: 2045 County: Orangeburg

Incident Type: FATAL

On-Scene Supervisor: Cpl. W.D. Rogan Primary Investigating Officer: T.F.C. H.F. James
MAIT Associate: N/A CRO Notified: L/Cpl J. Jones
Assisting Troopers: L/Cpl R. Rowe

Coroner: Deputy Coroner David Farr Phone # (803) 533 - 5842
Address of Coroner: 1558 Ellis Ave Orangeburg, SC 29115
Were Photographs Taken? Yes By Whom? TFC H.F. James # of Photos Taken: 60
Weather Conditions: Dry Roadway Surface: Dry
Roadway Construction: Asphalt If Other, Describe: _____
Roadway Defects Present: No If Yes, Describe: _____
Type of Area: Rural
Speed Limit: 45 mph Posted? Yes Date Posted: 04/2007
Other Traffic Signs or Signals: None Date Posted N/A

If any charges were filed:

Defendant's Name: N/A
Charges: _____
Summons or Warrant Number(s): _____
Solicitor's Office Contact: _____ Phone # ()
Address: _____

Other Agencies on the Scene and Names of Their Personnel:

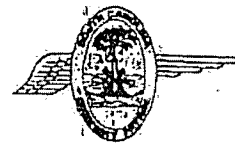
Agency	Names
<u>Orangeburg Department Of Public Safety</u>	_____
<u>Orangeburg E.M.S</u>	_____
_____	_____
_____	_____
_____	_____



Leroy Smith
Director
Department of Public Safety

SOUTH CAROLINA HIGHWAY PATROL

10311 Wilson Blvd.
Blythewood, SC 29016



Colonel Michael Oliver
Deputy Director
Highway Patrol

Advanced Collision Investigation and Major Incident Checklist

The following documents, information and items must be submitted with each fatality, felony DUI or other major collision investigation along with a copy of this checklist.

Document	Select One	Remarks
TR-310	☒ Yes ☐ No ☐ N/A	
Incident Report	☐ Yes ☒ No ☐ N/A	
TAVA Report	☐ Yes ☒ No ☐ N/A	
Toxicology Report	☐ Yes ☐ No ☐ N/A ☒ Pending	
Coroner's Report	☐ Yes ☐ No ☐ N/A ☒ Pending	
Driver's Records	☒ Yes ☐ No ☐ N/A	
Witness Statements: (check) ☒ Driver ☐ Passenger ☒ Other	☐ Yes ☐ No ☐ N/A	
Photographs	☒ Yes ☐ No ☐ N/A	
Video	☒ Yes ☐ No ☐ N/A	
Field Notes and Field Sketch	☒ Yes ☐ No ☐ N/A	
Copy of Summons (if applicable)	☐ Yes ☒ No ☐ N/A	
Search Warrants (if applicable)	☐ Yes ☒ No ☐ N/A	
Arrest Warrants (if applicable)	☐ Yes ☒ No ☐ N/A	
MAIT Report	☐ Yes ☒ No ☐ N/A ☐ Pending	

WDR [Signature]
Supervisor's Signature

10-25-12
Date

Statement/Collision Summary Continued

Use this page to describe the sequence of events before, during and after the collision.

On October 18, 2012 at approximately 2045 hours, I was advised by dispatch of a collision involving a vehicle and a pedestrian. I arrived on scene at approximately 2048.

As I arrived on scene of the collision, I observed a silver in color 4 door Acura off the Northbound side of the roadway with heavy front end damage. The Orangeburg Department Of Public Safety and Orangeburg E.M.S. arrived on scene. Corporal W.D. Rogan and Lance Corporal R. W. Rowe arrived on scene also. Corporal W.D. Rogan was the supervisor on scene. I spoke to a Stabler L. Inabinet who advised he was involved in the collision with the pedestrian. I observed a white male subject lying off the northbound side of the roadway. I was notified by Orangeburg E.M.S. the subject was pronounced deceased on their arrival. Mr. Inabinet advised he was traveling North on US 21 going back to his residence located in St. Matthews SC, when a white male subject stepped into the northbound lane directly in front of his vehicle. Mr. Inabinet advised the male subject collided into the passenger side front of his vehicle. I spoke with a witness who identified himself as James Mclean. Mr. Mclean advised he observed the white male pedestrian walking in the roadway traveling Southbound. Mr. Mclean advised he attempted to advise the subject to move out of the roadway. Mr. Mclean advised he smelled alcohol coming from the subject and that the subject became irate. Mr. Mclean advised as he began to dial 911, he observed the subject step into the Northbound lane directly in front of Silver Acura driven by Mr. Inabinet. Mr. Mclean advised he observed the subject collide into the front of Mr. Inabinet's vehicle. Mr. Mclean advised Mr. Inabinet maintained his lane. At approximately 2334 hours Deputy Coroner Farr arrived on scene. I took photographs of the scene. Corporal W.D. Rogan took measurements of the roadway. There were no skid marks. Lance Corporal R.W. Rowe painted and marked of the scene. The roadway was dry. The speed limit of the area of US 21 where the collision occurred was 45 miles per hour. The pedestrian was identified as a Shaun Robert Moore.

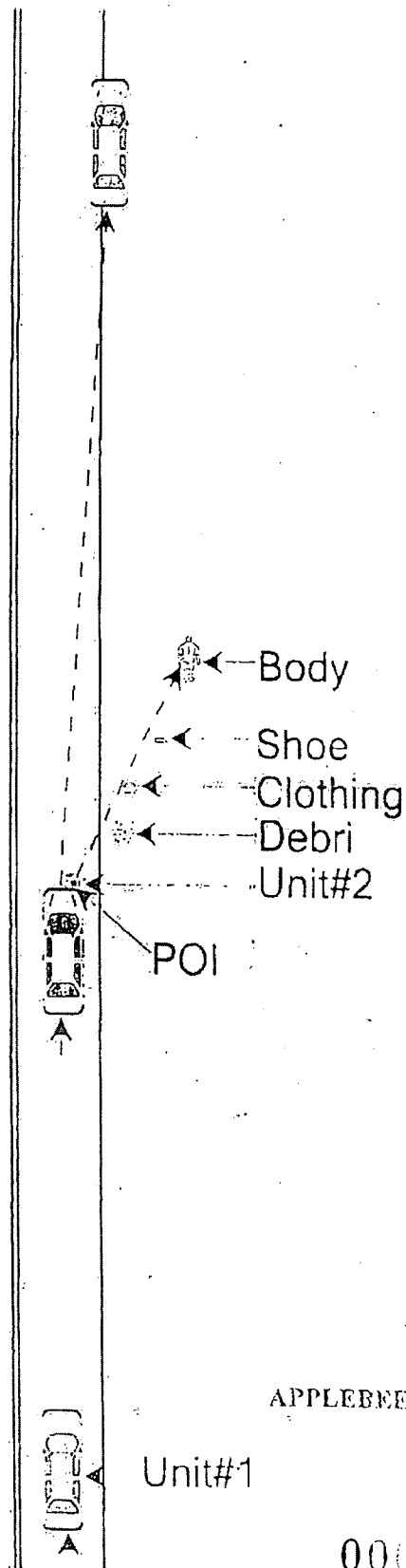
The investigation of the collision that occurred on US 21 showed that Mr. Shaun Robert Moore was intoxicated walking in the roadway traveling north in the south bound lane. Mr. Inabinet was traveling north on US 21 in his 2002 Acura. Mr. Moore improperly crossed the north bound side of the roadway and collided into the passenger side front of Mr. Inabinet's vehicle. Mr. Moore landed onto the side of the roadway. Mr. Inabinet was wearing his seatbelt and his airbags were not deployed

FROM POINT OF IMPACT

Debri- 37'1"
Clothing- 58.3"
Shoe- 96'2"
Body- 135'4"
Unit#1 came to rest- 353'8"

FROM FOG LINE

Debri- 1'6"
Clothing- 2'5"
Shoe- 17'4"
Body- 13'6"
Unit#1 12" in lane one



APPLEBEE'S 018

Unit#1

000133

RECEIVED

NOV 23 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
The Honorable Maite Murphy

Appellate Case No. 2016-001312

Lindsey Stewart, Personal Representative of the Estate of Shaun Robert Moore,..... Appellant,

v.

Green Apple, LLC, doing business as Applebee's, John/Jane Doe, Manager, and Stabler L.
Inabinet,.....Defendants.

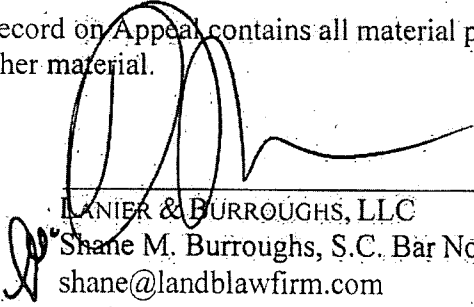
Of Whom Green Apple, LLC, d/b/a Applebee's is the..... Respondent.

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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Kathleen Chewning Barnes, SC Bar No. 78854
kbarnes@barneslawfirm.com
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Hampton, SC 29924
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