

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Charles B. Simmons, Jr., Master-in-Equity, Circuit Court Judge

Case No. 2015-CP-23-02597
Appellate Case No. 2016-001695

State of South Carolina on the relation of William Walter
Wilkins, III, Solicitor of the Thirteenth Judicial Circuit, ... Respondent,

v.

Elephant Inc., Gregory Kenwood Gaines, and Frontage
Road Associates, Inc., Defendants,
of which Elephant Inc. and Gregory Kenwood Gaines are
the Appellants.

**RECORD ON APPEAL
VOLUME II**

Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P O Box 711121
Charleston, SC 29415-1121
(843) 554-4291; (843) 554-5566 fax

H. Louis Sirkin, *pro hac vice*
Santen & Hughes
600 Vine Street, Suite 2700
Cincinnati, Ohio 45202
(513) 721-4450; (513) 721-0109 fax

Attorneys for Appellants

Thirteenth Circuit Solicitor William Walter
Wilkins, III
Deputy Solicitor Andrew Culbreath
For Respondent State of South Carolina
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8647

Attorneys for Respondent

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Certificate of Counsel

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

2015-CP-23- 02597

State of South Carolina on the relation of)
William Walter Wilkins, III, Solicitor of)
the Thirteenth Judicial Circuit,)

C.A. No.

Plaintiff,)

vs.)

**MOTION FOR TEMPORARY
INJUNCTION**

Elephant, Inc. and Frontage Road)
Associates, Inc.,)

Defendants.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MORENSHIER
2015 APR 7 PM 1 14

Pursuant to South Carolina Code §15-43-10 *et seq.*, Plaintiff W. Walter Wilkins, III, Solicitor of the Thirteenth Circuit ("Solicitor"), moves the Court for a temporary injunction against Defendants as set forth herein. In connection with the instant Motion, the Solicitor would respectfully show the Court as follows:

1. South Carolina Code §15-43-10 *et seq.* ("Nuisance Statute") declares certain types of conduct and activities a nuisance as a matter of law. Specifically, the Nuisance Statute states:

A person who erects, establishes, maintains, uses, owns, occupies, leases, or re-leases any building or other place used for the purposes of lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace in this State is guilty of a nuisance; and the building, place, or the ground itself in or upon which the lewdness, assignation, prostitution, repeated acts or unlawful possession or sale of controlled substances, or continuous breach of the peace is conducted, permitted, carried on, continued, or exists and the furniture, fixtures, musical instruments, and movable property in conducting or maintaining the nuisance also are declared a nuisance and shall be enjoined as provided in this chapter.

S.C. Code §15-43-10(A).

2. The Nuisance Statute authorizes the Solicitor to file a lawsuit seeking an injunction when a nuisance, as defined by the statute cited above, exists within the Thirteenth Judicial Circuit. The Nuisance Statute states:

Whenever a nuisance is kept, maintained or exists, as defined in this chapter...the solicitor of the judicial district in which such nuisance is kept...may maintain an action in equity in the name of the State, upon the relation of such...solicitor...to enjoin perpetually such nuisance, the person conducting or maintaining the nuisance and the owner or agent of the building or ground upon which the nuisance exists.

S.C. Code §15-43-20.

3. Pending a merits trial as provided by South Carolina Code §15-43-40, the Nuisance Statute compels the entry of a temporary injunction against Defendants if, as here, the Solicitor petitions the Court for temporary injunctive relief and if the evidence presented by the Solicitor satisfies the Court that a nuisance exists as defined above. Specifically, the Nuisance Statute provides:

In such action the court or the judge in vacation shall, upon the presentation of a petition therefore alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise, as the complainant may elect, unless the court or judge by previous order shall have directed the form and manner in which it shall be presented. Three days' notice in writing shall be given to the defendant of the hearing of the application and if then continued at his instance the writ as prayed shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the State, and any violation of the provisions of the injunction herein provided for shall be a contempt as provided in Section 15-43-70.

S.C. Code §15-43-30.

4. Abundant evidence establishes that Platinum Plus constitutes a nuisance under the Nuisance Statute. In this regard, the Solicitor incorporates by reference herein the Affidavit of Robert Curtis, which is attached to the contemporaneously filed Verified Petition as Attachment 1. Robert Curtis works as a Deputy Sheriff for the Greenville County Sheriff's Office ("GCSO"). Together with the Verified Petition, the Curtis Affidavit (including its attached exhibits), evidences and establishes that a pervasive nuisance (as defined above) exists at 805 Frontage Road in Greenville, South Carolina 29615 ("Subject Property").
5. Defendant, Elephant, Inc. ("EI") owns and operates an adult entertainment business at the Subject Property. (Curtis Aff., ¶¶6-7.) Defendant Frontage Road Associates, Inc. ("FRA") owns the Subject Property. (*Id.* at ¶8.) The instant motion pertains to both EI and FRA as provided by S.C. Code 15-43-10(A).
6. Specifically, the Curtis Affidavit (including its attached exhibits) evidences *inter alia* the following:
 - Promises by strippers that if customers paid to enter Platinum Plus's upstairs area (dubbed the "Champagne Room") they would not leave sexually frustrated;
 - Strippers' performing lewd and lascivious acts such as: rubbing their vaginas in customers' faces; inserting their fingers in their vaginas and waiving them below customers' noses; inserting their fingers in their vaginas and putting their fingers in their own mouths; inserting their fingers in their vaginas and putting their fingers in customers' mouths; sitting on customers' faces; and humming or vibrating with their mouths on customers' clothed penises;
 - Strippers performing oral sex on one another in exchange for money;
 - Offers by strippers to have sexual intercourse at Platinum Plus in exchange for money;
 - Offers by strippers to perform oral sex at Platinum Plus in exchange for money;

- Offers by strippers—while at the club--to have sexual intercourse with customers outside of Platinum Plus in exchange for money;
- Strippers digitally penetrating their vaginas and anuses in exchange for money;
- Strippers digitally penetrating the vaginas of one another in exchange for money;
- Full exposure of strippers' vaginas to customers in exchange for money;
- Full exposure of strippers' buttocks to customers in exchange for money;
- Manipulation and masturbation of strippers' vaginal areas in exchange for money;
- Strippers sucking and licking each other's nipples and breasts;
- Placement of customers' hands on the breasts and buttocks of strippers in exchange for money;
- Touching and rubbing of customers' crotch areas by strippers;
- Simulation of oral sex by strippers on patrons;
- Simulation of oral sex by strippers on other strippers;
- Exposing of bare breasts and grinding of the vaginal area of strippers to patrons' penises;
- Exposing of the buttocks of strippers directly to the face of patrons;
- Strippers making plans or appointments with customers for later dates when they would be working at Platinum Plus at which time they would then perform acts of prostitution or lewd and lascivious acts;
- The service and consumption of alcohol by strippers and employees under the age of twenty-one years of age;
- The service of alcohol to customers after midnight on a Saturday night and in the early morning hours on a Sunday;
- The presence of a gentlemen identified as a pimp who used Platinum Plus as a recruiting ground to induce strippers to become prostitutes;
- A stripper facilitating the terms for the sale of an ounce of marijuana, a Schedule I Controlled Substance, to be delivered outside of Platinum Plus, the sale of

which was then consummated by the undersigned;

- A stripper admitting she often supplied Adderall, a Schedule II Controlled Substance, to other strippers so as to keep the strippers up all night long.

(*Id.* at ¶9.)

7. The Curtis Affidavit also attaches the sworn statements of eight (8) individuals who worked at Platinum Plus, whose accounts and admissions corroborate the personal observations of Curtis and prove the existence of a nuisance at the Subject Property. (*Id.* at Ex. C-1 to C-8.) The sworn statements evidence *inter alia*:

- That "prostitution does occur at" Platinum Plus (Ex. C-1 to C-8)¹;
- That strippers had sexual intercourse with customers (*Id.*);
- That strippers performed oral sex on customers (*Id.*);
- That customers performed oral sex on strippers (*Id.*);
- That strippers performed oral sex on one another (*Id.*);
- That a single Champagne Room hostess witnessed strippers exposing their vaginas to customers more than one hundred times (*Id.*);
- That strippers masturbated customers through their clothes and down their pants (*Id.*);
- That customers fondled, kissed, and sucked strippers' breasts (*Id.*);
- That strippers fondled, kissed, and sucked the breasts of one another (*Id.*);
- That strippers touched each others' vaginas outside of the g-string or in a "manner simulating masturbation" (*Id.*);
- That strippers ground their buttocks on client's laps (*Id.*);

¹ A more detailed break-down of each sworn statement can be found in the Affidavit of Robert Curtis between Paragraphs 14-48. The statements themselves are attached to the Curtis Affidavit as C-1 to C-8.

- That strippers placed their mouths on the crotches of customers and made humming noises (*Id.*);
- That strippers performed simulated oral sex acts called the "vibration" on one another (*Id.*);
- That customers brought sex toys to Platinum Plus for strippers to use (*Id.*);
- That customers exposed their penises to strippers (*Id.*);
- That condoms were regularly found in the Champagne Room (*Id.*);
- That, while at Platinum Plus, strippers offered to perform Sex Acts for customers at locations outside of the club (*Id.*);
- That strippers and other employees under the age of twenty-one regularly consumed alcohol at Platinum Plus (*Id.*);
- That Platinum Plus employees permitted one stripper to drive home drunk from the club after helping her to her car resulting in an accident where the stripper ended up in a coma for three days (*Id.*);
- That Platinum Plus served alcohol after midnight on Saturday and during the early morning hours on Sundays (*Id.*);
- That Platinum Plus's management failed to take any action to stop Sex Acts and other unlawful conduct from occurring at the club (*Id.*);
- That Platinum Plus's management buried its head while Sex Acts were occurring so as to gain additional profit from such conduct (*Id.*);
- That Platinum Plus managers demanded higher "tip-outs" from strippers after catching them engaging in Sex Acts and, upon receiving more money, ignored the Sex Acts in return (*Id.*);
- That Platinum Plus managers had sexual relations with strippers in lieu of their having to pay nightly "tip-out[s]" (*Id.*);
- That strippers paid Platinum Plus bouncers higher tips so as to prompt the bouncers to look the other way and allow the strippers to continue engaging in Sex Acts (*Id.*);
- That Platinum Plus's General Manager spared a female employee from being fired because she performed oral sex on him (*Id.*);

- That strippers were frequently fired after they were caught engaging in Sex Acts only to be re-hired within a week or so (*Id.*);
 - That Platinum Plus's management simply ignores "certain acts" such as: "dancers exposing their private areas, women touching men's penises through their pants, the touching and sucking of [strippers'] breasts by patrons, and dancers touching other dancers through their clothes" (*Id.*);
 - That the Champagne Room is open and the management could see Sex Acts being performed but did nothing (*Id.*);
 - That after the initial arrests at Platinum Plus (on Friday March 27, 2015), Platinum Plus's managers called a meeting wherein they told employee attendees that the arrests were "not a big deal and everything would go back to normal in a couple of weeks." (*Id.*)
8. **Exhibit D** to the Curtis Affidavit is a surveillance video from Platinum Plus's own security camera. The footage reflects a stripper performing oral sex on another stripper in the main room of Platinum Plus.
 9. Platinum Plus has gained a reputation in the community as a business where prostitution, assignation, and lewd and lascivious acts occur. (Curtis Aff., Attach. Ex. E.)
 10. The Solicitor provided written notice to Defendants of the nuisance on March 27, 2015. Defendants thereafter failed to abate the nuisance within the meaning provided and in the manner required by the Nuisance Statute.
 11. This Motion is supported by the Nuisance Statute, the Affidavit of Robert Curtis (and attachments), and the law of the State of South Carolina. The Solicitor reserves the right to present witness testimony at the hearing of this Motion and at the trial of the merits of this action as may prove suitable or necessary.

WHEREFORE, the Solicitor asks the Court for an Order granting Temporary Injunctive relief mandating and ordering as follows:

- A. That Defendants along with their agents, servants, subordinates, employees and all other individuals acting in concert therewith be preliminarily enjoined from operating, using, maintaining, and assisting in the use or maintenance of Platinum Plus located at 805 Frontage Road in Greenville, South Carolina until such time as: (1) a trial can be conducted on the merits of the above-captioned matter; or (2) the Court modifies the Order granting the temporary injunction in a manner consistent with the provisions of S.C. Code §15-43-10 *et seq.*;
- B. That the Greenville County Sheriff's Office secure the entire premises of Platinum Plus by police barricades or by such other means as may be necessary to prevent anyone from entering the premises for any purpose whatsoever until such time as the above-captioned matter can be heard on the merits;
- C. That the Greenville County Sheriff's Office post copies of the Court's Order on the Subject Property along with a sign warning trespassers that the entire Subject Property is closed by Order of the Court and that violators may be punished for contempt of court or such other statutes or ordinances as may be applicable;
- D. That Defendants and their agents, servants, subordinates and employees are temporarily enjoined and restrained from operating, using maintaining, and assisting in the use or maintenance of any place in the State of South Carolina where a public nuisance exists in violation of S.C. Code §15-43-10 *et seq.*, and that the appropriate Law Enforcement agency from such other Judicial Circuit where such nuisance may occur shall post a copy of the Court's Order thereby providing notice of the injunctive relief imposed by the Court.



Attorneys for Petitioner

Lane W. Davis (S.C. Bar 68796)
Special Prosecutor
Office of the Solicitor, 13th Judicial Circuit
Nelson Mullins Riley & Scarborough, LLP
Poinsett Plaza/9th Floor
104 S. Main Street
Greenville, S.C. 29601
Tel: 864-250-2245
Fax: 864-232-2925
Lane.Davis@NelsonMullins.com

W. Walter Wilkins, III, Solicitor
Andrew Culbreath, Asst. Solicitor
Thirteenth Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, S.C. 29601

Greenville, South Carolina

April 17th, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Greenville

FILED-CLERK OF COURT

JUDICIAL CIRCUIT

State of South Carolina on the relation of

GREENVILLE D.D. S.C.

CASE NO.: -CP-

William Walter Wilkins, II Solicitor of the
Thirteenth Judicial Circuit 2015 Plaintiff,
vs.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Elephant, Inc and Frontage Road
Associates, Inc., Defendant.

2015-CP-23- 02597

Plaintiff's Attorney: <u>SC</u> , Bar No. <u>68796</u> Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Temp. Injunction</u> Estimated Time Needed: <u>1 hour</u> Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant <u>LW Davis</u> Date submitted <u>4/17/2015</u>			
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>[Signature]</u> Date Filed: _____ ☒ MOTION FEE COLLECTED: \$ <u>NA</u> ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

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Motion seeking the entry of a temporary injunction abating the public nuisance pending a merits trial in the above-captioned action.

I. MATERIAL PORTIONS OF THE NUISANCE STATUTE

The Nuisance Statute statutorily provides for the entry of a temporary injunction when the Petitioner demonstrates, to the Court's satisfaction, the existence of a public nuisance. South Carolina Code §15-43-30 states:

In such action the court or the judge in vacation shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise, as the complainant may elect, unless the court or judge by previous order shall have directed the form and manner in which it shall be presented. Three days' notice in writing shall be given the defendant of the hearing of the application and if then continued at his instance the writ as prayed shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the State, and any violation of the provisions of the injunction herein provided for shall be a contempt as provided in § 15-43-70.

S.C. Code §15-43-30. In turn, the Nuisance Statute defines a public nuisance as follows:

A person who erects, establishes, maintains, uses, owns, occupies, leases, or re-leases any building or other place used for the purposes of lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace in this State is guilty of a nuisance; and the building, place, or the ground itself in or upon which the lewdness, assignation, prostitution, repeated acts or unlawful possession or sale of controlled substances, or continuous breach of the peace is conducted, permitted, carried on, continued, or exists and the furniture, fixtures, musical instruments, and movable property in conducting or maintaining the nuisance also are declared a nuisance and shall be enjoined as provided in this chapter.

S.C. Code §15-43-10(A). As set forth below, the Solicitor has submitted substantial evidence demonstrating the Subject Property is being used by Platinum Plus "for the

purposes of lewdness, assignation, [and] prostitution..." in violation of South Carolina law.

II. EVIDENCE OF THE NUISANCE

The Greenville County Sheriff's Office ("GCSO") commenced an investigation into unlawful conduct occurring at Platinum Plus in April of 2014. During the course of its investigation, GCSO unearthed an ongoing, repeated, pattern of serial unlawful conduct, including the following (Affidavit of Deputy Robert Curtis² ("Curtis Aff."), ¶ 9):

- A. Promises by strippers that if customers paid to enter Platinum Plus's upstairs area (dubbed the "Champagne Room") they would not leave "sexually frustrated;"
- B. Strippers performing lewd and lascivious acts such as: rubbing their vaginas in customers' faces; inserting their fingers in their vaginas and waiving them below customers' noses; inserting their fingers in their vaginas and putting their fingers in their mouths; inserting their fingers in their vaginas and putting their fingers in the customers' mouths; sitting on customers' faces; and humming or vibrating with their mouths on customers' clothed penises.
- C. Strippers performing oral sex on one another in exchange for money;
- D. Offers by strippers to have sexual intercourse at Platinum Plus in exchange for money;
- E. Offers by strippers to perform oral sex at Platinum Plus in exchange for money;
- F. Offers by strippers—while at the club—to have sexual intercourse with customers outside of Platinum Plus in exchange for money;
- G. Strippers digitally penetrating their vaginas and anuses in exchange for money;
- H. Strippers digitally penetrating the vaginas of one another in exchange for money;
- I. Full exposure of strippers' vaginas to customers in exchange for money;
- J. Full exposure of strippers' buttocks to customers in exchange for money;
- K. Manipulation and masturbation of strippers' vaginal areas in exchange for money;
- L. Strippers fondling, sucking, and licking each other's nipples and breasts;

² The Curtis Affidavit and its incorporated exhibits were previously filed with the Court on April 17, 2015. References herein are to the previously filed document.

- M. Placement of customers' hands on the breasts and buttocks of customers in exchange for money;
 - N. Touching and rubbing of customers' crotch areas by strippers;
 - O. Simulation of oral sex by strippers on patrons;
 - P. Simulation of oral sex by strippers on other strippers;
 - Q. Exposing of bare breasts and grinding of the vaginal area of strippers to patrons' penises;
 - R. Exposing of the buttocks of strippers directly to the face of patrons;
 - S. Strippers making plans or appointments with customers for later dates when they would be working at Platinum Plus at which time they would then perform acts of prostitution or lewd and lascivious acts;
 - T. The service and consumption of alcohol by strippers under the age of twenty-one years of age;
 - U. The service of alcohol to customers after midnight on a Saturday night;
 - V. The presence of a gentlemen identified as a pimp who used Platinum Plus as a recruiting ground to induce strippers to become prostitutes;
 - W. A stripper facilitating the terms for the sale of an ounce of marijuana, a Schedule I Controlled Substance, to be delivered outside of Platinum Plus, the sale of which was then consummated by an undercover GCSO deputy;
 - X. A stripper admitting she often supplied Adderall, a Schedule II Controlled Substance, to other strippers so as to keep the strippers up all night long.
- (Id.) The information reported by GCSO Deputy Sheriff Curtis was subsequently corroborated in statements obtained from various individuals who worked at Platinum Plus. Pursuant to the Statement of Tara Whiteside, a Platinum Plus employee (Curtis Aff., Ex. C-1):
- A. Prostitution does occur;
 - B. Strippers expose their vaginas to customers;
 - C. Strippers touch men's penises through their pants;
 - D. Patrons touch and suck the breasts of the strippers;

E. Strippers touch other strippers through their clothes;

F. Men expose themselves to the strippers; and

G. Men perform oral sex on strippers.

(*Id.*) The reports of Tara Whiteside, a Platinum Plus stripper, prove consistent with the statement of Micah Dobbins. Pursuant to Dobbins' statement (Curtis Aff., Ex. C-2):

A. Strippers fondle and kiss each other's breasts;

B. Strippers touch each other's vaginas through their g-string;

C. Strippers simulate masturbation;

D. Strippers grind their buttocks on men's laps;

E. Patrons touch and suck the breasts of strippers;

F. Strippers expose themselves to patrons and touch themselves; and

G. Strippers perform simulated oral sex upon each other.

(*Id.*) The reports are further corroborated by the interview responses of Brittany Caroline Neal, a Platinum Plus stripper. Pursuant to her interview, Neal confirmed the following (Curtis Aff., Ex. C-3):

A. Strippers performing oral sex upon one another;

B. Strippers masturbating themselves;

C. Strippers manually stimulating men through their underwear;

D. Strippers expose their vaginas to customers;

E. Strippers manually stimulate their vaginas for customers; and

F. Underage women in Platinum Plus drink alcoholic beverages.

The reports are further corroborated by the statement of Jordyn Nicole Sierra, a Platinum Plus stripper. Pursuant to Sierra's statement (Curtis Aff., Ex. C-4):

A. Women have placed their hands "down their pants;"

B. Women expose their vaginas to patrons;

- C. Strippers "grope" and "grab" the genitals of patrons;
- D. Women masturbate themselves on the "stage;"
- E. Strippers "grind" themselves into patrons;
- F. Underage women in the club are allowed to drink alcohol; and
- G. Strippers have sex in the "Champagne Room."

The reports are further corroborated by the statement of Stephanie Renee Turner, a Platinum Plus stripper. Pursuant to Turner's statement (Curtis Aff., Ex. C-5):

- A. Strippers masturbate men through their pants;
- B. Strippers simulate oral sex upon patrons;
- C. Strippers are manually masturbated by patrons;
- D. Strippers kiss, "rub on" each other and lick each other's breasts; and
- E. Strippers touch each other through their g-strings on the main stages.

The reports are further corroborated by the statement of Ashley Renee Walker, a Platinum Plus stripper. Pursuant to Walker's statement (Curtis Aff., Ex. C-6):

- A. Strippers expose their vaginas to patrons;
- B. Strippers allow patrons to touch their vaginas;
- C. Strippers perform oral sex upon patrons;
- D. Strippers perform manual masturbation upon patrons;
- E. Strippers have vaginal intercourse in the Champagne Room;
- F. Strippers masturbate themselves; and
- G. Platinum Plus serves alcohol on Sundays.

The reports are further corroborated by the statement of Alicia Diane Howard, a Platinum Plus stripper. Pursuant to Howard's statement (Curtis Aff., Ex. C-7):

- A. Strippers expose their vaginas to patrons;
- B. Strippers rub patron's penises through their clothes;

- C. Strippers put their vaginas in men's faces;
- D. Strippers masturbate in front of customers;
- E. Strippers perform oral sex on customers;
- F. Strippers solicit off-site sexual encounters with patrons; and
- G. Strippers have sexual intercourse with customers.

The reports are further corroborated by the statement of Marissa R. Porter, a Platinum Plus employee. Pursuant to her statement (Curtis Aff., Ex. C-8):

- A. Patrons engage in underage drinking;
- B. Strippers engage in "girl on girl action," including on the main stage; and
- C. Strippers rub patron's crotches through their pants.

The video footage generated by Platinum Plus's own surveillance cameras evidences unlawful sex acts are even occurring in the main room of the club. (Curtis Aff., Ex. D). Deputy Sheriff Curtis's Affidavit, along with the sworn statements referenced above, evidence a consistent pattern of unlawful conduct at the Subject Property.

III. PLATINUM PLUS'S ACTIONS VIOLATE SOUTH CAROLINA LAW, GREENVILLE COUNTY ORDINANCES, AND A PRIOR ORDER OF THIS COURT

South Carolina law makes illegal all forms of "prostitution." S.C. Code §16-15-90. "Prostitution" is defined as "engaging or offering to engage in sexual activity with or for another in exchange for anything of value." *Id.* § 16-15-375(4). "Sexual Activity" includes:

- (a) masturbation, whether done alone or with another...;
- (b) vaginal, anal, or oral intercourse...;
- (c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;
- ...
- (f) the insertion of any part of a person's body...into another person's anus or vagina....

Id. § 16-15-375(5). The evidence recited above demonstrates that all of the above-referenced sexual activities were being conducted inside of Platinum Plus in exchange for money paid to the strippers and EI.

The Greenville County Code of Ordinances likewise regulates adult-oriented entertainment establishments. GCCO §§ 2.5-71 *et seq.* (Ordinance 2673). This Ordinance prohibits the use of the Subject Property as a "sexually oriented business." GCCO § 2.5-87. Under the Ordinance, no person in the Subject Property may appear in a "state of nudity" or engage in live performances characterized by the exposure of "specified anatomical areas" or by "specified sexual activities." GCCO § 2.5-72 ("Adult cabaret"). No person in the Subject Property may display her/his "bare buttock, anus, male genitals, female genitals, or female breast." *Id.* ("Nudity" or "a state of nudity"). Moreover, no person in the Subject Property may engage in the "(1) ... fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (3) Masturbation, actual or simulated..." *Id.* ("Specified sexual activities"). The above cited evidence demonstrates that all of the above-referenced sexual activities occur inside of Platinum Plus.

The aforementioned misconduct also violates a prior Consent Order entered into by EI in Greenville County Common Pleas, Case Number 01-CP-23-1793. (Order of Judge J. Kittredge, filed January 24, 2002, attached hereto as **Exhibit A**). In that Court Order, EI stipulated that it would not "engage in activities that if conducted, would constitute their business as a 'sexually oriented business' as that term is defined in Greenville County Ordinance 2673." (Consent Order, p. 2). EI agreed to prevent "any

person, at any time, to appear in a 'state of nudity' while in or on the premises of [EI's] businesses." *Id.* EI further agreed that it would "not permit any persons to engage in 'specified sexual activities'...while in or on the premises owned and/or operated by [EI]." *Id.*, p. 3. And, EI agreed that it would "not permit any person to at any time display or expose 'specified anatomical areas'...while in or on the premises owned and/or operated by [EI]." *Id.* The Consent Order went so far as to state that "violations of the agreements set forth in this order shall be punishable as contempt of Court...." *Id.*, p. 4. Like the laws referenced above, Platinum Plus simply disregarded this Court's Order.

IV. DEFENDANTS' KNOWLEDGE IS IMMATERIAL TO THE EXISTENCE OF THE NUISANCE

The Solicitor expects Defendants to argue they were unaware of the unlawful, public nuisance occurring at the Subject Property. Yet, whether Defendants knew of the existence of the illegal conduct occurring at the Subject Property proves immaterial to the relief sought by the Solicitor. "Public nuisance" cases in both South Carolina and throughout the country demonstrate that the owner's knowledge (or lack thereof) does not speak to the issue of whether a public nuisance exists.

Instead, the relevant inquiry is if the Subject Property's maintenance resulted in a public nuisance. *See, e.g., State v. Turner*, 198 S.C. 487, ___, 18 S.E.2d 372, 374 (1942) (owner "maintains, promotes, or continues what is ... a public outrage against common decency or common morality....").³ Negligence or knowledge on the part of Defendants

³ *Accord, State ex rel. Hembree v. Sherald*, No. 2010-UP-448, 2010 WL 10085571, at *2 (S.C. Ct. App. Oct. 19, 2010) (unpublished) ("if one maintains a place where the laws are publicly, repeatedly, persistently, and intentionally violated, then such place would become a common or public nuisance.").

is not an element of a claim for nuisance, and an action for nuisance may lie--even if-- Defendants exercised reasonable care to prevent the nuisance, which, in this case, they did not. *Peden v. Furman University*, 155 S.C. 1, 19, 151 S.E. 907, 913 (1930); *FOC Lawshe Ltd. Partnership v. International Paper Co.*, 2 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002).

Here, the basis for finding a public nuisance arises by operation of the Nuisance Statute. As cited above, under §15-43-10 "a person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases any building or other place used for the purposes of lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace in this State is guilty of a nuisance." S.C. Code §15-43-10(A). The court only examines whether the owner "permitted" such conduct to occur. *Turner*, 18 S.E.2d at 375 ("keeping and maintaining a [property] in which idle, vicious, and dissolute persons are encouraged to assemble, and are permitted to drink...and engage in lewd and immoral conduct."). The existence of "lewd behavior and other illegal sexual activity in violat[ion] of law...clearly and convincingly demonstrates Total Xposure to be a nuisance...." *State ex rel. Nasal v. BJS No. 2, Inc.*, 2003-Ohio-7323, ¶ 69, 806 N.E.2d 208, 220 (Ct. Comm. Pls. Miami County, Ohio 2003). Accordingly, the question before the Court is whether the property has been maintained in such a way as to allow the existence of the nuisance. *Carpenter v. Boyles*, 213 N.C. 432, 196 S.E. 850, 862 (1938) ("defendant permitted the cabins on his premises to be utilized for the purpose of prostitution, lewdness, and assignation"). The evidence set forth above convincingly demonstrates Platinum plus maintained the Subject Property in a manner allowing public nuisance to exist.

**V. SETTING ASIDE THE LANGUAGE OF THE NUISANCE STATUTE,
EI OTHERWISE KNEW OF THE ILLEGAL CONDUCT**

The various statements on file with the Court paint a consistent picture of EI condoning and encouraging the illegal conduct referenced above. They include:

- A. Deputy Curtis observed management of EI witnessing sex acts being performed in the Champagne Room while taking no actions to stop the sex acts. (Curtis Aff., ¶ 57).
- B. All money that is paid to the stripper is first paid to an EI employee who counts it and remits the funds to the Stripper. (Whiteside Statement; Dobbins Statement; Sierra Statement; Howard Statement).
- C. Multiple employees have witnessed sex acts being performed in the Champagne Room. (Whiteside Statement).
- D. Employees of EI have witnessed patrons performing oral sex on strippers and those patrons were only given a "warning." (Whiteside Statement).
- E. Strippers kiss and fondle each other's breasts on the "main stage" in front of all employees or expose their vaginas on the main stage. (Dobbins Statement; Sierra Statement; Porter Statement).
- F. The "Champagne Room" is open and the host, bouncer, and/or manager can see all acts being committed in all of the "couch areas" from the bar area. (Dobbins Statement).
- G. EI charges approximately \$300 and up for a bottle of champagne that is worth much less and derives "considerable money" off of the activities in the Champagne Room. (Neal Interview).
- H. Michael Hughey, a Champagne Room host, has walked in on a sex act on at least one occasion. (Neal Interview).
- I. Strippers have been caught performing oral sex in the Champagne Room and the strippers continue to work at Platinum Plus. (Sierra Statement).
- J. Platinum Plus knows that certain women are under the age of twenty-one and continue to allow them to take "shots" and otherwise consume alcohol. (Sierra Statement).
- K. Platinum Plus allows customers to "lick" the breasts of strippers. (Turner Statement).

- L. Bouncers at the club have been informed that strippers are manually masturbating patrons; in response, the bouncers have stated that the strippers "pay [them] enough to stay away...." (Walker Statement).
- M. Platinum Plus's management encourages strippers to sell alcohol on Sundays. (Walker Statement).
- N. In the Couch Room, strippers show their vagina to customers, masturbate in front of them, and perform oral sex. "Managers would roam around and see things but never really said anything about it." (Howard Statement).
- O. Management has caught strippers performing sex acts on customers but these strippers have returned to work for EI. (Howard Statement).

As a consequence, even if the knowledge of the misconduct proved relevant, which it is not, ample evidence demonstrates EI knew of illegal activities constituting a public nuisance at the Subject Property.

VI. PLATINUM PLUS OTHERWISE POSSESSED A LEGAL OBLIGATION TO KNOW OF THE ILLEGAL CONDUCT OCCURRING AT THE PREMISES

Regardless of whether it claims ignorance of the prostitution and sexual activity conducted at the Subject Property, Platinum Plus had a legal duty to know of the conduct. As set forth above, GCCO §§ 2.5-71 *et seq.* (Ordinance 2673) governs the operation of an adult-oriented business and prevents the occurrence of certain activities on the premises. Moreover, in the Consent Order executed by Judge Kittredge, EI agreed that it would "not permit" any of the activities banned under Ordinance 2673. If Platinum Plus was unaware of the sexual activities and prostitution occurring at the Subject Property--an assertion that is plainly contradicted by the evidence before the Court--then it violated the prior Court Order wherein such an affirmative duty was agreed upon and judicially imposed.

VII. THE SOUTH CAROLINA CODE COMPELS THE ISSUANCE OF A WRIT OF A PRELIMINARY INJUNCTION TO ABATE THE NUISANCE PENDING TRIAL

Once the "existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise, as the complainant may elect," the Court must enter a temporary writ of injunction. S.C. Code § 15-43-30. Pursuant to Section 15-43-30, the Solicitor seeks an Order of this Court enjoining the use of the building, place or ground itself and the furniture, fixtures, musical instruments and movable property located at Platinum Plus, whether owned by EI or FRAI.⁴ The temporary injunction must issue without the requirement of a bond. S.C. Code § 15-43-30.

VIII. EI AND FRAI HAVE NOT "ABATED" THE NUISANCE

The Solicitor expects that EI and/or FRAI will contend they have taken steps to abate the nuisance by stopping the ongoing prostitution, lewdness, illegal use of controlled substances, and underage consumption of alcohol on its premises. Not so. While these factual issues are subject to dispute, such an argument proves immaterial to the issuance of a temporary injunction (and the ultimate relief) sought in the above-captioned action for the following reasons:

⁴ The South Carolina Code provides that upon a full hearing as set forth in the statute, a permanent Order of Abatement may be entered that will "direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property" and "effect[] closing of the building or place against its use *for any purpose* and so keeping it closed for a period of one year, unless sooner released." S.C. Code Ann. § 15-43-80. (emphasis added).

A. FRAI has not "Abated" the Nuisance Within the Meaning of the Nuisance Statute

FRAI, as the property owner, must take steps to abate the nuisance created by its tenant, EI. Under the Nuisance Statute, EI cannot "abate" the nuisance. To abate the nuisance, the property owner⁵ (*i.e.*, FRAI) must "remov[e] from the building or place all fixtures, furniture, musical instruments or movable property used in conducting the nuisance..." S.C. Code §15-43-80. The abatement provisions of the statute are designed to eliminate the "instrumentality" of the nuisance, not simply to stop the people that were engaged in the criminal activity.

As explained by the Mississippi Supreme Court, the abatement of a nuisance will often time stop legal activity. However, the abatement procedures of nuisance statutes are designed to stop the instrumentality of the nuisance, both in its legal uses and the illegal uses to which it has been put. *Malouf v. Gully*, 187 Miss. 331, 192 So. 2, 4 (1939) ("The suppression of the place of business means not only the liquor business [the illegal business], but the mercantile business [the legitimate business]. The right to carry on both is forfeited.") *United States v. Myers*, 211 N.Y.S. 465, 467 (1925) (holding the court could enjoin the use of "the building or structure which is thus maintained [as a nuisance], as well as its contents"); *see also* 24 AM. JUR. 2D *Disorderly Houses* § 1 (stating a "disorderly house is one which is used habitually for any illegal or immoral purpose." (Internal footnotes omitted)); 27 C.J.S. *Disorderly Houses* § 12 ("A house may be a lewd house even though it is chiefly devoted to the carrying on of a legitimate trade or business." (Citing *Frazier v. State*, 91 S.E.2d 85 (Ga. 1956))). To date, FRAI has not

⁵ See S.C. Code § 15-43-110 (the "owner" may post a bond and have the property returned to him pursuant to an order that he will abate the nuisance and prevent it from being established or kept within the property).

evicted EI from the premises or removed the fixtures, furniture, musical instruments or movable property that was used in conducting the nuisance.

B. EI has Shown a Consistent Disregard for this Court's Prior Orders

In the Consent Order cited above, EI previously stipulated that it would "not permit" any of the "sexual activities" prohibited by Greenville County Ordinance 2673. (Consent Order, **Exhibit A**, *supra*). Nonetheless, the exact actions that EI promised would not occur, continue to occur at Platinum Plus on a large scale. In violation of the Ordinance, strippers at the Subject Property—under the control of EI and for the economic benefit of EI—displayed themselves in a "state of nudity" and engaged in "specified sexual activities" and prostitution. EI's violations of this Court's prior order show the spurious nature of its claiming a true intention to abate the public nuisance, even if the Nuisance Statute so allowed.

C. EI Plans to "Go Back to Normal in a Couple of Weeks"

Any statements by EI or FRAI that they have adequately abated the nuisance are likewise belied by statements made to employees at the Subject Property. As stated by Marissa R. Porter, EI plans for everything to go back to normal in just a few weeks. Specifically, Porter stated:

The Sunday right after the bust on Friday the entire staff, everybody but the dancers, had a meeting at the club. The managers explained the new rules for dancer and told us that if we get arrested to contact Platinum and they would send us a lawyer. During the meeting they told us they did not have a big case because only three were arrested, but in Memphis they arrested a bunch more. They also told us that it was not a big deal and everything would go back to normal in a couple of weeks. They told us not to worry about it.

(Porter Statement, Curtis Aff., Ex. C-8). Contrary to any representations to the Court, the statements of EI to its employees are clear. They view this case as another "temporary

inconvenience" and will simply return to business as usual, just as they ignored the previously existing Consent Order.

IX. CONCLUSION

Platinum Plus must face the legal consequences for its ongoing disregard for South Carolina law, the Greenville County Code, and the orders of this Court. Only when the underlying instrumentality of the nuisance is stopped will the public nuisance facilitated and promoted by Platinum Plus abate. This is what the Nuisance Statute requires and what should obtain. Accordingly, the Solicitor hereby asks the Court to enter the Temporary Injunction set forth in his Motion as provided by South Carolina law.



Attorneys for Petitioner

Lane W. Davis (S.C. Bar 68796)
Special Prosecutor
Office of the Solicitor, 13th Judicial Circuit
Dowse B. ("Brad") Rustin IV (S.C. Bar 74934)
Nelson Mullins Riley & Scarborough, LLP
Poinsett Plaza/9th Floor
104 S. Main Street
Greenville, S.C. 29601
Tel: 864-250-2245
Fax: 864-232-2925
Lane.Davis@NelsonMullins.com

W. Walter Wilkins, III, Solicitor
Andrew Culbreath, Asst. Solicitor
Thirteenth Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, S.C. 29601

Greenville, South Carolina

April 22, 2015

CERTIFICATE OF SERVICE

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

Pleadings:

Memorandum of Law in Support of Motion for Preliminary Injunction

Counsel Served:

Randall S. Hiller
850-B Wade Hampton Blvd
Greenville, South Carolina 29609
rsh@rshpa.org

Hannah R. Metcalfe
Metcalfe & Atkinson, LLC
9 Toy Street
Greenville, SC 29601
hmetcalfe@malawfirmssc.com



Ann Pollard
Administrative Assistant

April 22, 2015

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EXHIBIT A

ARTICLE III: ADULT-ORIENTED ENTERTAINMENT ESTABLISHMENTS

Section

- 2.5-71 Purpose and intent
- 2.5-72 Definitions
- 2.5-73 Classification
- 2.5-74 Permit required
- 2.5-75 Issuance of permit
- 2.5-76 Fees
- 2.5-77 Inspections
- 2.5-78 Expiration of permit
- 2.5-79 Suspension
- 2.5-80 Revocation
- 2.5-81 Transfer of permit
- 2.5-82 Location of sexually oriented businesses
- 2.5-83 Operating hours for sexually oriented businesses
- 2.5-84 Additional regulations for adult motels
- 2.5-85 Regulations pertaining to exhibition of sexually explicit films or videos
- 2.5-86 Exemptions
- 2.5-87 Injunction and penalty

§ 2.5-71 PURPOSE AND INTENT.

It is the purpose of this article to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the county, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the county. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent of this article to condone or legitimize the distribution of obscene material.

(1976 Code, § 2.5-71) (Ord. No. 2673, § 1, 2-7-95)

Cross-references:

Amusements, see Ch. 3;

Offenses, see §§ 15-1 et seq.;

Public nudity, see § 15-4;

Zoning, see App. A

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-72 DEFINITIONS.

As used in this article, the following words, terms and phrases shall have the meanings set forth herein:

Adult arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to 5 or fewer persons per machine at any 1 time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

Adult bookstore or adult video store means a commercial establishment that as 1 of its principle business purposes offers for sale or rental of any 1 or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or

(2) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore or adult video store so long as 1 of its principal business purposes is the offering for sale or rental of the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas."

Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(1) Persons who appear in a state of nudity; or

(2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult motel means a hotel, motel or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than 10 hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
 - (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (3) The addition of any sexually oriented business to any other existing sexually oriented business;
- or
- (4) The relocation of any sexually oriented business.

Permittee means a person in whose name a permit to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit.

Nude model studio means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

Nudity or a state of nudity means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.

Person means an individual, proprietorship, partnership corporation, association, or other legal entity.

Semi-nude means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual encounter center means a business or commercial enterprise that, as 1 of its primary business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between persons of the opposite sex or persons of the same sex or both when 1 or more of the persons is in a state of nudity or semi-nude.

Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio, or sexual encounter center.

Specified anatomical areas means the male genitals in a state of sexual arousal or the vulva or more intimate parts of the female genitals.

Specified sexual activities means any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

Substantial enlargement of a sexually oriented business means the increase in floor areas occupied by the business by more than 25%, as the floor areas exist on the effective date of this article.

Transfer of ownership or control of a sexually oriented business means any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or other similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(1976 Code, § 2.5-72) (Ord. No. 2673, § 2, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-73 CLASSIFICATION.

The following are classified as sexually oriented businesses:

- (1) Adult arcades;
- (2) Adult bookstores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult theaters;
- (7) Nude model studios; and
- (8) Sexual encounter centers.

(1976 Code, § 2.5-73) (Ord. No. 2673, § 3, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-74 PERMIT REQUIRED.

~~—(a) A person commits a misdemeanor if he operates a sexually oriented business without a valid permit issued by the county for the particular type of business.~~

~~—(b) An application for a permit must be made on a form provided by the Greenville County zoning department. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.~~

~~—(c) The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the health department, fire department, and building official. The health department, fire department, and building official shall complete their inspections and certify same to the zoning administrator within 21 days of receipt of the application by the zoning administrator.~~

~~—(d) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 10% or greater interest in the business must sign the application for a permit as an applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a 10% or greater interest in the corporation must sign the application for a permit as an applicant.~~

~~—(e) The fact that a person possesses other types of state or county permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business permit.~~

(1976 Code, § 2.5-74) (Ord. No. 2673, § 4, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-75 ISSUANCE OF PERMIT.

~~—(a) The Greenville County zoning administrator shall approve the issuance of a permit to an applicant within 30 days after receipt of an application unless he finds 1 or more of the following to be true:~~

~~—(1) An applicant is under 18 years of age.~~

~~—(2) An applicant or an applicant's spouse is overdue in his payment to the county of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business.~~

~~—(3) An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the applicant form.~~

~~—(4) An applicant is residing with a person who has been denied a permit by the county to operate a sexually oriented business within the preceding 12 months, or residing with a person whose permit to operate a sexually oriented business has been revoked within the preceding 12 months.~~

~~—(5) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.~~

~~—(6) The permit fee required by this article has not been paid.~~

~~(7) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.~~

~~(b) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.~~

(1976 Code, § 2.5-75) (Ord. No. 2673, § 5, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

~~§ 2.5-76 FEES.~~

~~The annual fee for a sexually oriented business permit is \$500. This fee is in addition to any other fees which may be due in connection with the operation of a business within the unincorporated areas of the county.~~

(1976 Code, § 2.5-76) (Ord. No. 2673, § 6, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-77 INSPECTIONS.

(a) An applicant or permittee shall permit representatives of the sheriff's office, health department, fire department, zoning department, or other county departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

~~(b) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises any time it is occupied or open for business.~~

(1976 Code, § 2.5-77) (Ord. No. 2673, § 7, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

~~§ 2.5-78 EXPIRATION OF PERMIT.~~

~~(a) Each sexually oriented business permit shall expire 1 year from the date of issuance and may be renewed only by making application as provided in § 2.5-74. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the permit will not be affected.~~

~~(b) When the zoning administrator denies renewal of a permit, the applicant shall not be issued a permit for 1 year from the date of denial. If, subsequent to denial, the zoning administrator finds that the basis for denial of the renewal permit has been corrected or abated, the applicant may be granted a permit if at least 90 days have elapsed since the date denial became final.~~

(1976 Code, § 2.5-78) (Ord. No. 2673, § 8, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-79 SUSPENSION.

~~The zoning administrator shall suspend a permit for a period not to exceed 30 days if the zoning administrator determines that a permittee or an employee of a permittee has:~~

- ~~(1) Violated or is not in compliance with any section of this article;~~
- ~~(2) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;~~
- ~~(3) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter;~~
- ~~(4) Knowingly permitted gambling by any person on the sexually oriented business premises.~~

~~Such determination may be based upon information obtained independently by the zoning department, a conviction under § 2.5-87 of this article, a separate criminal conviction that would constitute a violation of this article, or other information from law enforcement, the health department, the fire department, or other official charged with enforcing the law.~~

(1976 Code, § 2.5-79) (Ord. No. 2673, § 9, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-80 REVOCATION.

~~(a) The Greenville County zoning administrator shall revoke a permit if a cause of suspension in § 2.5-79 occurs and the permit has been suspended within the preceding 12 months.~~

~~(b) The zoning administrator shall revoke a permit if the zoning administrator determines that:~~

- ~~(1) A permittee gave false or misleading information in the material submitted to the zoning department during the application process;~~
- ~~(2) A permittee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;~~
- ~~(3) A permittee or an employee has knowingly allowed prostitution on the premises;~~
- ~~(4) A permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended;~~
- ~~(5) A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted premises;~~
- ~~(6) A permittee is delinquent in payment to the county or state for any taxes or fees past due.~~

~~Such determination may be based upon information obtained independently by the zoning department, a conviction under § 2.5-87 of this article, a separate criminal conviction that would constitute a violation of this article, or other information from law enforcement, the health department, the fire department, or other official charged with enforcing the law.~~

~~(c) When the zoning administrator revokes a permit, the revocation shall continue for 1 year, and the permittee shall not be issued a sexually oriented business permit for 1 year from the date revocation~~

~~became effective. If, subsequent to revocation, the zoning administrator finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit if at least 90 days have elapsed since the date the revocation became effective.~~

(1976 Code, § 2.5-80) (Ord. No. 2673, § 10, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-81 TRANSFER OF PERMIT.

~~A permittee shall not transfer his permit to another, nor shall a permittee operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application.~~

(1976 Code, § 2.5-81) (Ord. No. 2673, § 11, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-82 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(a) A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business outside of a designated S-1 district. All sexually oriented businesses shall be located within a S-1 district.

(b) A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business within 1,500 feet of:

- (1) A church;
- (2) A public or private elementary or secondary school;
- (3) A boundary of a residential district;
- (4) A public park adjacent to any residential district;
- (5) The property line of a lot devoted primarily to residential use;
- (6) A continuous care retirement center or nursing care facility;
- (7) A family oriented recreation facility including but not limited to a roller skating rink, an ice skating rink or a public swimming pool;
- (8) A day nursery or licensed child care facility;
- (9) A public library.

(c) A person commits a misdemeanor if he causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within 1,500 feet of another sexually oriented business.

(d) A person commits a misdemeanor if he causes or permits the operation, establishment, or maintenance of more than 1 sexually oriented business in the same building, structure, or portion thereof, or the increase of floor areas of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(e) For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of any land use listed in subsection (c) above.

(f) For purposes of subsection (d) of this section, the distance between any 2 sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(g) Any sexually oriented business lawfully operating on the effective date of this article [Feb. 7, 1995] that is in violation of subsection (a) through (f) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed 1 year, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If 2 or more sexually oriented businesses are within 1,500 feet of another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

(h) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a land use designated in subsection (c) above within 1,500 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit, and does not apply when the application for a permit is submitted after a permit has expired or has been revoked.

(i) With the exception of subsection (a) above, the provisions of this ordinance shall apply to those areas of the county that are not zoned.

(1976 Code, § 2.5-82) (Ord. No. 2673, § 12, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-83 OPERATING HOURS FOR SEXUALLY ORIENTED BUSINESSES.

No sexually oriented business shall open to do business before 10:00 a.m. Monday through Saturday or remain open after 12:00 midnight Monday through Saturday. No sexually oriented business shall be open for business on a Sunday. This subsection shall not apply to an adult motel, nor to a business whose hours of operation are regulated by state law.

(1976 Code, § 2.5-83) (Ord. No. 2673, § 13, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-84 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(a) It may be inferred from evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated 2 or more times in a period of time less than 10 hours that the establishment is an adult motel as that term is defined in this chapter.

(b) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business permit, he rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or subrents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the term "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(1976 Code, § 2.5-84) (Ord. No. 2673, § 14, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-85 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts "specified sexual activities" or "specified anatomical areas" shall comply with the following requirements:

(1) Upon application for a sexually oriented permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of 1 or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions of all areas of the interior of the premises to an accuracy of plus or minus 6 inches. The zoning administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the zoning administrator or his designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least 1 employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has 2 or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least 1 of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operators, and of any agents and employees present in the premises to ensure that the view area specified in subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this section.

(7) No viewing room may be occupied by more than 1 person at a time.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to an illumination of not less than 1 footcandle as measured at the floor level.

(9) It shall be the duty of the owners and operators and of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(b) A person having a duty under subsection (1) through (9) of subsection (a) above commits a misdemeanor if he knowingly fails to fulfill that duty.

(1976 Code, § 2.5-85) (Ord. No. 2673, § 15, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-86 EXEMPTIONS.

It is a defense to prosecution under § 2.5-74 and § 2.5-82 that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school, licensed by the State of South Carolina; a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
 - a. Which has no sign visible from the exterior of the structure and no other advertising that indicated a nude person is available for viewing; and
 - b. Where, in order to participate in a class a student must enroll at least 3 days in advance of the class; and
 - c. Where no more than 1 nude model is on the premises at any 1 time.

(1976 Code, § 2.5-86) (Ord. No. 2673, § 16, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

§ 2.5-87 INJUNCTION AND PENALTY.

A person who operates or causes to be operated a sexually oriented business without a valid permit or in violation of § 2.5-82 of this article is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a fine not to exceed \$500 or imprisonment not to exceed 30 days. Each day a violation continues shall constitute a separate offenses.

(1976 Code, § 2.5-87) (Ord. No. 2673, § 17, 2-7-95)

Editorial Note:

Provisions modified by judicial decision.

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
01-CP-23-1793

Elephant, Inc., d/b/a Platinum Plus,
Kenwood Enterprises, Inc. and Ken
Wood, and Nepals, Inc.,

2002 JAN 24 P 4:27

Plaintiffs,

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. WICKREPS

vs.

ORDER

Greenville County,

Defendant.

This is an action for declaratory relief in which the Plaintiffs seek a declaration and determination by this Court of the meaning of the terms "nudity" and "semi-nude" as defined in Greenville County Ordinance 2673. Plaintiffs allege that there currently exists a controversy between them and Greenville County as to whether Plaintiffs' businesses constitute a "sexually oriented business" as that term is defined in Ordinance 2673. They further allege that they face prosecution and the possibility of civil and criminal contempt if they are determined to be

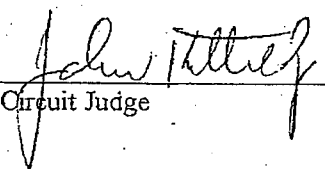
operating a sexually oriented business in violation of the permanent injunctive relief previously granted the County prohibiting Plaintiffs from operating their businesses in violation of Ordinance 2673. They have therefore asked the Court to inquire into the matter and issue a declaratory judgment interpreting and defining certain provisions of the Ordinance set forth in their complaint.

The parties have now advised the Court that they have reached an agreement pursuant to which this action has been resolved. Pursuant to this agreement, this action will be dismissed without prejudice. The parties have asked the Court to enter this consent order memorializing

remedies provided by law. The parties further understand and agree that violations of the agreements set forth in this order shall be punishable as contempt of Court and/or the County may pursue any other relief provided by law.

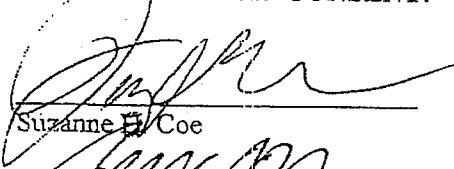
Based upon the foregoing, it is **ORDERED** that this action is dismissed without prejudice in accordance with the terms and provisions set forth hereinabove.

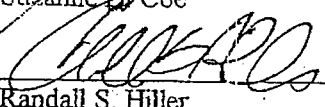
IT IS SO ORDERED.


Circuit Judge

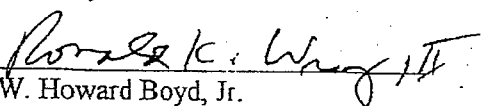
Dated this 24 day of
January, 2002, at Greenville, SC

WE, SO MOVE AND CONSENT:


Suzanne E. Coe


Randall S. Hiller

Attorneys for Plaintiffs


W. Howard Boyd, Jr.

Ronald R. Wray, II

Attorneys for the Defendant

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

01-CP-23-1793

Elephant, Inc., d/b/a Platinum Plus,
Kenwood Enterprises, Inc. and Ken
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2002 JAN 24 P 4:27

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FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. VICKERS

vs.

ORDER

Greenville County,

Defendant.

This is an action for declaratory relief in which the Plaintiffs seek a declaration and determination by this Court of the meaning of the terms "nudity" and "semi-nude" as defined in Greenville County Ordinance 2673. Plaintiffs allege that there currently exists a controversy between them and Greenville County as to whether Plaintiffs' businesses constitute a "sexually oriented business" as that term is defined in Ordinance 2673. They further allege that they face prosecution and the possibility of civil and criminal contempt if they are determined to be operating a sexually oriented business in violation of the permanent injunctive relief previously granted the County prohibiting Plaintiffs from operating their businesses in violation of Ordinance 2673. They have therefore asked the Court to inquire into the matter and issue a declaratory judgment interpreting and defining certain provisions of the Ordinance set forth in their complaint.

The parties have now advised the Court that they have reached an agreement pursuant to which this action has been resolved. Pursuant to this agreement, this action will be dismissed without prejudice. The parties have asked the Court to enter this consent order memorializing

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their agreement and the terms and conditions pursuant to which this action is being dismissed.

Plaintiffs have agreed that neither they, (and to the extent that they can control them), nor any of their successors or assigns will engage in activities that if conducted, would constitute their business as a "sexually oriented business" as that term is defined in Greenville County Ordinance 2673. Pursuant to Greenville County Ordinance 2673, a "sexually oriented business," as that term is currently defined in the Ordinance, must be located either in an S-1 zone or in one of the unzoned areas of the County. Sexually oriented businesses are also prohibited from locating within 1,500 feet of certain designated uses set forth in Section 12(b) of the Ordinance. At their present locations, Plaintiffs' businesses are in violation of the locational requirements set forth in Section 12 of Ordinance 2673 if their businesses are found to be "sexually oriented businesses".

In accordance with the agreement reached by the parties, Plaintiffs agree on behalf of themselves and their successors and assigns to the following:

1. Plaintiffs and their successors and assigns shall not permit any person at any time to appear in a "state of nudity" while in or on the premises of Plaintiffs' businesses. "State of nudity" is currently defined in Greenville County Ordinance 2673 as "the appearance of a human bare buttock, anus, male genitals, female genitals, or female breasts." County agrees that under the definition currently set forth in Ordinance 2673, a person at Plaintiffs' businesses would be considered to be in a "state of nudity" when any one or more of the following occur:
 - a. A female breast is shown with anything less than a completely opaque covering of the entire areola. As an illustration, a "pastie" or other covering which is both completely opaque and completely covering the areola, would be sufficient minimum coverage to avoid the "state of nudity" as currently defined in Ordinance 2673; or

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- b. A human buttock is exposed with anything less than a completely opaque covering of the genitalia and anus and a completely opaque covering over the buttocks with a minimum width of two (2) or more inches, at the sacrum. As an illustration, completely opaque "thongs", bikini bottoms, and "T-bar" forms of apparel that both completely cover the genitalia and anus and cover two (2) or more inches, at the sacrum, would be sufficient minimum coverage to avoid the "state of nudity" as currently defined in Ordinance 2673; or
 - c. Male or female genitals are exposed with anything less than a completely opaque covering.
- 2. Plaintiffs and their successors and assigns shall not permit any person to engage in "specified sexual activities", as that term is defined in Greenville County Ordinance 2673, while in or on the premises owned and/or operated by Plaintiffs.
 - 3. Plaintiffs and their successors and assigns shall not permit any person to at any time display or expose "specified anatomical areas", as that term is defined in Greenville County Ordinance 2673, while in or on the premises owned and/or operated by Plaintiffs.

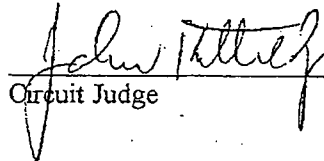
The parties agree that nothing in this Order shall be deemed to permit the Plaintiffs or any of their successors or assigns to violate any other provisions of Ordinance 2673 and Plaintiffs, on behalf of themselves and their successors and assigns agree to fully comply with all other provisions of Ordinance 2673. Plaintiffs agree that if they transfer their interest in their businesses, they will inform their successors and assigns of the agreements set forth in this order and this order shall be binding upon Plaintiff's successors and assigns. The parties also understand and agree that if Plaintiffs or any of their successors or assigns engage in any conduct that is prohibited by Ordinance 2673, the County may pursue any remedies provided by law and that nothing set forth in this order shall be deemed a waiver by County of its right to pursue any

3 JK

remedies provided by law. The parties further understand and agree that violations of the agreements set forth in this order shall be punishable as contempt of Court and/or the County may pursue any other relief provided by law.

Based upon the foregoing, it is **ORDERED** that this action is dismissed without prejudice in accordance with the terms and provisions set forth hereinabove.

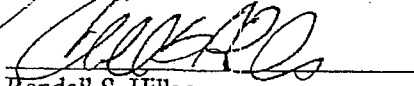
IT IS SO ORDERED.


Circuit Judge

Dated this 24 day of
January, 2002, at Greenville, SC

WE SO MOVE AND CONSENT:


Suzanne E. Coe


Randall S. Hiller
Attorneys for Plaintiffs

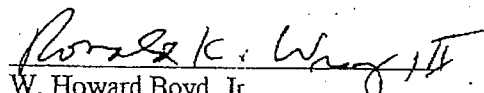

W. Howard Boyd, Jr.
Ronald K. Wray, II
Attorneys for the Defendant

EXHIBIT C

24 Am. Jur. 2d Disorderly Houses § 1

American Jurisprudence, Second Edition
Database updated February 2015
Disorderly Houses

Tracy Bateman Farrell, J.D.

I. In General
A. Definitions

Topic Summary Correlation Table References

§ 1. Disorderly house

West's Key Number Digest

West's Key Number Digest, Disorderly House ~~2~~2, 3

A disorderly place or house is one which is used habitually for any illegal¹ or immoral² purpose. In the broad sense, this includes houses of prostitution or lewdness, bawdy houses, common gambling houses, and places of like character.³ Statutes may also include as disorderly houses residences at which liquor is sold illegally,⁴ or where drug trafficking activity transpires.⁵

Observation:

Illegal drug activity at a premise is also directly regulated by other federal and state laws.⁶

Places where activity occurs that creates a public disturbance,⁷ such as where drunkenness or boisterous conduct are encouraged or permitted to the annoyance of the neighborhood,⁸ are "disorderly houses" because of the manner in which they are conducted. However, the conduct of the establishment need not disrupt peace and quiet or be open to public observation in order to be a disorderly house, so long as it would be offensive to public sensibilities if its presence in the community were generally known.⁹ Thus, for example, a bawdy house or a common gambling house is a disorderly house in a broad sense regardless of the fact that the only annoyance to the public is its existence,¹⁰ as, although concealed from the public, such an establishment is a nuisance per se.¹¹

Footnotes

1 State v. Massey, 539 So. 2d 1211 (La. 1989).

2 Harrison v. City of Norfolk, 16 Va. App. 572, 431 S.E.2d 658 (1993).

3 Com. v. Mahramus, 211 Pa. Super. 376, 236 A.2d 572 (1967).

As to the definition of a bawdy house, see § 3.

As to the definition of a common gaming or gambling house, see § 4.

4 State v. Hinkel, 365 N.W.2d 774 (Minn. 1985).

5 U.S. v. Wade, 992 F. Supp. 6 (D.D.C. 1997) (applying District of Columbia law); State v. Hinkel, 365 N.W.2d 774 (Minn. 1985).

6 § 5.

7 Harris v. U. S., 315 A.2d 569 (D.C. 1974).

§ 1. Disorderly house, 24 Am. Jur. 2d Disorderly Houses § 1

- 8 Com. v. Hartung, 156 Pa. Super. 176, 39 A.2d 734 (1944).
9 Payne v. U.S., 171 A.2d 509 (Mun. Ct. App. D.C. 1961).
10 Com. v. Hartung, 156 Pa. Super. 176, 39 A.2d 734 (1944).
11 § 8.

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27 C.J.S. Disorderly Houses § 12

Corpus Juris Secundum
Database updated March 2015
Disorderly Houses

by John J. Dvorske, J.D., M.A.

II. Elements of Offense and Defenses
A. Elements

Topic Summary References Correlation Table

§ 12. House or other building or place—Particular kinds of disorderly houses

West's Key Number Digest

West's Key Number Digest, Disorderly House 4

Either because it is within the definition of a disorderly house or because it of itself is a prohibited class of house, a house of prostitution, bawdyhouse, or the like is often the basis of an offense at common law or under statute.

Either because it is within the definition of a disorderly house or because it of itself is a prohibited class of house, a bawdyhouse, house of ill fame, house of prostitution, house of assignation, brothel, or lewd house is often the basis of an offense at common law¹ or under statute.² These terms are generally synonymous,³ denoting a resort of prostitutes⁴ for the commerce of lewd people of both sexes.⁵ A house may be a lewd house even though it is chiefly devoted to the carrying on of a legitimate trade or business.⁶ If there is no statute defining such a place, the common law must be resorted to for determination of the elements which are necessary to make it such a house.⁷ Where, however, the offense is defined in the statute, its terms are controlling.⁸

It is essential that the place or house in question be resorted to, or used for, purposes of prostitution and lewdness⁹ and be a public house where many people may frequent for immoral purposes without invitation,¹⁰ whether such acts are practiced openly or privately.¹¹ In some cases, it is not necessary for conviction that intercourse actually occur,¹² while in other cases fornication or adultery must actually be committed in the house.¹³

As nuisances per se.

Houses kept for the purposes of public prostitution¹⁴ or lewd practices¹⁵ are nuisances per se.¹⁶ Such a house may properly be called a disorderly house per se.¹⁷

Number of persons or acts.

While there are authorities holding that a bawdyhouse or the like must be a place of resort for or a habitation of more than one woman,¹⁸ the more general rule is that it is not necessary that more than one woman inhabit or resort to the place for the purpose of prostitution.¹⁹ Ordinarily a single act of illicit intercourse will not make a house disorderly,²⁰ although a single act in connection with other circumstances may fix the character of the place.²¹

Reputation of the house.

Ordinarily and apart from a statute so providing, it is not necessary that a house or place have the reputation of being a bawdyhouse or house of ill fame to make it such a house.²² However, some statutes have been construed as requiring the house to have such a reputation,²³ and in some jurisdictions a conviction may be had for operating a house known or notoriously reputed to be a resort of prostitutes or lewd persons.²⁴

Gaming or gambling house.

A "gaming house" or "gambling house" is a house kept for the purpose of permitting persons to resort to it and gamble for money or other valuable things.²⁵ It is a disorderly house²⁶ if gambling is carried on in the manner described in the statute.²⁷

The keeping of a gaming house is indictable at common law as a common or public nuisance²⁸ because it offers great temptation to idleness and tends to draw together disorderly persons to the encouragement of immorality and breaches of the peace.²⁹ If the house is used as a gaming house, it is not material that it is also used for other purposes³⁰ or its use is limited to a particular class of the public.³¹

Pool room.

A pool room, in its common or popular meaning, is a place where people resort to wager on horse racing which is run away from the room or out of the state.³² Such a place may be indictable as a common or public nuisance at common law.³³

Footnotes

- 1 Md.—Lutz v. State, 167 Md. 12, 172 A. 354 (1934).
N.J.—State v. Baldino, 11 N.J. Super. 158, 78 A.2d 95 (App. Div. 1951).
Or.—State ex rel. Ricco v. Biggs, 198 Or. 413, 255 P.2d 1055, 38 A.L.R.2d 720 (1953) (overruled in part on other grounds by, State ex rel. Maizels v. Juba, 254 Or. 323, 460 P.2d 850 (1969)).
- 2 N.J.—State v. Baldino, 11 N.J. Super. 158, 78 A.2d 95 (App. Div. 1951).
Or.—State ex rel. Ricco v. Biggs, 198 Or. 413, 255 P.2d 1055, 38 A.L.R.2d 720 (1953) (overruled in part on other grounds by, State ex rel. Maizels v. Juba, 254 Or. 323, 460 P.2d 850 (1969)).
- 3 Utah—State v. Tacconi, 110 Utah 212, 171 P.2d 388 (1946).
Wash.—Ikeda v. Curtis, 43 Wash. 2d 449, 261 P.2d 684 (1953).
- 4 Cal.—People v. Schultz, 238 Cal. App. 2d 804, 48 Cal. Rptr. 328 (1st Dist. 1965).
Conn.—State v. Malena, 4 Conn. Cir. Ct. 594, 237 A.2d 572 (App. Div. 1967).
Mo.—City of St. Louis v. Cook, 405 S.W.2d 545 (Mo. Ct. App. 1966).
- 5 D.C.—Harris v. U. S., 293 A.2d 851 (D.C. 1972), on reh'g, 315 A.2d 569 (D.C. 1974).
Ill.—People v. Lackaye, 1 Ill. 2d 618, 116 N.E.2d 359 (1953).
Mo.—City of St. Louis v. Cook, 405 S.W.2d 545 (Mo. Ct. App. 1966).
Wash.—Ikeda v. Curtis, 43 Wash. 2d 449, 261 P.2d 684 (1953).
- 6 Ga.—Frazier v. State, 93 Ga. App. 204, 91 S.E.2d 85 (1956).
- 7 Ark.—Gamewell v. State, 137 Ark. 74, 207 S.W. 211 (1918).
Md.—Lutz v. State, 167 Md. 12, 172 A. 354 (1934).
W.Va.—State v. Badda, 97 W. Va. 417, 125 S.E. 159 (1924).
- 8 D.C.—Harris v. U. S., 315 A.2d 569 (D.C. 1974).
N.J.—State v. Baldino, 11 N.J. Super. 158, 78 A.2d 95 (App. Div. 1951).
- 9 Fla.—Campbell v. State, 149 Fla. 701, 6 So. 2d 828 (1942).

- Mich.—People v. Lee, 307 Mich. 743, 12 N.W.2d 418 (1943).
 Mo.—State v. Kayser, 552 S.W.2d 27 (Mo. Ct. App. 1977).
 10 Ala.—Wilson v. State, 17 Ala. App. 307, 84 So. 783 (1920).
 Va.—Trent v. Com., 181 Va. 338, 25 S.E.2d 350 (1943).
 11 Ga.—Cason v. State, 60 Ga. App. 626, 4 S.E.2d 713 (1939).
 12 Pa.—Commonwealth v. Levandowski, 90 Pa. Super. 403, 1927 WL 4600 (1927).
 Wis.—State v. Damorjian, 187 Wis. 445, 204 N.W. 498 (1925).
 13 Ga.—Linebarker v. State, 74 Ga. App. 262, 39 S.E.2d 730 (1936).

Manner of violation

Where statute specifies several ways by which it may be violated, violation by any one means set forth authorizes conviction.

- Tex.—Booker v. State, 130 Tex. Crim. 460, 94 S.W.2d 755 (1936).
 14 Ill.—People ex rel. Thrasher v. Smith, 275 Ill. 256, 114 N.E. 31 (1916).

Only annoyance is existence

Bawdyhouses are "disorderly houses" in broad sense regardless of fact that only annoyance to public is their existence.

- Pa.—Com. v. Hartung, 156 Pa. Super. 176, 39 A.2d 734 (1944).
 15 Ga.—Fitzgerald v. State, 10 Ga. App. 70, 72 S.E. 541 (1911).
 Iowa—State v. Gardner, 174 Iowa 748, 156 N.W. 747 (1916) (overruled in part on other grounds by, State v. Frey, 206 Iowa 981, 221 N.W. 445 (1928)).
 16 Ala.—Barnett v. Tedeschi, 154 Ala. 474, 45 So. 904 (1908).
 D.C.—Harris v. U. S., 315 A.2d 569 (D.C. 1974).
 17 Mo.—State ex rel. Smith v. Dykeman, 153 Mo. App. 416, 134 S.W. 120 (1911).
 18 W.Va.—State v. Pyles, 86 W. Va. 636, 104 S.E. 100, 12 A.L.R. 527 (1920).
 19 Ark.—Gamewell v. State, 137 Ark. 74, 207 S.W. 211 (1918).
 Mo.—State v. Hesselmeyer, 343 Mo. 797, 123 S.W.2d 90 (1938).
 Va.—Trent v. Com., 181 Va. 338, 25 S.E.2d 350 (1943).
 20 Ill.—People v. True, 235 Ill. App. 349, 1925 WL 4334 (4th Dist. 1925).
 Mo.—State v. Powers, 176 S.W.2d 293 (Mo. Ct. App. 1943).
 W.Va.—State v. Crummitt, 129 W. Va. 366, 40 S.E.2d 852 (1946).
 21 Mo.—State v. Hesselmeyer, 343 Mo. 797, 123 S.W.2d 90 (1938).
 22 Ill.—People v. Flagg, 18 Ill. App. 2d 548, 153 N.E.2d 116 (1st Dist. 1958).
 Va.—Wilson v. Com., 132 Va. 824, 111 S.E. 96 (1922).
 Utah—State v. Tacconi, 110 Utah 212, 171 P.2d 388 (1946).
 23 Ga.—Linebarker v. State, 74 Ga. App. 262, 39 S.E.2d 730 (1936).
 Wyo.—Konopisos v. State, 26 Wyo. 350, 185 P. 355 (1919).
 24 Fla.—Atkinson v. State, 156 Fla. 449, 23 So. 2d 524 (1945).
 25 Ill.—City of Sterling v. Speroni, 336 Ill. App. 590, 84 N.E.2d 667 (2d Dist. 1949).
 26

Only annoyance is existence

Common gambling houses are disorderly houses in a broad sense even though only annoyance to public is their existence.

- Tex.—Com. v. Hartung, 156 Pa. Super. 176, 39 A.2d 734 (1944).
 27 Ga.—Martin v. State, 62 Ga. App. 902, 10 S.E.2d 254 (1940).
 28 Ill.—City of Sterling v. Speroni, 336 Ill. App. 590, 84 N.E.2d 667 (2d Dist. 1949).
 Pa.—Com. v. Visotsky, 129 Pa. Super. 86, 195 A. 148 (1937).
 29 Ill.—City of Sterling v. Speroni, 336 Ill. App. 590, 84 N.E.2d 667 (2d Dist. 1949).
 Or.—State v. Nease, 46 Or. 433, 80 P. 897 (1905).
 30 Fla.—Toll v. State, 40 Fla. 169, 23 So. 942 (1898).
 31 Mass.—Commonwealth v. Blankinship, 165 Mass. 40, 42 N.E. 115 (1895).
 32 Ill.—City of Sterling v. Speroni, 336 Ill. App. 590, 84 N.E.2d 667 (2d Dist. 1949).
 La.—State v. Maloney, 115 La. 498, 39 So. 539 (1905).
 33 Ill.—City of Sterling v. Speroni, 336 Ill. App. 590, 84 N.E.2d 667 (2d Dist. 1949).
 Or.—State v. Nease, 46 Or. 433, 80 P. 897 (1905).

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

STATE of South Carolina on the relation
of J. Gregory HEMBREE, Solicitor of the
Fifteenth Judicial Circuit, Respondent,
v.

Pearlie Mae SHERALD, Henry D. Sherald,
Seneca T. Sherald d/b/a Club Rainbow, Pearl's
Place, and John Doe, representing unidentified
employees, affiliates, lessors, and sublessors of
Club Rainbow, and Pearl's Place, Appellants.

No. 2010-UP-448. | Heard Oct.
6, 2010. | Decided Oct. 19, 2010.

Appeal from Horry County; J. Stanton Cross, Jr., Master-in-Equity.

Attorneys and Law Firms

Howard S. Sheftman and William R. Padget, of Columbia,
for Appellants.

Michael W. Battle, of Conway, for Respondent.

Opinion

PER CURIAM.

*1 This appeal arises from an order of the master-in-equity permanently enjoining Appellants Pearl Mae Sherald, Henry D. Sherald, Seneca T. Sherald, and their employees, affiliates, lessors, and sublessors (Appellants) from keeping or maintaining a public nuisance on their property. On appeal, Appellants argue the master erred in: (1) refusing to dismiss the action as moot where the property had been closed by court order for the maximum time prescribed by law for closure under section 15-43-10 of the South Carolina Code (2005); (2) refusing to dismiss the action where the State failed to have the matter heard on the merits after the first term of court as required by section 15-43-40 of the South Carolina Code (2005); (3) concluding the property constituted a nuisance where there was no evidence that the Appellants had knowledge of, or participated in, the alleged nuisance;

(4) issuing a permanent injunction against Appellants based on the criminal acts of third parties; and (5) considering evidence of alleged nuisance activities occurring more than two years prior to the initiation of the instant action where such evidence is barred from consideration by the applicable statute of limitations set forth in section 15-3-550 of the South Carolina Code (2005). Appellants further maintain the issuance of the permanent injunction served to deprive Appellants of their right to a jury trial and their fundamental right to due process. After a thorough review of the record, we find the evidence supports the master's decision to issue the permanent injunction. Specifically, the evidence in the record demonstrates that the manner in which the property was used falls within the ambit of section 15-43-10(A). Accordingly, we affirm the order of the master-in-equity pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to mootness, the relief sought by the State was a permanent injunction under section 15-43-20 of the South Carolina Code (2005), and although the closure was ordered by a temporary injunction, the nuisance issue was still pending a final hearing on the merits; thus, the matter was not moot. *See* S.C.Code Ann. § 15-43-20 (2005) (providing the State may maintain an action to "enjoin perpetually such nuisance"); *Seabrook v. City of Folly Beach*, 337 S.C. 304, 306, 523 S.E.2d 462, 463 (1999) ("A case becomes moot when judgment, if rendered, will have no practical effect upon [an] existing controversy.").

2. As to dismissal for failure to have the matter heard on the merits after the first term of court as required by section 15-43-40, we find appellants construction of 15-43-40 too strict. Section 15-43-40 merely states "[t]he action, when brought, shall be *triable* at the first term of court after due and timely service of the notice has been given." S.C.Code Ann. § 15-43-40 (2005) (emphasis added); *see* Black's Law Dictionary (8th ed.2004) (defining triable as subject or liable to judicial examination and trial).

*2 3. As to whether the property constituted a nuisance: S.C.Code Ann. § 15-43-10(A) (2005) ("A person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases any building or other place used for the purposes of ... prostitution, repeated acts of unlawful possession or sale of controlled substances ... in this State is guilty of a nuisance."); *Shaw v. Coleman*, 373 S.C. 485, 493, 645 S.E.2d 252, 256 (Ct.App.2007) ("Where the terms of the statute are clear, the court must apply those terms according to their literal meaning, without resort to subtle or forced construction to limit or expand

the statute's operation."); *State v. Turner*, 198 S.C. 499, 505, 18 S.E.2d 376, 378 (1942) (recognizing as a sound principle the court's charge that "if one maintains a place where the laws are publicly, repeatedly, persistently, and intentionally violated, then such place would become a common or public nuisance.").

4. As to the issuance of the permanent injunction: S.C.Code Ann. § 15-43-20 (2005) ("Whenever a nuisance is kept, maintained or exists, as defined in this chapter, the Attorney General, the solicitor of the judicial district in which such nuisance is kept or any citizen of the State may maintain an action in equity in the name of the State ...

to enjoin perpetually such nuisance, the person conducting or maintaining the nuisance and the owner or agent of the building or ground upon which the nuisance exists."); *State v. Turner*, 198 S.C. 487, 497, 18 S.E.2d 372, 375 (1942) (noting a business "may become a nuisance by the manner in which it is conducted, and by the conduct of the persons assembling in and around it").¹

AFFIRMED.

WILLIAMS and PIEPER, JJ., and GOOLSBY, A.J., concur.

Footnotes

- ¹ Because the master's order failed to address the remaining issues on appeal and Appellants did not move pursuant to Rule 59(e), SCRCP, to alter or amend the master's order, we need not reach these issues. See *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 698 S.E. 2d 244, 247 n. 1 (Ct.App.2010) (holding issue not preserved where master-in-equity did not address the issue and appellant failed to file a motion to alter or amend pursuant to Rule 59(e), SCRCP).

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[Cite as *State ex rel. Nasal v. BJS No. 2, Inc.*, 127 Ohio Misc.2d 101, 2003-Ohio-7323.]

IN THE COMMON PLEAS COURT OF MIAMI COUNTY, OHIO
GENERAL DIVISION

THE STATE EX REL. NASAL ET AL., : CASE NO. 03-CV-287

PLAINTIFFS/RELATORS, : Judge Welbaum

v. :

BJS NO. 2, INC. ET AL., :

DEFENDANTS/RESPONDENTS.*

Decided Oct. 16, 2003

ORDER DECLARING THE CABARET PORTION OF TOTAL XPOSURE A NUISANCE,
GRANTING A PERMANENT INJUNCTION, ABATEMENT,
CLOSURE FOR ONE YEAR, FORFEITURE AND SALE OF
CONTENTS AND PERSONAL PROPERTY, IN PART
R.C. 3767.01(C)(2) and (3), 3767.05, and 3767.06

Syllabus by the Court

1. Where all patrons who pay a cover charge, show identification, and sign an agreement that includes a provision to allow their images to be broadcast over the World Wide Web, are thereby admitted as members, there is no genuine selectivity of the group. Where such "members" have no control in the operation of a for-profit nude-dancing business, and the announcers inform the patrons that their images and the dancing are being broadcast over the World Wide Web, such business is a public place for the purpose of ascertaining whether lewd activity takes place under

* Reporter's Note: An appeal to the Miami County Court of Appeals in case No. 03-CA-42 was voluntarily dismissed by defendants/respondents on January 8, 2004.

R.C. 3767.01(C)(2).

2. Where a partially partitioned nude couch-dancing area is open to view at different angles from inside a public cabaret, there is no legitimate expectation of privacy within the partition. Therefore, such couch-dance area is also a public place for the purpose of ascertaining whether lewd activity takes place under R.C. 3767.01(C)(2).

3. Where lewd behavior including illegal sexual activity is methodical, constant, and rampant, and the two owners are at the nude-dancing premises multiple times each week, there is sufficient proof by clear-and-convincing evidence that the owners knowingly permitted, encouraged, and facilitated such behavior.

4. Nondance-related sexual contact by a dancer with another person in exchange for money constitutes illegal sexual activity.

5. Resolution of an issue from a preliminary-injunction hearing does not bar consideration of the issue at the permanent-injunction hearing because the burden of proof is lower at the former proceeding.

6. A liquor license is required where patrons are permitted to bring alcoholic beverages into a public nude-dancing establishment, and the business refrigerates the beverages and charges the patrons to receive them for consumption on the premises. Each such act of delivery to the patron for consumption on the premises constitutes "an exchange" and "distribution and delivery of any kind" as stated in R.C. 4301.01 and is therefore a "sale" as defined by the statute.

JEFFREY M. WELBAUM, Judge.

{¶ 1} On August 12, 2003, a trial to the court was heard on plaintiffs' complaint for a permanent injunction, seeking a declaration and abatement of a nuisance, an order closing the business for one year, and forfeiture and sale of the personal property used to conduct the nuisance.

{¶ 2} The defendants/respondents and their counsel, H. Louis Sirkin, Robert J. Huffman Jr., Jennifer M. Kinsley, and Michael R. Botros, attorneys at law, were present. The plaintiffs/relators were represented by Gary A. Nasal, Miami County Prosecuting Attorney, Mark W. Altier, Chief Civil Assistant Prosecuting Attorney, and W. McGregor Dixon Jr., Law Director of the city of Troy. Due to the lack of time prior to trial to allow a response to the plaintiffs' motions to dismiss the defendants' counterclaim, disposition of the motion to dismiss the counterclaim was postponed. The parties proceeded to litigate the plaintiffs' complaint for a permanent injunction. The motions to dismiss were subsequently granted by separate orders.

{¶ 3} On September 11, the court admitted STATE'S EXHIBITS 1 through 8. On September 22, defendants Scott Conrad and Luke Liakos, and BJS No. 2, Inc. and Haworth, Inc. filed their post-hearing briefs. On that date, the plaintiff filed its post-hearing merit memorandum. On September 29, the parties filed their reply memoranda and briefs.

{¶ 4} There is nude dancing performed at the cabaret portion of Total Xposure. First, it must be said that some people find nude dancing objectionable under any circumstances. Others not only approve of nude dancing, they obviously pay to watch. It is not the court's function to decide whether the dancing at Total Xposure is morally acceptable or whether it is equivalent to a visit to the ballet or the human hog trough.

{¶ 5} It has been held by the United States Supreme Court that entertainment programs may not be prohibited solely because they display a nude human figure, and nude dancing is not without its First Amendment protection from official regulation. *Schad v. Borough of Mt. Ephraim* (1981), 452 U.S. 61. The court is confined to determinations based solely on the law and the facts proved at trial.

{¶ 6} Plaintiffs claim that Total Xposure is a nuisance for two reasons. First, the plaintiffs say that Total Xposure is a public nuisance under R.C. 3767.01(C)(2) due to the sexual activity that takes place on the premises. Second, the plaintiffs allege that it is a nuisance under R.C. 3767.01(C)(3) because the defendants permit, encourage, and promote the distribution of alcoholic beverages on its premises in violation of law.

{¶ 7} R.C. 3767.01(C) defines "nuisance" as:

- "(1) That which is defined and declared by statute to be a nuisance;
- "(2) Any place in or upon which lewdness, assignation, or prostitution is conducted, permitted, continued or exists. * * *
- "(3) Any room, house, building, boat, vehicle, structure, or place where beer or intoxicating liquor is manufactured, sold, bartered, possessed, or kept in violation of law * * * or the operation of such a room, house, building, boat, structure, or place as described in division (C)(3) of this section where the operation of that place substantially interferes with public decency, sobriety, peace, and good order. * * *"

{¶ 8} The Total Xposure defendants contend that any sexual contact with the patrons was incidental to the expressions exhibited by the performers during their dancing. They say that it is therefore protected under the First Amendment. As to the second claim, the defendants say that Total Xposure is a private club and the liquor laws do not apply. Finally, the Total Xposure defendants say that they were not aware of any nuisance at the business. It is easy to envision cases with facts where these defenses will ring true. However, the defenses proposed are clearly

inapplicable to the facts of this case.

{¶ 9} As a preliminary finding, the court must first determine whether Total Xposure is a private club. Lewd behavior does not constitute a nuisance unless Total Xposure is a public place. Also, the liquor laws were not violated if Total Xposure is a private club. In resolving this issue, the seven-factor test set forth in *Tippecanoe Country Club, Inc. v. Ohio Civ. Rights Comm.* (Mar. 30, 2000, Mahoning App. No 99 CA 330, requires the court to consider:

- (1) the genuine selectivity of the group;
- (2) the membership's control over the operation of the establishment;
- (3) the history of the organization;
- (4) the use of the facilities by nonmembers;
- (5) the club's purpose;
- (6) whether the club advertises for members; and
- (7) whether the club is nonprofit or for profit.

{¶ 10} From the foregoing factors, the court finds that Total Xposure is a public place and not a private club. The evidence shows that there is no genuine selectivity in admission to Total Xposure. People become "members" upon signing the agreement, giving identification, and paying a cover charge. The membership has no control over the operation of the establishment. Total Xposure is for profit. There is no history or purpose of the organization that would support a conclusion that it is legitimately a private club.

{¶ 11} The partitioned couch-dance area is also public. It is open to view at different angles from the main cabaret area. All persons paying for a couch dance have access to this area

upon paying for a couch dance. For example, it has been held that an enclosed video booth of an adult bookstore is a public area. *State ex rel. Bowers v. Elida Rd. Video* (1997), 120 Ohio App. 3d 78, 84.

{¶ 12} “For the purposes of defining lewdness under R.C. Chapter 3767, sexual activity that occurs in areas where there is no legitimate expectation of privacy is public sexual activity.” *State ex rel. Roszmann v. Lions Den* (1993), 89 Ohio App. 3d 775; *State ex rel. Montgomery v. Pakrats Motorcycle Club, Inc.* (1997), 118 Ohio App. 3d 458. The announcers during EXHIBITS 1 through 8 informed the dancers and audience that the shows were being broadcasted live to thousands over the World Wide Web. The membership agreements that the customers signed included a consent that gave Total Xposure permission to record and broadcast the patrons’ images for commercial purposes. From the foregoing and the evidence described below, the court finds that the lewd behavior and unlawful sexual activity at Total Xposure are public activities.

{¶ 13} The evidence shows that the “membership” is a scheme concocted by the Total Xposure defendants in an attempt to avoid the liquor and nuisance laws. In one of the state’s videotape exhibits, the announcer stated over the public-address system that Total Xposure is not governed by any local liquor laws and that alcohol will be served until closing at 4:00 a.m. EXHIBIT 3, Show 4.

{¶ 14} The next issue is whether Total Xposure is a nuisance due to lewd behavior or other unlawful sexual activity. The criminal statutes prohibit sexual activity for hire. “Sexual activity” is defined as sexual conduct or sexual contact, or both. R.C. 2907.01(C). Sexual conduct is vaginal or anal intercourse, cunnilingus, fellatio, or the insertion of anything into the

vaginal or anal cavity of another. R.C. 2907.01(A). Sexual contact is touching of certain parts of the body with the intent to cause sexual arousal or gratification. R.C. 2907.01(B). A prostitute is a person who promiscuously engages in sexual activity for hire. R.C. 2907.01(D). Prostitution is engaging in sexual activity for hire. R.C. 2907.25(A). Procuring is knowingly permitting a premises under one's authority or responsibility to be used for the purpose of engaging in sexual activity for hire.

{¶ 15} "Lewd" is not defined by statute. It has been held that "lewdness" is not a legal term of art. Rather, it is a word of common usage, meaning "sexually unchaste or licentious, lascivious, inciting to sensual desire or imagination." The Ohio Supreme Court took this definition and concluded, "In summary, we conclude that the term 'lewdness' is not void for vagueness. The word describes a public sexual activity that is reprehensible or disgusting in nature." *State ex rel. Rear Door Book Store v. Tenth Dist. Court of Appeals* (1992), 63 Ohio St. 3d 354, 360.

{¶ 16} The written rules of Total Xposure that were signed by the patrons and dancers in the defense exhibits prohibit sexual contact between them. However, these rules are ruses. The actual rules are unwritten. The unwritten rules are that dancers at Total Xposure are encouraged to engage in lewd behavior and illegal sexual activity with the customers and that the customers will receive lewd behavior or illegal sexual contact with the dancers for money.

{¶ 17} April Brewer was called to testify by the plaintiffs. In exchange for her testimony, she expected some consideration concerning her four pending felony trafficking charges. Brewer was employed at Total Xposure from August 2001 until May 3, 2003. She described the overall

operation of the business.

{¶ 18} Brewer described couch dancing and friction dancing at Total Xposure in exchange for money, which were ongoing until she was suspended. Couch dances are done in the partitioned area. Couch dances are where a nude or semi-nude dancer makes sexual contact with patrons for money. The dancers' breasts and vaginas make contact with the seated patrons' faces. The dancers grind or hump their vaginas on the genital areas of the patrons. Friction dances are couch dances with a specific objective. They involve the dancers' humping their vaginal areas on the seated patrons' clothed genitals with the purpose to ejaculate the patrons in exchange for money.

{¶ 19} The court watched the videotapes, EXHIBITS 1 through 8, depicting about 30 hours of feature dancers performing in the fall of 2002. Some, if not all, of the dancers are introduced as nationally known porn stars. During the performances, they would often give or sell their posters and videotapes to patrons.

{¶ 20} EXHIBITS 1 through 8 demonstrate that, overall, lewd behavior and illegal sexual activity are more prevalent than dancing at Total Xposure. The dancers routinely made sexual contacts with the customers and house dancers for money. No dancer or customer was ever reprimanded during approximately 30 hours of videotape of performances for a violation of the anti-touching rules, with one exception. On one occasion, a patron was warned by the announcer and the dancer for slapping a dollar bill onto the body of a greased dancer too hard, while patrons were being encouraged by the announcer to try to make dollar bills stick to her breasts, buttocks, torso, and groin.

{¶ 21} During most shows, it was announced what the price would be for a private dance or couch dance with that performer after the show. The announced price ranged from a set price of \$30 to a price to be determined by a silent auction or to the highest bidders with bids starting at \$50. (EXHIBIT 7, Shows 4 and 11, and EXHIBIT 8, Shows 6, 7, 8, and 9 as to bids and auctions.)

{¶ 22} All but one of the dancers performed "rides for five." These were announced in advance by the master of ceremonies at different times on EXHIBITS 1 through 8 as "interactive adult entertainment," "now for the interactive part of the show," "now for the interactive part of the show featuring full contact entertainment," "where else can you get molested on stage by a porn star?", "now is the time for some public humiliation and molestation," "nude interactive adult entertainment," "get crawled all over and molested," "get publicly molested," "let her do a little crawling on you," "get mildly molested," "get mildly molested by a porn star," "for \$5.00 we'll put her right on top of you," "it's public molestation," and "a ride for five gets you a smile and a hard-on." It is evident that sexual contact was encouraged by the management.

{¶ 23} The defendants claim that any sexual contact with the patrons was incidental to the expressions of dancing. Nothing could be further from the truth. When the sexual contacts between the dancers and the patrons described in this decision took place, there was never any movement of the dancer to the beat of the music. All sexual contacts were during time outs from the dancing, if there was dancing near the time of the sexual activity. Most of the time, there was no dancing at all near the time of the sexual activity. Most of the time, the dancers would move down the line or around the stage performing repeated acts of sexual activity for money paid on

the spot without any dancing in between.

{¶ 24} During all of the shows, the patrons were encouraged to give money to the dancers. There was always an exchange of money either immediately prior to or after a sexual contact between a performer and patron. It was announced many times that "gratuities are not only appreciated, they are expected." Regarding "rides for five," the money was paid in advance, usually to a security guard but sometimes to the performer. The announcer told the patrons to "give the money to the security guard, who will put you up there." Even the female house dancers referred to herein paid for sexual activity with the performers described herein.

{¶ 25} Defendants Scott Conrad and Luke Liakos are the owners of Total Xposure. Total Xposure is owned by BJS No.2, Inc., which is wholly owned by Hayworth, Inc. Defendants Scott Conrad and Luke Liakos are equal shareholders in defendant BJS No. 2 Inc.

{¶ 26} Defendant Scott Conrad was at the dance area of Total Xposure during business hours between three to five times a week while dancers were present. Defendant Luke Liakos was there at such times between one and three times a week while dancers were present. The lewd behavior and illegal sexual activity at Total Xposure were methodical, constant, and rampant to the point that they were clearly known, condoned, acquiesced in, and institutionalized by the owners. The evidence shows by clear-and-convincing evidence that the owners and managers under the owners' control knowingly permitted, encouraged, and facilitated illegal sexual activity, including lewd behavior in the ordinary course of business at the premises in violation of law.

{¶ 27} STATE'S EXHIBITS 1 through 8 depict a myriad of lewd behavior and illegal sexual activity, including sexual contact between dancers and patrons in exchange for money.

They are telling.

{¶ 28} These videotapes reveal that the testimony of April Brewer drastically understates the nature and frequency of the sexual contacts and lewd behavior between the performers and the customers. She was the disc jockey and announcer during approximately half of the shows depicted on the videotapes. In most respects, EXHIBITS 1 through 8 undermine her credibility as a witness. The exhibits and her overall testimony cause the court to conclude that she is biased in favor of the Total Xposure defendants.

{¶ 29} The court does not accept her exculpatory testimony in favor of the defense, as it is clearly contradicted by the videotapes. For example, when asked how frequently she saw the no-contact or no-sexual-touching rules broken, she testified, "I would say at least once every time I worked." A comparison of the exhibits' contents with her testimony illustrates the breadth of her understatement and bias.

{¶ 30} EXHIBIT 1 depicts a dancer who was nude most of the time. She did 12 shows mostly consisting of four or five songs per show. During these performances, she pulled the heads of patrons into her bare breasts about 106 separate occasions, usually rubbing and bouncing their faces between her breasts for a while. On most of these occasions, the patrons had paper currency in their mouths, which she removed by squeezing her breasts on the patron's face and the money.

{¶ 31} She humped her vaginal area on the groins of sitting patrons with her legs over their shoulders, usually while placing her breasts in their faces about six times. She left the stage to place her face in the genital areas of sitting patrons two times.

{¶ 32} This dancer performed a "ride for five" on a combination of male and female

patrons approximately 48 times. In exchange for \$5 paid in advance to a bouncer, she lay nude upon patrons on the stage. In the process, she performed various acts of sexual activity and contacts upon patrons. Her usual routine was to rub her breasts on the patrons' faces, then crawl into an inverted position with her vagina on the patrons' faces and her head on the patrons' genital areas.

{¶ 33} About half the time, she put folded currency on the patrons' faces, squatted on their faces, and somehow picked up the money with the underside of her crotch. During this process, her vagina and lower buttocks made contact with the patrons' faces.

{¶ 34} There were other miscellaneous sexual contacts between patrons and this nude dancer. One patron sponged her breasts and other parts in a kiddie bath for \$5. Another female house dancer patron paid \$5 to this performing dancer to have the performing dancer lick whipped cream and cherries off her breasts about five times. There were other sexual contacts that do not fit into any easily defined categories.

{¶ 35} EXHIBIT 2 depicted a second dancer's performances of 12 shows consisting of between five and nine songs each. During these shows, she pulled the heads of patrons into her bare breasts about 70 separate occasions, usually rubbing and holding their faces between the bare skin of her breasts for a while. On many of these occasions, the patrons held paper currency in their mouths, which she removed by squeezing the patron's face and the money with her breasts.

{¶ 36} She placed her legs over their shoulders of sitting patrons, and pulled their faces into her vaginal area about four times. She partially left the stage to place her face in the genital areas of sitting patrons about 22 times. This dancer left the stage to place the genital area of a

sitting patron between her legs and hump it or pull his or her face into her buttocks with her arms or legs about six times. She placed her face in the breasts of a female patron. The performer lifted the dress of a scantily dressed house dancer standing next to the stage and simulated performing oral sex on her under a skirt. She fondled the breasts of a standing female house dancer. On another occasion, the performer placed her face on the bare breasts of female house dancers.

{¶ 37} This dancer performed a "ride for five" on a combination of male and female patrons approximately 67 times. In exchange for \$5, this nude dancer lay on top of patrons on the stage and engaged in various sexual contacts. Her usual routine was to rub her breasts on the patrons' faces, then crawl into an inverted position while rubbing her breasts on the torsos of the patrons' bodies. Often she would pull the shirt of the patrons up to make contact between her breasts and the patrons' skin. She always placed her vagina on the patrons' faces and her head on his or her genital areas. Many times while in this position, she would simulate giving the patrons oral sex. She usually placed her hands on the patrons' groins and often placed her hand inside the pants of the patrons in the genital areas by unzipping their pants and reaching into the top of the patrons' underwear. Sometimes she put folded currency on the patrons' faces, squatted on their faces, and somehow picked up the currency with the underside of her crotch. In the process, contact was made with the patrons' faces. In all rides for five, the dancer made contact with her genitals or the upper interior of her vaginal area with the patrons' faces.

{¶ 38} Several female house dancers and civilian females paid \$5 to this performing dancer for a "ride for five" about 17 times. The performing dancer performed various sexual acts on the other females that included fondling of the other females' naked genitals and breasts,

humping her vagina against their genitals, and simulated oral sex upon them. On some occasions, the performer kissed or sucked the bare breasts and nipples of the paying females.

{¶ 39} There were other miscellaneous sexual contacts between patrons and this nude dancer. For \$5 one patron sponged what was represented to be motor oil off her breasts and other parts of the dancer's body in a kiddie pool. Another patron paid \$5 to sponge-bath the nude dancer's breasts and buttocks. Another patron paid the set price of \$20 to paint her breasts and body. Then the dancer lay on him with her vagina near his face, to transfer the paint to a T-shirt that he wore.

{¶ 40} Other patrons were humped "doggie style" on the patrons' bare buttocks. Several patrons' bottoms were repeatedly, nonviolently, struck by the performer with a whip.

{¶ 41} EXHIBIT 3 depicts a third dancer's performances of 12 shows consisting of between four and six songs each. She was nude almost all of the time. During these shows, the performer pulled the heads of patrons into her bare breasts or rubbed her nipples across their faces on about 171 separate occasions. During many of these, the patrons held paper currency in their mouths, which she removed by squeezing the patron's face and the money with her breasts.

{¶ 42} She left the stage and humped her vaginal area on the groins of sitting patrons with her legs over their shoulders, while sometimes placing her breasts in their faces, about 16 times. She left the stage to place her face in the genital areas of two sitting patrons.

{¶ 43} This dancer performed a "ride for five" on a combination of male and female patrons approximately 66 times. Her usual routine was to rub her breasts on the patrons' faces, then crawl into an inverted position with her vagina on the patrons' faces and her head on his or

her genital areas. She often pulled up the patrons' shirts or blouses and rubbed her breasts on the stomachs or chests of the patrons, making skin-to-skin contact. Often during these times, she would either kiss, suck, or blow on the stomach skin of the patrons. On one occasion, the patron was a house dancer who paid \$5 and was also nude. The dancer's vagina was on or near the patron's face and vice versa.

{¶ 44} There were other miscellaneous sexual contacts between patrons and this nude dancer. One patron sponged her breasts and other parts in a kiddie bath for \$5. A female house dancer paid \$5 to this performing dancer to have the performing dancer lick whipped cream and cherries off the former's breasts about five times. There were other miscellaneous sexual contacts.

{¶ 45} EXHIBIT 4 depicts a dancer who did 12 shows consisting of between four and six songs per show primarily in the nude. During these shows, she pulled the heads of patrons into her bare breasts on about 183 separate occasions, usually rubbing and bouncing their faces between her breasts for a while. During most of these, the patrons held paper currency in their mouths, which she took by squeezing the patrons' faces and the money with her breasts.

{¶ 46} She rubbed her hands on the groins of sitting or standing male and female patrons about six times and humped her groin on the genital area of a sitting patron one time. She placed the heads of patrons between her legs with her legs over their shoulders and held them to her buttocks or groin, often humping them so their faces made contact with her private areas. This occurred about 20 different times.

{¶ 47} She fondled or licked the bare breasts or nipples of female house dancers or

civilian females and simulated oral sex with them, making contact on their genital areas with her face. With the civilian females, she would unclothe the patrons before engaging in this activity. The house dancers usually removed their own clothing and were usually nude during this sexual activity. The dancer placed her head on the unclothed or partially clothed genitals of females, sometimes under their clothes about nine times. The dancer fondled or licked the breasts or nipples of the females on about 15 separate occasions.

{¶ 48} This dancer performed a "ride for five" on a combination of male and female patrons approximately six times. Her number of "rides for five" was evidently reduced because she dedicated a significant portion of her acts to swallowing 9.5-, 12-, and 18.5-inch dildos. This was during the time slot when other performers normally would perform "rides for five."

{¶ 49} During the "rides for five," this nude dancer lay on top of patrons on the stage and engaged in various sexual contacts. Her usual routine was to rub her breasts on the patrons' faces, then crawl into an inverted position with her vagina on the patrons' faces and her head on his or her genital areas. Most of the time, she put folded currency on the patrons' faces, squatted onto the patrons' faces, and somehow picked up the currency with the underside of her buttocks and genital region. In the process, firm contact of the dancer's underside was made with the patrons' faces.

{¶ 50} There were other miscellaneous sexual contacts between patrons and this nude dancer. She pulled patrons' underwear out from their bodies and looked inside, squirted lotion inside patrons' underwear and reached her hands inside their underwear, apparently touching their genitals.

{¶ 51} EXHIBIT 5 depicts a dancer who was nude most of the time. She did 16 shows consisting of between four and eight songs per show. During these shows, she pulled the heads of patrons into her bare breasts or pulled their hands into her breasts while they gave her currency on about 154 separate occasions. During most of these times, she held their faces or hands between her breasts for a while. On most of these occasions, during this facial contact with her bare breasts, the patrons held paper currency in their mouths, which she took by squeezing the patron's faces and the money with her breasts.

{¶ 52} This dancer did not perform "rides for five." Instead, she filled that time slot by a series of vaginal gymnastics. Some constitute sexual activity. Unlike the other activities described herein, no direct payment was made in exchange for the activities described in the next two paragraphs. However, the announcers strongly encouraged tipping both before and after these acts, and the patrons responded with payments.

{¶ 53} This included expelling golf and ping pong balls across the room from inside her vagina, lighting and smoking cigars with her vagina, blowing puffs of cigar smoke from her vagina, extinguishing multiple flaming safety match books from air blown from her vagina, expelling significant volumes of water from her vagina onto patrons, and blowing folded currency placed on her vagina into the air with gases apparently inhaled and then expelled from her vagina.

{¶ 54} Although it might be argued in the abstract that shooting water from one's vagina onto a patron is not lewd behavior, sexual contact, or sexual activity, on several occasions, it clearly was. After being doused with a large volume of water in the face at point blank range, several of the patrons spit out significant amounts of the water that had entered their mouths in

the process.

{¶ 55} Similarly, although one might argue in the abstract that the lighting and smoking cigars with one's vagina might not be lewd behavior or sexual activity, when the performer sold the cigars after this and the cigars were smoked in her presence, the court concludes that lewd behavior and sexual activity took place. Likewise, it might be argued that propelling ping pong balls and golf balls across the room from inside one's vagina may not be lewd behavior or sexual activity. However, when its announced purpose is for the patrons to catch the balls in their mouths, sexual activity is clearly afoot.

{¶ 56} In direct exchange for money, she touched the breasts of female patrons with her hands. She unzipped the pants of patrons and felt crotches with her hands. She left the stage and sat on the genital area of patrons while they were seated. On three occasions, she placed her face in the crotches of prone females on stage while she lay on top of them. She pulled up their blouses and bras, rubbed her breasts on their stomachs and breasts, and rubbed her breasts on their faces.

{¶ 57} Almost every act with this dancer included patrons' playing "cooter-ball." Patrons tried to make a basket by throwing wadded up currency at a small container located in front of the performer's vagina as she was sitting on stage with her legs spread. If they made a basket, they won a poster as a prize. Patrons shot approximately between eight and 20 cooter-ball tries per act with this performer.

{¶ 58} EXHIBIT 6 depicted a sixth dancer's performance. Most of the time she performed nude during 12 shows of between four and six songs each. During these shows, she pulled the heads of patrons into her bare breasts or rubbed her nipples across their faces on about 75 separate

occasions. During almost all of these, the patrons held paper currency in their mouths, which she removed by squeezing the patrons' faces and the money with her breasts. On about five occasions, she pulled the patrons' hands between her breasts and removed the money with a similar squeezing process.

{¶ 59} She put the heads of sitting patrons between her legs by placing her legs over their shoulders, while sometimes placing her breasts in their face about seven times.

{¶ 60} This dancer performed a "ride for five" on a combination of male and female patrons approximately 56 times. She always made sexual contacts with each of the patrons during these "rides for five."

{¶ 61} This is the first dancer to conduct any of the "rides for five" with any clothing covering her vaginal area. Sometimes she had a small patch of clothing held by strings over her vagina. She was always at least topless. Her usual routine was to rub her breasts on the patrons' faces, then crawl into an inverted position with her vagina on the patrons' faces and her head on his or her genital areas. Usually she placed folded currency on their face over the nose. Then she would squat onto the patrons' faces and somehow remove the money with the underside of her vaginal buttock's region.

{¶ 62} She often pulled up the male and female patrons' shirts, sweaters, or blouses and rubbed her breasts on the stomachs or chests of the patrons, making skin-to-skin contact while her vagina was at or around their faces. Many times the females who paid for the ride for five were nude female house dancers. Approximately 14 times the dancer felt the breasts with her hands and kissed or licked the breasts of the nude female house dancers. On about two occasions she felt the

breasts of clothed female civilian patrons.

{¶ 63} Patrons threw wadded up currency at a small container located between her breasts and at her vagina about 68 times while playing "hooter-ball" and "cooter-ball" as was previously described.

{¶ 64} EXHIBIT 7 depicted a seventh dancer's performances. She performed 12 shows consisting of between three and five songs each. She was nude most of the time. During these shows, she pulled the heads of patrons into her bare breasts or rubbed her nipples across their faces on about 54 separate occasions. During these, the patrons held paper currency in their mouths, which she removed by squeezing the patrons' faces and the money with her breasts.

{¶ 65} She left the stage and humped her vaginal area on the groin of sitting patrons with her legs over their shoulders, while sometimes placing her breasts in their faces about 16 times. She put her legs over the shoulders of a sitting patron one time, pulling his face into her vaginal area. She pressed the face of a patron into her buttocks in a similar manner. On two occasions when a patron won a rolled-up poster of her, she had them take it from between her legs. As they did this she grabbed their heads and pulled them into her so their faces made firm contact with her buttocks.

{¶ 66} This dancer performed a "ride for five" on a combination of male and female patrons on approximately 47 separate occasions. She engaged in various forms of sexual contacts. Her usual routine was to rub her breasts across the patrons' faces, then crawl into an inverted position with her vagina on the patrons' faces and her head on his or her genital areas. Many times, while nude, she firmly rubbed and stroked her clitoris on the patrons' faces and noses for

quite a while. Usually, she firmly rubbed the patron's genitals with her hands or breasts. She sometimes lay on the patron, face to face, and humped on their genitals with hers. She licked one of the female house dancer patron's skin from her chest to her crotch. With another she pulled the recipient's bra up exposing the breasts. She fondled the breasts of a female civilian patron over her clothing. While her vagina was over the face of two male patrons, she pulled up their shirts and kissed their stomachs.

{¶ 67} Several dancers had male and nude or semi-nude females come on stage, hold burning candles, and drip hot wax on the dancers' breasts, torsos, and vaginal areas in exchange for money. EXHIBIT 1, Show 2; EXHIBIT 2, Shows 5 and 11; EXHIBIT 8, Show 5.

{¶ 68} The court finds that illegal sexual activity and lewd behavior at Total Xposure are methodical, constant, and rampant, and constitute a nuisance under the definitions enacted by the Ohio General Assembly. The conduct at Total Xposure involves lewd behavior in public, dancing that involves sexual contact with paying customers, lap dancing, sexual activity for hire, and illegal alcohol sales. These acts are not protected by the First Amendment. *Acara v. Cloud Books, Inc.* (1986), 478 U.S. 697; *State ex rel. Rear Door Bookstore v. Tenth Dist. Court of Appeals*, (1992), 63 Ohio St. 3d 354; *State ex rel. Montgomery v. Pakrats Motorcycle Club, Inc.* (1997), 118 Ohio App. 3d 458; *State ex rel. Rothal v. Smith*, 151 Ohio App.3d 289, 2002-Ohio-7328; *State ex rel. Miller v. Private Dancer* (1992), 83 Ohio App. 3d 27.

{¶ 69} The evidence demonstrates lewd behavior and other illegal sexual activity in violation of law. The foregoing evidence clearly and convincingly demonstrates Total Xposure to be a nuisance under R.C. Chapter 3767.

{¶ 70} The next issue is whether Total Xposure is a nuisance for violation of the liquor laws. The plaintiffs claim that the issue regarding whether Total Xposure is a nuisance on the basis of illegal alcohol sales is res judicata. It relies on the *Order Granting Plaintiffs' Application for Preliminary Injunction, In Part*, filed on June 9, 2003. The plaintiffs' position is incorrect.

{¶ 71} Res judicata does not apply, because the standard of proof was lower regarding the former proceeding. To prevail on a request for a preliminary injunction, the standard of proof is lower than for a permanent injunction. In the former proceeding, the movant must demonstrate only a likelihood of success on the merits rather than actual success on the merits. *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App. 3d 260. See, e.g., *Del-Fair, Inc. v. Seyferth* (June 6, 1981), Hamilton App. No. C-800277; *Daniel Constr. Co. v. Internatl. Bhd. of Electrical Workers, Local 88* (Dec. 10, 1986), Ross App. Nos. 1237 and 1243.

{¶ 72} The court must consider the nuisance issues relating to the sale of alcohol on the merits. The defendants say that the state liquor laws do not apply to them because Total Xposure is a private club. The court has determined that for all purposes Total Xposure is a public place and not a private club, for the reasons previously explained.

{¶ 73} Under the state liquor laws, it is unlawful to sell an alcoholic beverage without a permit. R.C. 4301.01. R.C. 4301.01 defines "sale" as "*exchange, barter, gift, offer for sale, sale, distribution and delivery of any kind*, and the transfer of title or possession of beer and intoxicating liquor either by constructive or actual delivery by any means or devices whatever, including the sale of beer or intoxicating liquor by means of a controlled access alcohol and beverage cabinet." (Emphasis added.)

{¶ 74} Total Xposure allowed persons to enter the premises with alcoholic beverages such as beer, wine, and wine coolers. The beverages were taken by an employee and stored in a cooler. If the patrons wanted to drink one of the beverages, they paid a waitress to bring it to them. The price was \$1.50 for a 12-oz (or less) container, \$2.50 for a 16-oz. container, \$3.50 for a 22/24-oz container, and \$7.50 for a 40-oz. container. If the container was a wine cooler, the charge was \$1.75.

{¶ 75} When patrons left the premises, they were allowed to take any remaining unopened containers brought by that patron. Any containers of alcoholic beverages that were left by patrons were considered abandoned. The printed Total Xposure rules provided that such abandoned property would be destroyed. Actually, the employees and management sometimes drank it or took it home. The stipulated facts and evidence demonstrate that Total Xposure's procedures involve the "sale" of alcoholic beverages as defined above. Therefore the liquor laws were violated by Total Xposure and constitute a nuisance as alleged.

{¶ 76} The court finds by clear and convincing evidence that the two owner/shareholders had knowledge of and acquiesced in violation of the state liquor laws at Total Xposure. When defendants Scott Conrad and Luke Liakos were at the dance area of Total Xposure during business hours, alcoholic beverages were being served.

{¶ 77} EXHIBITS 1 through 8 depict that the cabaret was filled with persons drinking alcoholic beverages. The defense exhibits indicate that the presence of alcoholic beverages would be permitted under an elaborate membership scheme. This entire procedure was developed by the owners and management. Obviously, they had knowledge of and acquiesced in the nuisance of

illegal alcohol sales to avoid the state liquor laws.

{¶ 78} The court grants the plaintiffs' prayer for relief, in part. The court enters judgment and a declaration of a public nuisance, orders abatement of the nuisance, enjoins the continued existence of the nuisance by a permanent and perpetual injunction prohibiting the Total Xposure defendants personally, and through their agents, employees, and assigns, from maintaining a nuisance at 1615 Haworth Court, Troy, Ohio, or elsewhere; orders closure of the Total Xposure defendants' cabaret business premises for a period of one year from the date of this order; orders removal and forfeiture of all of the personal property and contents used in maintaining the nuisance from the cabaret business portion of the premises and a public sale of that personal property without an appraisal to the highest bidder for cash pursuant to R.C. 3767.06(A), and imposition of the taxes authorized by R.C. 3767.08.

{¶ 79} Therefore, the court finds and declares that the cabaret portion of Total Xposure is a public nuisance under R.C. 3767.01(C)(2) and (3). Due to the nature of the nuisance and the circumstances in maintaining the nuisance, the court finds that it is necessary to enter this abatement and closure order and order forfeiture, removal, and public sale of the personal property that was used to maintain the nuisance located at the cabaret portion of the business located at 1615 Haworth Court, Troy, Miami County, Ohio, to abate the nuisance in the future.

{¶ 80} The court permanently and perpetually enjoins the Total Xposure defendants, personally, and through their agents, employees, and assigns, from maintaining a nuisance at the above location or elsewhere. No person may occupy or use the cabaret portion of the said business location for a period of one year from the date of this judgment. R.C. 3767.05 and 3767.06.

{¶ 81} The Miami County Sheriff is ordered to enforce this order by entering upon the premises at 1615 Haworth Court, Troy, Miami County, Ohio, and locking and securing the cabaret portion of the business by padlock, or by any other reasonable and necessary means to effectuate this order and to remove all personal property and contents from the cabaret portion of the business, to be safely held by the Miami County Sheriff until sold at a public auction for cash to the highest bidders pursuant to R.C. 3767.06(A).

{¶ 82} The court denies the plaintiffs' request for a closure order or other relief pertaining to the adult bookstore portion of the said premises. There has been no showing that the bookstore operation or that portion of the Total Xposure business at 1615 Haworth Court is a nuisance. Moreover, the plaintiffs have not overcome the First Amendment protection that shrouds the bookstore. Closure of the bookstore would be overbroad in respect to the nature of the nuisance in the cabaret portion of the business. Therefore, the bookstore portion of Total Xposure is not found or declared a nuisance and is not subject to this closure and forfeiture order. The bookstore shall not be seized or closed by the sheriff under this order, and the contents of the bookstore shall not be removed, forfeited, or sold at a public auction under this order.

{¶ 83} Also, the Total Xposure defendants, personally, and through their agents, employees, and assigns, are permanently and perpetually enjoined from maintaining a nuisance at 1615 Haworth Court, or elsewhere, as to the illegal sale of alcoholic beverages. Judgment of a nuisance is also specifically entered pursuant to R.C. 3767.05(E). It is ordered that no beer or intoxicating liquor be manufactured, sold, bartered, possessed, kept, or stored at 1615 Haworth Court, Troy, Miami County, Ohio, or any part thereof.

{¶ 84} Counsel for plaintiffs shall give notice of this order to the Division of Liquor Control, the Liquor Control Commission, and the Liquor Enforcement Division of the Department of Public Safety as required by R.C. 3767.05(E)(4).

{¶ 85} The clerk is directed to give notice of this order and judgment to the Miami County Sheriff, forthwith.

{¶ 86} IT IS SO ORDERED.

Judgment accordingly.

Gary Nasal, Miami County Prosecuting Attorney, and Mark W. Altier, Chief Civil Assistant Prosecuting Attorney; W. McGregor Dixon Jr., Troy Law Director, for plaintiffs.

Sirkin, Pinales, Mezibov & Schwartz, H. Louis Sirkin and Jennifer M. Kinsley, for defendants BJS No. 2, Inc., and Lucas Liakos.

Huffman, Landis & Weaks and Robert J. Huffman Jr., for defendant Hayworth, Inc.
Donenfeld, Botros, Kollin & Schulte and Michael R. Botros, for defendant Scott Conrad.

125 Misc. 556
Supreme Court, Schoharie County, New York.

UNITED STATES
v.
MYERS et al.
SAME
v.
VAN PATTEN.

August 17, 1925.

Separate actions by the United States against Jason W. Myers and another, and against Virgil Van Patten, to procure injunction orders to abate nuisances caused by sale of intoxicating liquors in violation of National Prohibition Act. Temporary injunctions were granted. On motion to modify. Injunctions modified.

West Headnotes (1)

[1] **Intoxicating Liquors**

☛ Nuisance or Business Subject to Abatement or Injunction

A bar or counter in a place where intoxicating liquors are sold is a "fixture," and rooms used in connection with bar, and opening into it, for purpose of obtaining access to bar by bartender are "other things" used in connection with violation of National Prohibition Act, tit. 2, § 22 (27 USCA § 34), and hence may be closed by temporary injunction.

1 Cases that cite this headnote

Attorneys and Law Firms

****465** *557 Alberti Baker, of Schoharie, for the United States.

Henry F. Toohey, of Schuylerville, for defendants.

Opinion

NICHOLS, J.

Temporary injunctions under the provisions of the National Prohibition Act (41 Stat. 305 [U. S. Comp. St. Ann. Supp. 1923, § 10138 1/4 et seq.]) were granted in each case without notice to the defendants, and the defendants have applied without notice, under the provisions of section 897 of the Civil Practice Act, to modify said injunction orders.

Each of these actions were brought in the Supreme Court of the state of New York by the district attorney of the county of Schoharie to procure injunction orders to abate nuisances caused by the sale of intoxicating liquors in violation of title 2, § 22, of the National Prohibition Act (U. S. Comp. St. Ann. Supp. 1923, § 10138 1/2k). The injunction order in each case contains three clauses, by the first of which the defendants are enjoined from conducting or carrying on said nuisances or the continuance of the same, and by the second of which they are restrained from removing or interfering with the liquors, fixtures, or 'other things' used in the violation of said law or act constituting said nuisance, and the third of which provides that the bar, barroom, and the rooms adjoining the same and the entrance thereto be closed until the close of the trial of this action, and until that time there shall be a notice ****466** affixed to the entrance to said barroom, a notice sufficiently plain to be read from the street, as follows: 'Closed by order of Charles E. Nichols, Justice Supreme Court.'

It is the third clause of said injunction orders which the defendants ask to have modified, by striking from said order the said clause entirely. Section 22 of the National Prohibition Act (41 Stat. 314, c. 85, tit. 2) contains, among other things, two ***558** clauses, the first of which clauses referred to reads as follows:

'If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial.'

And the second clause referred to reads as follows:

'If a temporary injunction is prayed for, the court may issue an order restraining

the defendant and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation of this Act constituting such nuisance.'

Whether the third clause of the injunction is to stand depends upon the construction of the words 'other things' in the act. The first clause of the act provides for the abatement of the nuisance until the conclusion of the trial, and the second clause furnishes greater security in abating said nuisance, permitting, not requiring, the court to enjoin the defendant and all other persons from removing or in any way interfering with the 'liquor or fixtures or other things' used in connection with the violation of this act constituting said nuisance. By the second clause of said act, above quoted, there are three things which the defendant may be restrained from removing or in any way interfering with, viz. the 'liquor or fixtures or other things'; and it is the 'other things,' and what the words 'other things' mean, which the third clause of the injunction order enjoins the defendants and other persons from 'interfering' with.

In places where intoxicating liquors are sold there is usually a room, called a barroom, containing a bar or counter, with a bartender on one side the bar and the patrons on the other, where the liquor is dispensed. It is manifest that the bar is a fixture used in connection with the violation; so that the words 'other things,' in the act, must include the room or rooms used in connection with and in carrying on the business, and this would include any room opening into the bar, for the purpose of obtaining access to the bar by the bartender, and so arranged that the patrons are to be kept in front of the bar, and not have access to the rear of the bar. And the only way in which the defendants and 'all persons' could be kept from interfering with said rooms would be by excluding them therefrom, which is what these injunction orders do in these cases. The bar being a fixture, the public could not be kept from **467 interfering with it, so as to avoid touching or using it, except by being excluded from the rooms, which these injunction orders do.

The case of *In re Love*, 205 App. Div. 363, 199 N. Y. S. 530, was a proceeding for an order enjoining the maintenance of a common nuisance under the provisions of section 1214g of the Penal Law, as added by *559 Laws 1921, c. 155

(repealed by Laws 1923, c. 871), which reads in part as follows:

'No person shall maintain any room, house, building, boat, vehicle, structure or place where intoxicating liquor is manufactured, sold, given away, kept or bartered in violation of this article, and all intoxicating liquor and property kept and used in maintaining the same is hereby declared to be a common nuisance.'

The Appellate Division of the Fourth Department, in construing this section, says:

'The question rests in the interpretation that is to be given to the words 'property kept and used in maintaining the same.' The appellant contends that this is to be limited to the bottles, glasses, boxes, and articles immediately connected with the manufacturing, keeping, serving and sale of the liquor and not to the structure or building itself. The appellant's construction is too narrow,'

—holding that it included the building or structure which is thus maintained, as well as its contents.

The third clause of the injunction orders herein, however, should be modified as follows:

In the Myers Case, to state: 'Further ordered, that the said bar, barroom, and the rooms adjoining the same, which are so arranged as to open behind said bar,' and the balance of said third clause to stand as the order was originally signed.

In the Van Patten Case, the third clause should be modified as follows: 'Further ordered, that the said bar, barroom, and the rooms adjoining the same, except the dining room and the entrance thereto, be closed until the conclusion of the trial of this action,' should be modified, so as to provide as follows: 'Further ordered, that the said bar, barroom, and rooms so arranged as to open behind said bar, except the dining room, be closed until the conclusion of the trial of this action.' The balance of the third clause of said order to stand as originally signed.

Parallel Citations

125 Misc. 556, 211 N.Y.S. 465

24 Am. Jur. 2d Disorderly Houses § 1

American Jurisprudence, Second Edition
Database updated February 2015
Disorderly Houses

Tracy Bateman Farrell, J.D.

I. In General
A. Definitions

Topic Summary Correlation Table References

§ 1. Disorderly house

West's Key Number Digest

West's Key Number Digest, Disorderly House ~~4~~2, 3

A disorderly place or house is one which is used habitually for any illegal¹ or immoral² purpose. In the broad sense, this includes houses of prostitution or lewdness, bawdy houses, common gambling houses, and places of like character.³ Statutes may also include as disorderly houses residences at which liquor is sold illegally,⁴ or where drug trafficking activity transpires.⁵

Observation:

Illegal drug activity at a premise is also directly regulated by other federal and state laws.⁶

Places where activity occurs that creates a public disturbance,⁷ such as where drunkenness or boisterous conduct are encouraged or permitted to the annoyance of the neighborhood,⁸ are "disorderly houses" because of the manner in which they are conducted. However, the conduct of the establishment need not disrupt peace and quiet or be open to public observation in order to be a disorderly house, so long as it would be offensive to public sensibilities if its presence in the community were generally known.⁹ Thus, for example, a bawdy house or a common gambling house is a disorderly house in a broad sense regardless of the fact that the only annoyance to the public is its existence,¹⁰ as, although concealed from the public, such an establishment is a nuisance per se.¹¹

Footnotes

1 State v. Massey, 539 So. 2d 1211 (La. 1989).

2 Harrison v. City of Norfolk, 16 Va. App. 572, 431 S.E.2d 658 (1993).

3 Com. v. Mahramus, 211 Pa. Super. 376, 236 A.2d 572 (1967).

As to the definition of a bawdy house, see § 3.

As to the definition of a common gaming or gambling house, see § 4.

4 State v. Hinkel, 365 N.W.2d 774 (Minn. 1985).

5 U.S. v. Wade, 992 F. Supp. 6 (D.D.C. 1997) (applying District of Columbia law); State v. Hinkel, 365 N.W.2d 774 (Minn. 1985).

6 § 5.

7 Harris v. U. S., 315 A.2d 569 (D.C. 1974).

§ 1. Disorderly house, 24 Am. Jur. 2d Disorderly Houses § 1

- 8 Com. v. Hartung, 156 Pa. Super. 176, 39 A.2d 734 (1944).
9 Payne v. U.S., 171 A.2d 509 (Mun. Ct. App. D.C. 1961).
10 Com. v. Hartung, 156 Pa. Super. 176, 39 A.2d 734 (1944).
11 § 8.

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

Plaintiff, the Thirteenth Circuit Solicitor, William W. Wilkins, III ("Solicitor"), on behalf of the State of South Carolina ("State"), respectfully submits the instant brief supporting the State's Rule to Show Cause against Defendants, Elephant, Inc. ("EI") and Gregory Kenwood Gaines ("Gaines") (EI and Gaines treated collectively as "Defendants" or "Platinum Plus").

I. FACTUAL BACKGROUND

The factual background underpinning the instant contempt proceedings substantially informs the discussion of Defendants' contempt:

A. Procedural Background & the Underlying Proceeding

On April 17, 2015, Solicitor W. Walter Wilkins, III, filed a Verified Petition ("Nuisance Petition") against Elephant, Inc. and Frontage Road Associates, Inc. alleging that a Public Nuisance ("Nuisance Action") as defined in South Carolina Code §15-43-10, *et seq.* existed at 805 Frontage Road in Greenville, South Carolina ("Subject Property").¹ (*See*

¹ In reciting facts relating to the underlying Nuisance Action, the Solicitor cites and incorporates herein filings submitted to the Court and already appearing in the public record

Nuisance Petition; Am. Nuisance Petition.) The Nuisance Petition detailed twenty-four categories of unlawful conduct occurring at the Subject Property, occurring on fifteen (15) different occasions, over the course of a one-year investigation. (*Id.*)

The State supported the Nuisance Petition with the Affidavit of Deputy Sheriff Robert Curtis. (*Id.*) The State also supported the Nuisance Petition with eight (8) sworn statements from individuals working at Platinum Plus during the time period material to the dispute. (*Id.*) Separate and apart from the Nuisance Action, the misconduct detailed in the Nuisance Petition resulted in nine (9) different convictions for prostitution, including the conviction of an EI Champagne Room Hostess.²

Upon filing the Nuisance Petition, the Solicitor moved the Court for a Preliminary Injunction as provided by S.C. Code §15-43-30. (*See* 4/17/2015 Mot. for Prelim. Inj.) The Court granted the State's motion for a temporary injunction on May 6, 2015, pending a trial on the merits. (5/6/2015 Order Grant. Prelim. Inj.) In doing so, this Court preliminarily found *inter alia*: "[T]he Solicitor has satisfied the burden under S.C. Code §15-43-30 by introducing evidence demonstrating a repeated and continuous nuisance...existed at the Subject Property within the meaning of the Nuisance Statute." (*Id.* at 4.)

(prior to the June 14th hearing) in Civil Action 2015-CP-23-02597. Rule 201, SCRE allows judicial notice of such materials as adjudicative facts, which the Solicitor so requests. *See* Rule 201, SCRE; *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that "the most frequent use of judicial notice of ascertainable facts is in noticing the content of court records."); *Doe v. Bishop of Charleston*, 407 S.C. 128, 135, FN2 (S.C. 2014); 21 C. Wright & K. Graham, *Federal Practice and Procedure: Evidence* §5106 at 505 (1977).

² *See* **Exhibit A**, Attached Public Records reflecting convictions arising from underlying investigation; *see also* FN1.

In granting the preliminary injunction, the Court also found that a 2002 Consent Order (treated as "2002 Order")³ entered into by Defendants "clearly defined...what could or could not occur [at the Subject Property] and...set out the affirmative duties and obligations that [Defendants] undertook . . ." (*Id.* at 5.)⁴ In so noting, the Court found admissible evidence, introduced by the Solicitor, established prohibited conduct "repeatedly and consistently occurred" at Platinum Plus. (*Id.* at 5.) The Court also rejected an as-applied First Amendment challenge advanced by Platinum Plus as lacking "evidentiary support." (*Id.* at 8.)⁵

On the same day of its issuance, Defendants appealed the Order granting the preliminary injunction and filed a petition for an emergency writ of supersedeas. (5/6/2015 Not. of App.) Chief Judge Few of the South Carolina Court of Appeals thereafter denied Defendant's petition for supersedeas within twenty-four hours of its filing (*i.e.*, May 7, 2015). (5/7/15 COA Order Den. Petit. for Super.)

³ In the 2015 Order, referenced below, the 2002 Order was referenced as the "2003 Order," even though entered by the Circuit Court in January of 2002. However, no confusion exists as to what Order the 2015 Consent Order referenced since the Parties attached the 2002 Order as Exhibit B to the 2015 Consent Order and expressly incorporated its terms by reference. (*Compare* 2015 Order at 5 *with* 2015 Consent Order, Exhibit B.) For purposes of this submittal, the Solicitor will reference the prior consent order as the 2002 Order.

⁴ Ironically, the 2002 Order arose out of a declaratory action wherein Platinum Plus sued Greenville County to obtain a judicial declaration interpreting and clarifying certain provisions of the Greenville County Sexually-Oriented Business Ordinance. Platinum Plus contended it feared "prosecution and the possibility of civil and criminal contempt" if it did not obtain clarification of the Ordinance. (2002 Order at 1.) The 2002 Order resulted from negotiations between the Parties of that litigation to provide Platinum Plus clear contours of what it could and could not do.

⁵ However, the Court did not foreclose Platinum Plus's ability to raise such issues at a trial on the merits if later developed evidence could support such a contention. (*Id.*)

On May 15, 2015, the Solicitor filed an Amended Petition joining Gregory Kenwood Gaines⁶ as a party to the Nuisance Action due to his status as owner of Platinum Plus and as a named tenant to Platinum Plus's lease. (Am. Nuisance Petit.) The Solicitor likewise joined several dancers, who were alleged to have engaged in unlawful conduct and who Platinum Plus identified as sublessees of portions of the Subject Property. (*Id.*) Pursuant to Defendants' request, the Circuit Court slated an accelerated trial date for June 22, 2015 before Circuit Court Judge James Barber.

B. The 2015 Consent Order

Shortly after the Solicitor amended the Nuisance Petition, Defendants inquired about the possibility of a negotiated outcome to the lawsuit.⁷ Following extensive negotiations with defense counsel, on June 3, 2015, the State and Defendants entered into a Consent Order (treated as "2015 Order") in an effort to resolve the Nuisance Action. As reflected by its terms, the 2015 Order specifically aimed to abate the unlawful conduct prompting the Nuisance Action's filing in the first place.⁸

⁶ To avoid confusion in the record, the Solicitor notes Gregory Kenwood Gaines uses a variety of different permutations of his name including: Ken Wood, Ken Gaines, Ken Wood Gaines, Kenwood Gaines, Greg Gaines. (*See, e.g.*, Aff. of Thomas Schweitzer, Ex. A (Platinum Plus lease signed for EI, as a tenant, by "Ken Wood" on one signature block and then by "Gregory Gaines" on the signature block directly below for himself personally, as a tenant); Def. Memo. in Opp. (Referred as "Ken Gaines"); Aff. of Kenwood Gaines (Attesting affiant's name was "Kenwood Gaines"); 7/22/99 Secretary of State Articles of Incorporation for EI listing registered agent as "Ken Wood"; 12/5/10 Greenville County Business Registration sought for Ken Wood Gaines and then signed by "Ken Wood." Despite the varying monikers, all such usages refer to the same individual--Defendant Gregory Kenwood Gaines.

⁷ Due to ongoing negotiations, the Parties agreed to postpone the video-deposition of Gregory Kenwood Gaines, which was noticed for May 27, 2016, as well as several other depositions.

⁸ *See, e.g.*, 2015 Consent Order, ¶¶II, IV, V, VIII, IX (Providing for: a six (6) month shut-down, incorporating and reaffirming prior consent order, mandatory enhanced monitoring,

Due to the strength of the Solicitor's case, in Paragraph I of the 2015 Order, Defendants specifically acknowledge[d] and stipulate[d] the Solicitor "possesse[d] and could present sufficient evidence...that a presiding judge could find...Platinum Plus...constituted a public nuisance within the meaning of the Nuisance Statute." (*Id.* at 3.) Nonetheless, in exchange for Defendants' agreement to abide by the 2015 Order's terms and conditions, the Solicitor agreed to forgo a trial on the merits of the Nuisance Action. (*Id.* at 9.) Contrary to Defendants' unsupported assertions of being singled-out, the Solicitor also agreed to allow Platinum Plus to re-open on November 8, 2015, albeit under express (and negotiated) conditions designed to safeguard against the recurrence of the public nuisance at the Subject Property. (*Id.* at ¶II, p. 3.)⁹

The 2015 Order imposed both mandatory and prohibitive obligations, which Defendants agreed to fulfill in order to avoid trial. As an initial matter, the 2015 Order expressly "incorporated by reference...and reaffirmed" the 2002 Order's terms and conditions. Defendants agreed the 2002 Order would remain "in full force and effect..." and promised to comply with its provisions to re-open. (*Id.* at 5.) Important to the discussion below, and as previously noted by the Court, the 2002 Order "clearly defined...what could or could not occur [at the Subject Property]." (*See, e.g.*, 2002 Order at 2-3 (Prohibiting *inter alia* the "state of nudity," "specified sexual activities," and "specified anatomical areas"); *see also infra* Section

surveillance footage, independent monitoring, contempt sanctions for non-compliance, and continued jurisdiction.

⁹ By contrast, had the Solicitor prevailed at the trial on the merits, the Public Nuisance Statute would have compelled: the closure of Platinum Plus for a year (in addition to the closure imposed by the preliminary injunction); the sale of Defendants' fixtures, furniture, and moveable property; and the issuance of a perpetual, statewide injunction. *Compare* S.C. Code §15-43-20 *with* §15-43-70 *with* §15-43-80.

II.) Of note, the reaffirmed 2002 Order stated: "The parties further understand and agree that violations of the agreements set forth in this order shall be punishable as contempt of Court..." (2002 Order at 4.)¹⁰

Because Defendants had already violated the 2002 Order, the Solicitor insisted the Parties' settlement agreement be "made an Order of this Court requiring compliance with the same by operation of judicial decree." (2015 Order at 2; *see also Id.* at 1 (Entitling document as "Consent Order"); *Id.* at 9 ("The recitals to this Consent Order are intended to be incorporated as a material part of this Order and the agreement of the undersigned parties.") To foreclose any attempts—after-the-fact—to distort the 2015 Order as a "mere settlement contract," such as those now advanced, *see e.g.*, Def. Memo. in Opp. at 3, Paragraph VIII (entitled, "Sanctions for Violation of this Order") expressly stated: "Willful violations of the terms and conditions set forth in this Consent Order shall be punishable as contempt of Court." (*Id.* at 8.)

The 2015 Order similarly forecloses Defendants' other, unmeritorious challenges.

- To foreclose any after-the-fact attempts to elude personal jurisdiction, such as dodging service of process (as Defendants now raise for the first time despite appearing at the hearing and raising no service objections, *see e.g.*, Def. Memo. in Opp. p. 5), Paragraph IX(B) expressly states: "All undersigned signatories hereto stipulate and agree that the Greenville County Court of Common Pleas possesses personal jurisdiction over them..." (*Id.*)

¹⁰ The Solicitor would also note the following language in the 2015 Order: "EI and Gaines hereby acknowledge and stipulate that the [2002] Order remains and will continue to remain in full force and effect thereby mandating EI's and Gaines' continued compliance with the same." (2015 Order, p. 5.) "The [2002] Order is likewise incorporated by reference into and reaffirmed by this Consent Order thereby mandating full compliance with same under this Consent Order as well." Accordingly, for the reasons stated within, Defendants have not violated just the 2015 Order but both the 2002 Order and the 2015 Order, each of which contain stand alone provisions, yet cross-incorporated, subjecting Defendants to segregable contempt sanctions for each. *See also* S.C. Code §1-7-350 (Solicitor represents all state agencies within their respective circuits.)

- To foreclose any after-the-fact attempts to claim the Court lacks subject matter jurisdiction to enforce its own orders (which Defendants once suggested but now abandon, *see e.g.*, Def. Memo. in Supp. p. 4), Paragraphs IX(B) and IX(F) expressly state: "All undersigned signatories hereto stipulate and agree that the Greenville County Court of Common Pleas possesses...subject matter jurisdiction to hear this matter and enter this Consent Order" and "shall perpetually retain jurisdiction to enforce the terms and conditions of this Consent Order." (*Id.*)
- And, last, to foreclose any after-the-fact attempts by Defendants to resuscitate substantive arguments they could not substantiate and, thus, abandoned in the Nuisance Action (which they haphazardly re-try), Defendants agreed that "all civil causes of action, remedies, and claims that have been or could have been asserted, by an undersigned party in the above-captioned case, are deemed adjudicated and deemed *res judicata* without further recourse." (*Id.* at 9.)

Yet, despite the clarity of these terms and despite unequivocal evidence demonstrating serial violations of the 2015 Order, not once do Defendants acknowledge their infractions, culpability, apologize to the Court for their stark disobedience, or petition for lenity due to any mitigating circumstances. They instead liken their contumacious acts to the pirouettes of *prima* ballerinas. (Hr'g Tr. at 55:3-19.) Some challenges to the Court's authority prove so brazen and disrespectful they cannot be ignored.

II. LAW/ANALYSIS

The Solicitor has broken down the legal analysis portion of the State's brief as follows:

- (A) The Legal Standards Applicable to Contempt Proceedings;
- (B) The Evidence Fulfilling the State's *Prima Facie* Case for Contempt;
- (C) Responses to Defendants' Unfounded Objections; and
- (D) The Criminal and Civil Contempt Remedies Available to the Court to Punish Defendants' Disobedience.

A. Legal Standards

The exercise of a court's contempt powers is a bulwark of justice: "its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts; and consequently to the due administration of justice." *See State v. Goff*, 88 S.E.2d 788, 790 (S.C. 1955). "The power to punish for contempt is inherent in the nature and constitution of a court." (*Id.* at 791.) The Court's contempt power does not derive "from any statute, but arising from necessity; implied, because it is necessary to the exercise of all other powers." (*Id.*) "Without such power...the administration of the law would be in continual danger of being thwarted by the lawless." (*Id.*) (Internal citation omitted). "A finding of contempt rests within the sound discretion of the trial judge." *Durlach v. Durlach*, 359 S.C. 64, 70, 596 S.E.2d 908, 912 (2004) (citation omitted). "Such a finding should not be disturbed on appeal unless it is unsupported by the evidence or the judge has abused his discretion." *Id.*

<http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=le&search=228+S.C.+17%2520at%252023>To establish a *prima facie* case of contempt, South Carolina law required the Solicitor to prove two elements. First, the State had to demonstrate the existence of a Court order. And second, the State had to introduce evidence demonstrating EI's and Gaines's willful non-compliance with the Court's Order. *See Hawkins v. Mullins*, 597 S.E.2d 897, 899 (S.C. Ct. App. 2004).

An order stating "mandatory or prohibitive" terms of sufficient clarity to inform a defendant "what he must do" or not do satisfies the first element of a *prima facie* case for contempt. *Welchel v. Boyter*, 196 S.E.2d 496, 498 (S.C. 1973); *S.C. Dep't of Social Servs. v. Brock*, 329 S.E.2d 773, 774 (S.C. Ct. App. 1984). As to the second criterion, the Court

determines whether the defendant willfully disobeyed its order through a "subjective, not objective" evaluation of "all the acts, words, and circumstances surrounding" Defendants' disobedience. *State v. Passmore*, 611 S.E.2d 273, 275 (S.C. Ct. App. 2005).

Contrary to Defendants' assertions at the hearing on June 14, 2016, contemptuous conduct may be direct *or* constructive. Direct contempt occurs in the presence of the court. *State v. Kennerly*, 524 S.E.2d 837, 838 (S.C. 1999). By contrast, constructive contempt involves conduct outside the presence of the court. *Ex parte Jackson*, 672 S.E.2d 585, 589 (S.C. Ct. App. 2009) (finding contemptuous failure to cease accumulating debris on personal property).

Once the Solicitor made out a *prima facie* case for contempt, the burden shifted to Defendants to establish their defense or an inability to comply with the order. *Widman v. Widman*, 557 S.E.2d 693, 705 (S.C. Ct. App. 2001). But, here, Defendants did neither. They offered no proof—of *anything*. They advanced no defense. Nor did they claim they could not comply. See *Moseley v. Mosier*, 306 S.E.2d 624, 626 (S.C. 1983); *Ex parte Cannon*, 385 S.E.2d 814, 826 (S.C. Ct. App. 2009).¹¹

The purpose and type of sanctions levied distinguish criminal and civil contempt. See *Poston v. Poston*, 502 S.E.2d 86, 88 (S.C. 1998) (distinguishing by "the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed"). Contempt exists to ensure obedience of a court's orders. *State v. Bevilacqua*, 447

¹¹ At a bare minimum, Defendants were required, but did not, show a good faith attempt at compliance. See *Abate v. Abate*, 660 S.E.2d 515, 518–19, 520 (S.C. Ct. App. 2008). To claim good faith, Defendants must demonstrate compliance up to the level of their abilities. See *Lynn v. Lynn*, 350 S.E.2d 403, 405 (S.C. Ct. App. 1986) (upholding contempt where record showed father could but did not pay some alimony); *Moseley*, 306 S.E.2d at 626. However, a history of poor conduct—such as that of Defendants dating back to 2002 and continuing to date—mitigates against a good faith claim. See *Hawkins v. Mullins*, 597 S.E.2d 897, 900 (S.C. Ct. App. 2004).

S.E.2d 213, 217 (S.C. Ct. App. 1994). As such, Courts invoke civil contempt to coerce a defendant into compliance for the benefit of the plaintiff. *See id.*; *see also Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441 (1911) ("[F]or civil contempt the punishment is remedial, and for the benefit of the complainant.") (quoted in *Poston*, 502 S.E.2d at 88).

By contrast, a defendant may be so willfully disobedient that coercion is rendered insufficient. Such egregious violations of a court's order undermine its authority, and the violation cannot be redressed by mere compliance. *See Poston*, 502 S.E.2d at 88 ("The primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders."). "Every act which tends to frustrate the mandates of a Court of justice is a contempt of its authority." *Long v. McMillan*, 86 S.E.2d 477, 482 (S.C. 1955). As such, criminal contempt punishes the defendant. *Poston*, 502 S.E.2d at 88. For example, in *Ex parte Jackson*, the defendant began to accumulate debris in violation of a court order less than a week after the city removed the trash of the initial violation. 672 S.E.2d 585, 587 (S.C. Ct. App. 2009). The court levied criminal contempt to punish her flagrant disobedience of the court's order. (*Id.* at 587-88.)

Likewise, the state Supreme Court even upheld criminal contempt against a defendant who politely told surveyors to leave his property, in disobedience of a restraining order. *Greenwood Cty v. Shay*, 23 S.E.2d 825, 827 (S.C. 1943). Because his conduct "clearly involved a violation of the letter and spirit of the restraining order" criminal contempt was "fully justified." *Id.* Thus, criminal contempt is appropriate to uphold the court's authority and punish defendants for willful disobedience. Both criminal and civil contempt may be contemporaneously imposed, so long as the sanctions are "separate and distinct." *DiMarco v. DiMarco*, 713 S.E.2d 631, 634 (S.C. 2011).

To bring charges of constructive contempt, a party must bring a Rule To Show Cause based on affidavit(s) or verified petition. *Toyota of Florence, Inc. v. Lynch*, 442 S.E.2d 611 (S.C. 1994). Criminal contempt may be exercised against a defendant even where the rule to show cause sought only civil contempt. *State ex rel. Love v. Howell*, 328 S.E.2d 77, 78 (S.C. 1985). Civil contempt may be established by clear and convincing evidence, while criminal contempt requires proof beyond a reasonable doubt. *Poston v. Poston*, 502 S.E.2d 86, 113 (S.C. 1998); *see also Curlee*, 287 S.E.2d at 918 ("[T]he record must be clear and specific as to the acts or conduct upon which such finding is based."). Once the *prima facie* case is proven, the burden shifts to the defendant to introduce evidence establishing a defense. *Widman v. Widman*, 557 S.E.2d 693, 705 (S.C. Ct. App. 2001).

The Solicitor properly pled and proved both criminal and civil contempt violations on the part of Defendants. The Solicitor initiated the proceedings with a Petition For Rule to Show Cause. Within the Petition, the State pled facts sufficient to establish: (1) the existence of the 2015 Consent Order as a valid and binding Order of this Court; and (2) Defendants' willful violation thereof. The Solicitor likewise filed a verification of the Petition, which exists in the Court's record. (*See also* Hr'g Tr. at 12.) As discussed below, Attorney Randy Hiller executed a form certifying his authority to accept documentation on both Defendants' behalf and memorializing the hand-delivery of: the Petition for the Rule to Show Cause; the Verification; Rule to Show Cause; and subpoena for Gregory Kenwood Gaines. (*See* Ex. B)

The Solicitor further supported the Petition with the affidavits of two Independent Monitors establishing violations of the 2015 Consent Order. The Petition further attached two exhibits of video footage corroborating the Independent Monitors' affidavits and the Petition's

recitation of facts demonstrating Defendants' willful disobedience. Plaintiff pled criminal and civil contempt.

First, the Petition asked that Defendants "be sanctioned to the maximum extent allowed by law." (2015 Order at 6.) Because it results in definite, unconditional sanctions, criminal contempt ensures the maximum allowable sanctions under contempt law. Second, the State asked the Court to sanction Defendants in such "manner [to] ensure the Defendants permanently abate all conduct creating a nuisance." (2015 Order at 6.) In this way, the Petition also constitutes a pleading for civil contempt, as civil contempt is exercised for the coercion of compliance for the complainant's benefit. Contrary to Defendants' bare assertions, then, the Solicitor's Petition satisfies the procedural requirements for findings of both criminal and civil contempt against Defendants.

C. The Solicitor Proved A *Prima Facie* Case for Criminal Contempt Beyond a Reasonable Doubt.

The un-refuted evidence of record proves Defendants' willful disobedience of the Court's Order.

i) The 2015 Order Constitutes a Judicial Decree With Clear Mandates & Prohibitions

As an initial matter, the 2015 Consent Order satisfies the first element of the Solicitor's *prima facie* case for contempt.¹² The 2015 Order constitutes a valid and binding order of this Court and succinctly sets forth the requirements for compliance. As noted *supra*, the Parties expressly incorporated their agreement into a judicial decree, stipulated to the Court's jurisdiction to enforce the 2015 Order, and agreed to subject themselves to the contempt power of the Court in instances of non-compliance. (*See supra* at II(b); 2015 Order at 2, 8-9.)

¹² As noted *supra*, the 2002 Order reaffirmed by the 2015 Order and incorporated therein does as well.

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

Incorporated into the 2015 Order, the 2002 Order likewise: "clearly defined...what could or could not occur [at the Subject Property] and... sets out the affirmative duties and obligations that [Defendants] undertook . . ." (5/6/2015 Order Grant. Temp. Inj. at 5.) In the 2002 Order, Platinum Plus agreed to abide by the following terms and conditions, which were then incorporated into a judicial decree:

1. [EI]¹³ and [its] successors and *assigns shall not permit any person at any time to appear in a "state of nudity" while in or on the premises of Plaintiffs' businesses.* "State of nudity" is currently defined in Greenville County Ordinance 2673 as "the appearance of a human bare buttock, anus, male genitals, female genitals, or female breasts." County agrees that under the definition currently set forth in Ordinance 2673, a person at Plaintiffs' business would be considered to be in a "state of nudity" when any one or more of the following occur:
 - a. A female breast is shown with anything less than a complete opaque covering of the entire areola. As an illustration, a "pastie" or other covering which is both completely opaque and completely covering the areola would be sufficient minimum coverage to avoid the "state of nudity" as currently defined in Ordinance 2673; or
 - b. A human buttock is exposed with anything less than a complete opaque covering of the genitals and anus and a complete opaque covering over the buttocks with a minimum width of two (2) or more inches at the sacrum. As an illustration, completely opaque "thongs," bikini bottoms, and "T-bar" forms of apparel that both completely cover the genitalia and anus and cover two (2) or more inches, at the sacrum, would be sufficient minimum coverage to avoid the "state of nudity" as currently defined in Ordinance 2673; or

¹³ In the lawsuit in which the Court entered the 2002 Order, EI was the Plaintiff. To avoid confusion, the Solicitor has inserted EI in brackets where the term "Plaintiff" appeared in the earlier order.

- c. Male or female genitals are exposed with anything less than a completely opaque covering.
2. [EI] and [its] successors and assigns *shall not permit any person to engage in "specified sexual activities"...*while in or on the premises owned and/or operated by [EI].
3. [EI] and [its] successors and assigns *shall not permit any person to at any time display or expose "specified anatomical areas"...*while in or on the premises owned and/or operated by [EI].

(2002 Order at 2-3 (italicized emphases added).)

Nor were the specific terms used left undefined. As defined for purposes of the 2002 Order (and reaffirmed by the 2015 Order), "specified sexual activities" include, *inter alia*:

1. The *fondling or other erotic touching* of human genitals, pubic region, buttocks, anus, or female breasts;
2. Sex acts, normal or perverted, *actual or simulated*, including intercourse, oral copulation, or sodomy;
3. Masturbation, *actual or simulated*;

(*Id.* at 3; GCO §2.5-72 (emphasis added).) As defined for purposes of the 2002 Order and thus incorporated in the 2015 Order, "specified anatomical areas" include "[m]ale genitals in the state of sexual arousal or the vulva or more intimate parts of the female genitals." (*Id.*)

The 2002 Order's terms sets forth prohibitive terms, sufficiently clear to allow Defendants a reasonable certainty about what conduct violates its provisions. The terms define prohibited conduct at length and even include examples of minimum compliance. Moreover, their prohibitions have been binding on the Defendants for over fourteen years, and twice knowingly and voluntarily agreed upon following advice from counsel.¹⁴ Accordingly, the

¹⁴ The Solicitor would also point out the following: (1) Defendants have never claimed not to understand any term of either the 2002 or 2015 Order; (2) Defendants' counsel participated in the drafting of both the 2002 and 2015 Orders; and (3) if Defendants did not understand either Order or claimed an infirmity inflicted either Order, they could have, but did not, file a motion

2015 Order satisfies the first criterion of the Solicitor's *prima facie* showing. As a consequence, the 2015 Consent Order is an "order" for the purposes of contempt proceedings.

ii) Defendants willfully violated the 2015 Consent Order

Since November 20, 2015 (a mere week after Platinum Plus re-opened), the un-rebutted evidence of record establishes Defendants have violated the 2015 Consent Order no less than twenty-eight (28) times. The mere volume and regularity of Defendants' misconduct standing alone suffices to establish their willful disobedience beyond a reasonable doubt. *State v. Passmore*, 611 S.E.2d at 275 (Court should consider "all the acts, words, and circumstances surrounding" Defendants' disobedience). However, as discussed below, the Solicitor introduced ample other evidence of Defendants' willful disobedience of this Court's Order.

The evidence of record clearly establishes Defendants allowed exotic dancers to engage in conduct prohibited by the 2015 Consent Order. The Solicitor introduced both video and live witness testimony establishing serial misconduct expressly violative of what Platinum Plus promised and the Court ordered by judicial decree. One of the many examples found in the evidence of record was related by one of the Independent Monitors who testified:

[Mia] was sucking on Nicole's breasts, rubbing the vaginal area. Then at that point Mia climbed on top of Nicole and they both began *rubbing their vaginal areas together, simulating sexual intercourse, as well as masturbation*. At one point Nicole yelled out, I'm going to cum. This went on for several minutes like that...Mia laid across my lap, at which point *Nicole was basically kissing around her vagina area, rubbing it, simulating oral sex*. At one point *Mia lifted up the front of her thong which exposed to me her vagina*.

(H'rg Tr. at 73 (emphasis added).) The witness confirmed a Platinum Plus Champagne Hostess witnessed the violative conduct but took no action and allowed its continuance.

pursuant to Rule 60, SCRCP; and (4) Courts impose very stringent requirements on litigants who attempt to escape the terms of Consent Order to which they agreed in the first instance.

An Independent Monitor likewise testified: "Nicole had taken a piece of ice which she used while Mia was laying on the couch and took the piece of ice in her mouth and actually rubbed it on Mia's crotch area." (Hr'g Tr. at 96.) The Independent Monitor also recounted a comparable instance in Platinum Plus's Couch Room:

[T]he dancer would put their [sic] buttocks on my lap, *crotch area and begin grinding back and forth or rocking back and forth*...She then stood up. She *pulled her thong down halfway under her back side*, which was about center with her buttocks. She sat back down and began doing the same thing again, the grinding, at which point she stopped and she laid across my lap. She put her legs up in the air. *She began to pat and rub her vaginal areas to simulate masturbation*. She then got up, crawled onto my lap and she again began to bounce and grind. She *stuck her breasts in my face, rubbed it, basically rubbed her breasts against my face*.

(Hr'g Tr. at 64-65 (emphasis added).) The testimony introduced by the Solicitor establishes simulated sex, simulated masturbation, fondling and the "state of nudity"—all of which Platinum Plus promised (and the Court ordered) would not occur as a condition to the Club's re-opening.

Nor were the above examples isolated violations; rather, they proved representative of the flagrant violations of 2015 Order witnessed by the Monitors each and every time they audited Platinum Plus. Indeed, the record establishes thirteen (13) separate violations of the agreed upon "state of nudity" prohibition: seven through violative thongs, *see* Hr'g Tr. at 32, 37, 64, 65, 72, 77; four through the display of bare female breasts, *see* Hr'g Tr. at 65, 72, 73, 74; two through exposure of the vagina, *see* Hr'g Tr. at 73, 97. The record establishes fifteen (15) separate violations of the "specified sexual activities" prohibition: eight through simulated sex acts, *see* Hr'g Tr. at 32, 36, 64, 68, 73, 74, 77, 96; four through fondling, *see* Hr'g Tr. at 32, 34, 35, 72; three through simulated masturbation, *see* Hr'g Tr. at 65, 73, 84. Importantly,

these numbers reflect only what the two Independent Monitors observed, together, on the three (3) randomly chosen nights when the State audited Platinum Plus's compliance efforts.

Defendants (implausibly) suggest what the Independent Monitors witnessed on the three (3) randomly selected nights merely constituted isolated instances of only a few exotic dancers. (Def. Memo. in Opp. at 4.) Defendants then (also implausibly) suggest the Independent Monitors "induce[d] the dancers to bend the rules." (*Id.* at 8.) Of course, Defendants' assertions strain their already strained credibility. And, of course, if Defendants had evidence to support their assertions, they would have presented the same. Defendants presented no such evidence because none exists.

Had the Independent Monitors only witnessed isolated violations, the Solicitor would not have filed the instant Petition. But, the 2015 Consent Order prohibits Defendants from "permitting" such conduct on the Subject Property. The evidence of record—which Defendants awkwardly try to spin in various directions—establishes serial violations. Moreover, the Solicitor presented multiple pieces of evidence establishing Defendants' Champagne Hostesses and personnel turned a blind eye to violative conduct, just like they did in the months before the State initiated the Nuisance Action. Defendants actually knew or were willfully ignorant of the exotic dancers' prohibited conduct and took no—or patently insufficient acts—to remedy it and prevent future instances. As such, they willfully permitted prohibited conduct in willful disobedience of the 2015 Consent Order.

Just one of many examples in the record illustrating Platinum Plus's "institutional" blind eye involved a Platinum Plus Champagne Hostess named Brée. The Solicitor introduced evidence whereby Brée observed, and patently so, violative misconduct occurring between two exotic dancers, including fondling of the breasts, simulated masturbation, simulated sex,

simulated oral sex, and exposed female genitals. (Hr'g Tr. at 72-75, 97.) The testimony confirmed Bree could observe all such conduct from her station in the Champagne Room's bar area; Bree even frequently visited the booth where the dancers engaged in the misconduct to serve drinks. (Hr'g Tr. at 74.) Yet, neither then nor at any point in the hour-long dance did Bree do or say anything about conduct plainly violating the Court's Order. (Hr'g Tr. at 74, 96.) Bree took no action even when she could observe the dancers "rubbing their vaginal areas together," or when one indicated she was going to orgasm, or when the two started spanking each other. (Hr'g Tr. at 73.)

The Independent Monitors likewise confirmed exotic dancers plainly wore clothing violative of the 2015 Order (*i.e.*, "g-string" panties, etc.) (Hr'g Tr. at 63-64, 72, 74, 77.) At no point did Defendants or their employees take action to ensure compliance with the Court's Order. In yet another instance, an employee of Defendants intervened when a customer tried to kiss a dancer in the couch room, confirming his ability to view the dancer and customer. (Hr'g Tr. at 36.) Yet, prior to that, the employee did nothing to intervene when the exotic dancer engaged in simulated sex acts and erotic fondling. (Hr'g Tr. at 35-36.) As a whole, Defendants' employees were present for each of the instances discussed in the foregoing paragraph where dancers openly engaged in conduct prohibited by the Court's Order. They did nothing to try to comply with the 2015 Order and stood complicit with its violation.

The Solicitor introduced evidence demonstrating the State informed Defendants of conduct violative of the Consent Order in January 25, 2016. (*See, e.g.*, Pet. Rule Show Cause, Ex. E at 2.) Yet, a few months later, the Independent Monitors observed continued, serial non-compliance.

The State also introduced the testimony of Ashton Taylor Padgett ("Padgett"). Defendants operate under the misimpression Padgett's testimony somehow helped them. (Def. Memo. in Opp. at 9.) Defendants are wrong.

Padgett testified she applied to work as an exotic dancer at Platinum Plus on or about March 29, 2016. (Hr'g Tr. at 104-108.) Padgett confirmed Defendants presented her with certain documents (State Exhibits 7 & 8) during her application process. (*Id.* at 106-107.) And the State introduced the exhibits into evidence without any specific objections raised by Defendants.

State Exhibit 7, entitled "Entertainer Agreement," proves telling of Defendants' intent. The first line of Exhibit 7, in all caps and bold type, states: "**THIS IS A LEGAL CONTRACT.**"¹⁵ (State Ex. 7 at 1.) Paragraph 2 then identifies the purpose of the contract as conferring upon Padgett "the right to use certain areas of the Premises for activities related to the presentation of live semi-nude and/or nude dance entertainment to the adult public." (*Id.*) Paragraph 6 states:

Property Rights. The Club has no right to direct or control the nature, content, character, manner or means of Entertainer's entertainment services or for her performances, except to ensure that no violations of law occur on the Premises.

(*Id.* at 2.) Paragraph 7 states:

Entertainer shall supply all of her own costumes and wearing apparel. The Club shall not control in any way the choice of costumes and/or wearing apparel made by Entertainer, except that all clothing worn by the Entertainer shall comply with the law.

(*Id.*) Last, Paragraph 8 states:

¹⁵ Page 7 of the Entertainer Agreement states: "**THIS LEASE IS NOT BINDING UNTIL SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE CLUB.**"

Nature of Business. Entertainer understands: (1) that the nature of the business operated at the Premises is that of adult entertainment; (2) that he/she will be subjected to partial and/or full nudity (primarily female) and explicit language; and (3) that he may be subject to advances by customers, to depictions or portrayals of a sexual nature, and to similar types of behavior. Entertainer represents that she is not, and will not be, offended by such conduct, behavior, depictions, portrayals, and language, and that she assumes any and all risks associated with being subjected to these matters.

(*Id.*).

While the passages from Exhibit 7 do purport to state Defendants retain control to ensure compliance with law, nowhere does the Entertainer Agreement disclose the terms and conditions set forth by the 2015 Consent Order. (*See Ex. 7.*) Nowhere does the "Legal Contract" disclose Defendants' mandatory and prohibitory obligations. (*Id.*) As confirmed by Padgett's testimony, Defendants made no *bona fide* effort whatsoever to inform her—as late as ninety (90) days ago—what clothing and conduct proved off-limits by operation of the 2015 Consent Order. (*See Hr'g Tr.* at 108:23-24 ("But I don't recall any specific ruling to dress or activities other than to be careful what I do."); *Id.* at 114:4-5 ("I was never sat down and said, this is what you need to have on."); *Id.* at 114:17-18 (Never told about restrictions on "contact dancing" agreed to by Defendants in Consent Order.) No basic efforts occurred because Defendants simply did not care about compliance.

Apparently, Defendants now contend (or, more correctly, spin) their Entertainer Agreement "spelled out" the "rules," *see, e.g., Id.* at 114:8-10, but, in fact, the agreement's terms facially violate the 2015 Consent Order and confirm—in black and white type—Platinum Plus's intent to operate in a fashion *exactly* opposite to what Defendants promised the State, and the Court ordered, as a condition to re-opening. To make matters worse, the conduct

described in the Entertainer Agreement has been prohibited on the Subject Property since the execution of the 2002 Consent Order.

Defendants did not and, in fact, could not have offered evidence to rebut the Solicitor's showing in this regard. And, scant evidence could be more damning of Defendants' willfulness than a nine (9) page contract, carefully authored, succinctly crafted, intentionally presented to would-be exotic dancers, and purposefully executed by Platinum Plus. By its nature, a contract's terms embody the contracting parties' intent—here, an unlawful one.

The evidence of record also demonstrates Defendants took affirmative action to conceal their dancers' conduct from the Plaintiff. The 2015 Consent Order requires Defendants to maintain video surveillance equipment "sufficient to capture reviewable video footage...of all places where Dancers interact with customers inside the Subject Property." (2015 Consent Order at 6.) Yet, Defendants installed cameras that excluded areas of the Couch Room, *see* Hr'g Tr. at 37-38, and obscured booths in the Champagne Room, *see* Hr'g Tr. at 26, 38; Pet. Rule Show Cause Ex. E at 1.

When the Solicitor notified Defendants of the violation, Defendants conceded the video equipment in the Champagne Room lacked sufficient coverage but assured the Solicitor they would refrain from using the obscured booths. (Pet. Rule Show Cause Ex. E at 1.) Nonetheless, video surveillance confirms Platinum Plus continued to use the obscured booths, despite their representations to the contrary. (*See* Pet. Rule Show Cause Ex. E at 2.) Indeed, video footage confirms exotic dancers intentionally avoided areas covered by surveillance and used the obscured booths instead. (Hr'g Tr. at 38.) Yet, Platinum Plus never remedied the video deficiencies or undertook measures to ensure the obscured booths remained unused, as represented.

Finally, Defendants refused to deliver video footage from May 13 and 14, 2016 which the Solicitor requested pursuant to the 2015 Consent Order. (Hr'g Tr. at 40-41.) Although Defendants know they were obligated to supply the footage, and although Defendants know they have not done so, they continue to refuse to supply the same. And, yet, they strenuously urge they have complied with the Court Order and have nothing to hide. Plainly they do and plainly it is willful.

Moreover, Defendants cannot plead ignorance of the dancers' prohibited behavior. Defendants had an obligation—if they had any good faith intention to abide by the Court's Order—to hire sufficient employees to observe their premises and ensure those employees understood Defendants' compliance obligations. The evidence confirms this never occurred.

While Mr. Gaines may resort to jokes portraying his violations of the Court's Order as a "vicarious" contempt, *see* Def. Memo. in Response, p. 14, the State would respectfully call it something else—intentionally and willfully failing to pursue the most minimal effort to comply with what Gaines promised and the Court ordered. And, while Mr. Gaines suggests he lacked knowledge about how the company—he *solely* owns—was being operated, his affidavit from April of 2015 reports a markedly different story—one where Gaines possesses a detailed, ongoing knowledge of Platinum Plus's operations. (*See, e.g.,* Ex. C.)

Moreover, as a named tenant of the Subject Property, *see, e.g.,* Affidavit of Thomas Schweitzer, Ex. A (lease), and as the sole owner of Elephant, Inc. (which contrary to defense counsel is the owner, not a "holding" company), *see* Affidavit of Gregory Gaines, Gaines, is charged with knowledge of the business practices of the Company he alone owns and controls at the Subject Property he alone leased for himself and EI as named tenants.

The Solicitor would further note Platinum Plus could have reviewed its own video footage to ensure compliance with the Court's Order. Yet, Defendants either did so and took no remedial action. Or, Defendants could not be bothered to monitor the footage to ensure whether they remained in compliance with the Court's Order. Either scenario supports a finding of willful disobedience.

This is particularly true after January 25, 2016, when the Solicitor's Office informed Defendants that they had discovered violations of the 2015 Order by reviewing the video footage supplied by Defendants. (Pet. Rule Show Cause, Ex. E at 2.) Thenceforth, Defendants were on notice that violations of the 2015 Consent Order were occurring and could be observed by their employees and through video surveillance, already in their possession. Subsequent violations were either observed and permitted by Defendants or allowed through willful ignorance and inaction. Taken in its totality, the evidence introduced by the Solicitor proves beyond a reasonable doubt that Defendants willfully disobeyed the 2015 Order.

The Defendants' sustained and flagrant violations of the Court's 2015 Order challenge the Court's authority. As the state Supreme Court has decided, "Every act which tends to frustrate the mandates of a Court of justice is a contempt of its authority." *Long v. McMillan*, 86 S.E.2d 477, 482 (S.C. 1955). For over one year, the Defendants' obstinacy, prevarication, and egregious disregard for this Court's Order undermined both its authority and the administration of justice.

Defendants have consistently and flagrantly violated the 2015 Consent Order. As noted, their violations began less than a week after the premises reopened pursuant to the 2015 Consent Order. (Hr'g Tr. at 31.) This flagrant disregard proves reminiscent of the defendant in *Ex parte Jackson*, who began accumulating debris on her property less than a week after the

city remedied her initial violation. *Ex parte Jackson*, 672 S.E.2d 585, 587-88 (S.C. Ct. App. 2009). Defendants' violations continued for months after they received notice from the Solicitor.

Aside from improperly placing cameras, Defendants took no steps to comply with the Court's mandates and prevent or stop prohibited conduct. Moreover, the prohibited conduct is grossly contemptuous. Defendants are not merely tolerating prohibited g-string thongs; they are observing and permitting dancers to, *inter alia*, run ice cubes in their mouths along the length of each other's vaginal openings in an egregious display of simulated oral sex. (Hr'g Tr. at 96.) Most damning of all, Defendants' business interests take advantage of the Court's indulgence. The likelihood of most instances of prohibited conduct will be discovered by the State is minimal, due to their poor camera coverage, the infrequent and random video audits, and the limited funds available for Independent Monitor visits.

Even when caught, Defendants contend they need only terminate the dancer, an independent contractor in whom Defendants have invested no resources, to claim compliance. They do not disgorge the profits gained from the dancers' conduct. (*See* Hr'g Tr. at 72.) In short, Defendants have made a sophisticated business calculation to violate the 2015 Order, just like they made a sophisticated business decision when they previously violated the 2002 Order. As a consequence, Defendants' behavior merits the punitive sanctions of criminal contempt to uphold the Court's authority as the administrator of justice.

Defendants' conduct has rendered the sanctions limited to civil contempt inappropriate and insufficient. Defendants have used the past year for flagrant, repeated, and egregious disobedience. They have shown and show today no willingness to attempt compliance. Even at this late stage, Defendants protest their innocence while casting aspersions on law enforcement

and the Solicitor—as if the State preferred to expend resources to compel Defendants to honor what they promised as opposed to Defendants acting honorably by fulfilling their agreement and the Court Order.

Additionally, mere conditional sanctions prove impractical to coerce compliance, where as here, compliance with the 2015 Consent Order involves refraining from prohibited conduct as opposed to performing a positive act, which can more easily be compelled. Indeed, the United States Supreme Court has suggested that prohibitive orders are more attuned to criminal contempt and its punitive sanctions. *See Gompers*, 221 U.S. at 443 ("The distinction between refusing to do an act commanded (remedied by imprisonment until the party performs the required act), and doing an act forbidden (punished by imprisonment for a definite term), is sound in principle and generally, if not universally, affords a test by which to determine the character of the punishment.") (quoted with qualified approval in *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 834 (1994)). Civil contempt alone falls far short of Defendants' conduct.

Any attempt by Defendants to claim impossibility or a good faith attempt at compliance outright fails. Defendants have offered no evidence that compliance is impossible, and, in any case, there is no evidence their business situation has materially changed since their negotiation of and agreement to the 2015 Consent Order. Under South Carolina law, the good faith defense requires a minimum of compliance up to the offender's ability. Defendants have presented no such evidence. As such, punitive sanctions are requisite to vindicate the authority of the Court. The criminal contempt penalties suggested by the Solicitor as possible sanctions for the Court to consider appear in the final section below.

D. Civil Contempt Must Be Levied For Plaintiff's Benefit

Regardless of the Court's ruling on criminal contempt, the Court should also impose civil contempt penalties to coerce the Defendants to comply with the 2015 Consent Order. As the foregoing analysis establishes with clear and convincing evidence, Defendants willfully violated the 2015 Court Order. (*See supra* Section II.B(a).) Civil contempt is, therefore, appropriate to coerce Defendants' compliance with the 2015 Order for the purpose of curing the prejudice incurred by the State due to Defendants' non-compliance. Otherwise, the Defendants will have obtained the *quid* from the Solicitor without delivering their reciprocally obliged *quo* to the State.

Pursuant to the terms of the 2015 Consent Order, the Solicitor dismissed all claims, for which he had "sufficient evidence...[that] a presiding judge could find Platinum Plus constituted a public nuisance within the meaning of the Nuisance Statute." (2015 Consent Order at 3.) Defendants' conduct constitutes willful abandonment of their reciprocal obligations, as they have neither complied nor made serious attempts to comply. Where the Solicitor forewent his right to proceed to trial against them, civil contempt properly lies to coerce Defendants' satisfaction of their reciprocal obligations to the State.

E. Defendants' Objections Are Meritless

Defendants have raised a series of objections but none have merit:

1. Defendants Had Five Weeks to Prepare For the June 14th Hearing.

Defendants initially claim they had an inadequate opportunity to prepare. (Def. Memo. in Opp., p. 6.) This argument, at best, proves disingenuous for several reasons. They include:

First, the Court conducted a conference call on May 6, 2016 regarding the scheduling of a hearing date on the Solicitor's Petition for a Rule to Show Cause. (Hr'g Tr. at 5.) Over the Solicitor's objection, the Court granted Defendants a five (5) week period to retain new counsel (if they so chose) and to prepare for the hearing. (*Id.* ("And part of the Court's rationale was to make sure that the Defendants had proper representation and that they had time to prepare for presentation of the case by the State."))

Second, Defendants failed to make any evidentiary showing supporting their assertions. Defendants submitted no competent evidence explaining why five (5) weeks proved insufficient time to hire counsel. In fact, defense counsel altogether failed to identify when Defendants first contacted them and when they were actually retained. While the Solicitor does not mean to cast aspersions in any way, the State has legitimate grounds to inquire why Defendants failed to make any such showing, since the failure to do so suggests contact and retention likely occurred earlier than the defense's arguments suggest.¹⁶

¹⁶ Since defense counsel has interjected the timing of their retention into this dispute and, indeed, bottoms constitutional arguments on the same, the Solicitor would ask the Court to inquire whether Defendants desire to continue pursuing such arguments or to abandon them. If Defendants persist with the former, the Solicitor would ask the Court to require defense counsel to verify by affidavit when Defendants first contacted them, when they were retained, and attaching a true and accurate copy of their respective engagement letters (appropriately redacted). As noted herein, earlier in this proceeding, Defendants made statements contrary to those now made. If retention issues are to remain in this case, defense counsel should submit sworn submittals confirming the actual timeline. And the Solicitor would like the record to be clear that the State specifically asked for the same. Out of fairness to opposing counsel, though, the Solicitor would disclose that he now believes he can independently establish the actual hiring chronology. And, while the Solicitor is sure such tactics are not occurring in this case, there has been a recent uptick of attempts by defendants to create Sixth Amendment issues by intentionally delaying counsel's appearance and then claiming they do not have time to secure the lawyer of their choosing. For all parties involved, then, it would be best to establish the actual chronology—by sworn submittal from defense counsel—to allow a proper record for a reviewing a court.

Moreover, no evidentiary showing explicates why—as of June 14, 2016—Mr. Sirkan still had not filed a motion for *pro hac vice*, a form application which can be executed in ten (10) minutes. With respect to a hearing scheduled a month and a half in advance, the State believes objective reasonability required an evidentiary basis supporting good cause for an even further delay. But, Defendants made no such showing.

2. Defendants Jury Trial Arguments Defy Logic.

Contrary to their assertions, *see* Def. Memo. in Opp., p. 2, Defendants do not possess a right to a jury trial. Defendants would only have a constitutional right to a jury trial before the Court imposed a criminal sentence of more than six months incarceration. *Curlee v. Howle*, 277 S.C. 377, 385, 287 S.E.2d 915, 919 (1982); *Frank v. United States*, 395 U.S. 147, 150 (1969) ("[T]his Court has held that sentences for criminal contempt of up to six months may be constitutionally imposed without a jury trial."). The State does not ask the Court to impose a sentence exceeding six months but acknowledges it is within the province of the Court to decide.

Defendants' analysis nonetheless makes no sense. Without citing any authority, Defendants assert: "[I]t remains the Court's sole discretion to incarcerate the defendants for period greater than six months and it is in the defendant's exposure...which triggers the defendants' Sixth Amendment." (Def. Memo. in Opp. at 2.) As a constitutional ceiling, the Court cannot impose a sentence greater than six months without affording Defendants a jury trial; the Court has no "discretion" to impose a sentence greater than six months. *Curlee*, 277 S.C. at 385. Thus, absent a jury trial, no "exposure" over six months exists. Simply no Seventh Amendment issue exists.

As to civil contempt, the right to a jury does not attach. *Bagwell*, 512 U.S. at 827 ("[C]ivil contempt sanctions . . . may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required.") Thus, Defendants' analysis similarly errs in this regard.

3. A Consent Order Does Not Equate to a Civil Settlement.

Defendants serially and errantly refer to the 2015 Consent Order as a "civil settlement agreement." Defendants, therefore, conclude the Court cannot enforce a judicial decree by operation of its contempt powers. Demonstrably untrue. Defendants fundamentally misapprehend the nature and purpose of Consent Orders.

A Consent Order, "although founded on the agreement of the parties, is a judgment." *United States v. Kellum*, 523 F.2d 1284, 1287 (5th Cir. 1975). It exists as "a hybrid of a contract and a judicial act." *Local No. 93, Int'l. Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 519, 106 S. Ct. 3063, 92 L. Ed. 2d 405 (1986); see also 46 Am.Jur.2d §186 ("Consent decrees have attributes both of contracts and judicial decrees.") A Consent Order "mirrors a contract in that it reflects 'an agreement by the parties,' and it is a judicial act because it 'places the power and prestige of the court behind the compromise struck by the parties.'" *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983).

"Courts are not reduced to approving" Consent Orders only to hope "for [their] compliance." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 440, 124 S. Ct. 899, 157 L. Ed. 2d 855 (2004). "Once entered, a consent decree may be enforced." *Id.*; see also *Smyth v. Rivero*, 282 F.3d 268, 276 (4th Cir. 2002) (A Consent Order "is entered as an order of the court, receives "court approval" and is subject to the "oversight attendant to the court's

authority" and "contempt powers."). Indeed, Courts have an obligation to "protect the integrity of [their] decree with contempt powers." *Williams*, 720 F.2d at 920.

Despite its adoption by judicial decree, Defendants contend the 2015 Consent Order proves identical to a run-of-the-mill settlement contract and, therefore, fails to implicate the Court's inherent contempt powers. (Def. Memo. in Opp., p. 4.) Of course, Defendants cannot and did not cite any actual legal authority to support their position. (*Id.*) And, if Defendants' arguments proved correct, Consent Orders would serve no purpose. The core purpose of a Consent Order reinforces the Parties' brokered "compromise... to obtain its more ready enforceability by" the Court.¹⁷

As discussed above, the Parties specifically negotiated and agreed to incorporate their Settlement Agreement into a Consent Order to ensure compliance by operation of the Court's contempt power. (*see supra*; 2015 Order, pp. 1-2, 8-9.) Accordingly, Defendants' arguments altogether lack merit.

4. No Fifth or Sixth Amendment Infirmities Exist.

Defendants next contend they have had their Fifth and Sixth Amendment rights abridged. As with all of Defendants' arguments, such contentions lack factual and legal merit for multiple reasons. They include:

First, Defendants errantly contend the Solicitor abridged their Due Process rights by: (1) supporting the State's Petition with "anonymous affidavits," *see* Def. Memo. in Opp.,

¹⁷ Multiple examples prove Defendants' argument as flatly wrong. For example, consent orders routinely issue in Family Court, where judges also routinely hold Defendants in criminal contempt when they are violated. Other examples include: run-of-the-mill injunction cases, environmental cases, disciplinary proceedings—all of which are civil proceedings—where consent orders commonly eventuate and Courts enforce the same with both criminal and civil contempt powers.

p. 4, and (2) serving the State's Petition on Attorney Randall Hiller. (*Id.*) The Solicitor will address Defendants' arguments in turn.

Defendants previously raised their objection to the "anonymous affidavits" at the June 14, 2016 Contempt Hearing. (Hr'g Tr. at 12-13.) As the State indicated at that time, the Solicitor redacted the Independent Monitors' names in the public record to preserve their anonymity for future operations and specifically noted that fact in the Verified Petition.¹⁸ (Compare *Id.* with Verif. Petit. at 5, ¶11.) However, as the Verified Petition further notes, the Independent Monitors' names would be readily made available to both Defendants and the Court if deemed necessary to the proceedings. (Hr'g Tr. at 12-13.) Such redactions prove perfectly lawful in this State. *State v. Humphries*, 354 S.C. 87, 90 (S.C. 2003).

Indeed, when Defendants raised the issue at the hearing, it appeared they had not even read the passage. (*Id.*) Nor did defense counsel ever ask the Solicitor for the individuals' names. Moreover, the testimony of both Independent Monitors tracked the affidavits attached to the Petition and defense counsel cross-examined both at length.

No evidence of record substantiates any prejudice resulted from Defendants' knowing the substance of the Independent Monitors' testimony in advance but not their names. Defendants cannot legitimately complain about the redaction of undercover law enforcement agents' names when they failed even to ask the Solicitor to provide the information, which would have been forthcoming so long as Defendants would agree not to misuse the information. (*Id.*) Indeed, such a request is required under the common law of South Carolina

¹⁸ As noted by the Independent Monitors during the June 14th hearing, they otherwise work as undercover investigators for a local law enforcement agency. (Hr'g Tr. at 86:3-8.)

before Defendants can raise it in a proceeding.¹⁹ *State v. Batson*, 261 S.C. 128, 136 (S.C. 1973) ("[W]e conclude that a request to be timely should be made prior to the commencement of the trial where as here all of the facts other than identities were known to the accused."

As to the service of process issues, Defendants fair even worse. First off, the passage cited by Defendants does not state what they claim. (Def. Memo. in Opp., p. 5.) The Solicitor stated: "Mr. Hiller made it very clear at the outset that he was not an attorney of record on this *particular aspect of the case*." (Hr'g Tr. at 14:21-24 (emphasis added).) More importantly, however, on May 13, 2016, Mr. Hiller plainly accepted service of process on behalf of both Defendants. The Solicitor has attached as Exhibit B the Acceptance of Service personally executed by Mr. Hiller. The Acceptance of Service states:

The undersigned hereby certifies that he is duly authorized by the Defendants Elephant, Inc. and Gregory Kenwood Gaines to accept service of process in the above-captioned matter. Two copies of the following documents and pleadings and one check for \$25.00 payable to Gregory Kenwood Gaines:

- Petition for the Rule to Show Cause
- Verification
- Rule to Show Cause
- Subpoena for Gregory Kenwood Gaines

I, the undersigned, do hereby certify that the herein-referenced documents were delivered via hand-delivery.

¹⁹ Defendants suggest they were entitled to know the witnesses' names to the extent the proceeding sounded in civil contempt. Defendants are—once again—flatly wrong. No such disclosure is required in South Carolina State Court, unless propounded in a discovery request. Defendants made no such requests. Notwithstanding the same, the Solicitor still supplied Defendants with a witness list. Of note, Defendants—once again—announce legally incorrect arguments without citing any authority.

(See Ex. B.) The Solicitor would have expected Defendants to have disclosed this fact to the Court when factually representing they had not properly received service. They did not.

In addition, throughout the monitoring period contemplated by the 2015 Consent Order, Mr. Hiller served as Defendants' counsel with respect to compliance issues. (See, e.g., Verif. Petit., Ex. E.) As of the service date (*i.e.*, May 13, 2016), Mr. Hiller had not filed a motion to withdraw and remained as counsel of record, although the Solicitor acknowledges he did indicate "he was not an attorney of record on this *particular aspect of the case*." (Hr'g Tr. at 14:21-24 (emphasis added).)²⁰ Defendants simply have supplied no basis supporting their contention that the Solicitor did not properly serve Defendants when Mr. Hiller certified he, in fact, had the authority to accept service on their behalf and did so. Thus, Defendants' concealment of such facts from the Court remains troubling to the State.²¹

Second, The Solicitor next addresses Defendants' Sixth Amendment arguments. As an initial matter, the Solicitor reincorporates his comments from Footnote 16, above. If Defendants elect to pursue such argumentation, their arguments still utterly fail. This is

²⁰ As an additional matter, pursuant to the 2015 Consent Order, Defendants stipulated to the Court's personal jurisdiction over them and they clearly received notice of the Verified Petition. (See Hr'g Tr. at 5.) Defendants also have submitted no evidence of record to support any contention that Mr. Hiller lacked authorization to accept service of process, which he could have done regardless of whether he intended to remain as counsel of record.

²¹ The game-playing about representation and service of process issues proves reminiscent of the underlying Nuisance Action. In the Nuisance Action, EI's registered agent refused to come to the door for service. When the State served EI's General (Daytime) Manager, he represented he had the authority to accept legal papers. Then, in Court filings, EI represented he did not. Issues with representation also existed. Defense counsel indicated he did not know whether he represented Defendants only to appear on the nightly news answering questions on Defendants' behalf and identifying himself as their counsel. Such conduct only serves as further indicia of Defendants' lack of respect of this Court and its proceedings.

because a trial court does not abridge Sixth Amendment protections by adhering to state *pro hac* mandates even if it results in a defendant being denied access to out-of-state counsel of his choosing. *United States v. Menner*, 374 F.App'x. 446, 447 (4th Cir. 2010) (unpublished), *cert denied*, 131 S.Ct. 191, 178 L.Ed.2d 114 (2010). Of course, a Defendant does not have a right "to insist on representation by a member who is not a member of the [South Carolina] bar," and who otherwise lacks the requisite approvals to represent a client in a South Carolina Court. The Sixth Amendment's safeguards do not operate as a "get-out-of-jail" free card for out of state attorneys to engage in the unauthorized practice of law, a crime in this State.

By a like token, a defendant's right to counsel "is only a qualified one" and "the opportunity guaranteed is only a 'fair' one." *Sampley v. Attorney General of North Carolina*, 786 F.2d 610, 612-16 (4th Cir. 1986). "Obviously a defendant has no constitutional right to dictate the time, if ever, at which he is willing to be tried by simply showing up without counsel, or with allegedly unsatisfactory counsel, whenever his case is called for trial...or by objecting that counsel then retained is not presently "counsel of his choice." *Id.* (internal citation omitted). This analysis applies here.²²

As noted above, Defendants had five (5) weeks to retain counsel. By the time of the June 14, 2016 hearing, Defendants' "counsel of choice" had not even filed the basic form, *pro hac vice* motion. Defendants offered no affidavits or testimony why they could not retain counsel in the intervening month's time.

²² The Solicitor would also note that Defendants contend their primary choice in counsel is Mr. Sirkin, a "distinguished First Amendment lawyer" from Ohio. Yet, nowhere in their closing do Defendants even raise a single First Amendment issue. (Hr'g Tr. at 7:10.)

Indeed, Defendants never even substantiated the engagement date of counsel or the date counsel was first contacted but appeared to remain intentionally vague about the same. No evidence supports a finding that Defendants did not receive a "fair" opportunity to retain the counsel of their choosing. Defendants, not the State, elected to omit such evidence. Accordingly, this Court afforded Defendants a "fair" opportunity and Defendants simply did not avail themselves of that opportunity. No Sixth Amendment infraction exists under the facts at bar.²³

5. Defendants Raise Specious Arguments Under the 2015 Order.

Defendants next raise several arguments under the 2015 Consent Order, which have no textual basis. For example, Defendants complain about how the Independent Monitors investigated their compliance. The 2015 Consent Order does not place limitations on how the Independent Monitors can or should investigate Defendants' compliance with the Court Order. (2015 Order at 6.) The Monitors work at the pleasure of the Solicitor, not the Defendants. (*Id.*)

²³ Defendants suggest abusive litigation tactics occurred because the Solicitor subpoenaed Mr. Hiller to the June 14, 2016 hearing. Such suggestion simply demonstrates Defendants' willingness to do and say just about anything to misdirect. It also evidences their lack of respect for this Court. Indeed, Defendants cannot have it both ways. Mr. Hiller represented to both the Solicitor and the Court that he would not appear in this particular matter. Such representations occurred at the beginning of May. Yet, now Defendants claim the issuance of a subpoena to Hiller—shortly before the hearing several weeks later—"severely disadvantaged" them by leaving them with "time so short." To make matters worse, Defendants appear to suggest the Solicitor violated Rule 3.7, SCACR. Such accusations altogether lack any factual basis push the outer-limits of the litigation privilege. The Solicitor had a perfectly legitimate reason to subpoena Mr. Hiller, which was abated when Defendants elected to present no evidence and stipulated to the video footage's authenticity.

As noted, the subject provisions inure to the benefit of the State to ensure compliance, not Defendants. (*Id.*) Defendants, in fact, did negotiate certain limitations on the Monitors' activities. For example, the Monitors could visit the Subject Property no more than twenty (20) hours per month. (*Id.*) Defendants sought to impose additional limitations, which the Solicitor rejected.

Moreover, the only way the Independent Monitors could determine whether Platinum Plus satisfied the Court Order—in restricted parts of the club—was to do exactly what they did. If Defendants' arguments rang true, the Solicitor could never deploy the Monitors into the Champagne Room without first alerting Defendants. Of course, as the Court recalls from prior proceedings, most of Platinum Plus's unlawful conduct occurs in the Champagne Room. So, essentially Defendants claim they were entitled to prior notice before the Independent Monitors could audit the historically most non-compliant area of Platinum Plus, presumably so they could/would have a chance to halt their contumacious conduct before the Monitors could witness the same and report it to the Solicitor. This is plainly neither the letter nor the spirit of the provision, which was authored to ensure Defendants' compliance.

Just like in the underlying Nuisance Action, in the face of unequivocal evidence, Defendants have no other response but to level *ad hominem* attacks at law enforcement agents and the Solicitor.²⁴ And, instead of merely expending resources on compliance with the

²⁴ Platinum Plus also complains how much money the Independent Monitors spent in the club. (*See* Def. Memo. in Opp., p. 8.) Of course, this proves entirely ironic since the amount of money spent directly corresponds to what Platinum Plus charges and, in reverse fashion, evidences Defendants' profiteering from their contumacious conduct.

Court's Order, Defendants have elected to violate the Order and spend their resources on hiring celebrity, out-of-state lawyers to construct their defense.

Defendants also complain the Solicitor did not introduce evidence that the Independent Monitors' reports were sent to them. This is inaccurate. There was, in fact, testimony confirming the Solicitor sent the reports to Platinum Plus. (Hr'g Tr. at 88:5-15.)²⁵

Of course, such evidence did not establish any part of the Solicitor's *prima facie* case. And, if Defendants wished to rely upon such assertions in connection with offering a defense, which would fail since such assertions were, in fact, false, then Defendants had an obligation to present the evidence themselves when the burden shifted to them. They did not and could not.

To make matters worse, Defendants appear to suggest the 2015 Consent Order somehow conferred upon them a right to cure if they failed to satisfy the Court Order's obligations. Not so. No such language appears in the 2015 Order. Nor was it ever intended. Defendants simply invent the same from whole-cloth.²⁶ While long on accusations, Defendants

²⁵ Of note, defense counsel did not object to any such testimony, nor did he move to strike it. In addition, since forwarding of the reports was required by a Court Order, the testimony relates to acts of independent legal significance and constitutes a non-hearsay usage. The testimony also arose in response to questioning by defense counsel and, therefore, came into evidence as a statement of a party opponent.

²⁶ To the extent the Solicitor's Petition sounds in civil contempt, the State questions Defendants' good faith factual basis under Rule 11, SCRCP for raising many of the arguments in its Closing. For example, Defendants argue they had to hire new counsel because the Solicitor subpoenaed Randy Hiller. Yet, Mr. Hiller himself informed the Court weeks earlier he would not be appearing in this aspect of the case, which was the reason for the five (5) week delay. Defendants state the Solicitor failed to serve Defendants through Hiller when Mr. Hiller himself executed a certification he had the authority to do so. Defendants contend no Monitor reports were forwarded to them, when, in fact, they were. The Solicitor also believes a further inquiry may very well reveal defense counsel had been contacted and/or retained much earlier than their submittal suggests. If true, many of the arguments raised would appear as intentionally contrived by Defendants, which, in turn, also evidences an intentional design to

prove short—as in non-existent—with respect to actual evidence supporting their defense or any of the accusations they presently lob.²⁷

F. Remedies Available To The Court

(1) Remedies for Criminal Contempt

Given the serial nature of Defendant's conduct, this Court should levy the maximum allowable sanction. Criminal contempt sanctions are levied for punishment and deterrence. *Curlee*, 287 S.E.2d at 919. Available sanctions can include *inter alia* definite and unconditional fines and/or imprisonment. *Poston*, 502 S.E.2d at 90–91 (providing examples of criminal contempt sanctions).

These sanctions are imposed independently of compliance, as they are exercised for the court's authority rather than the complainant's benefit. *Gompers*, 221 U.S. at 443 ("[T]he defendant is furnished no key, and he cannot shorten the term by promising not to repeat the offense. Such imprisonment operates . . . solely as punishment for the completed act of disobedience."). The sanction rests in the court's discretion. *Miller*, 652 S.E.2d at 760.

Indeed, this Court is limited solely by the lack of a jury trial, which prohibits levying an imprisonment of more than six months, *see supra* Section II.D, or fines that are serious

violate and dodge the Court's order. The Solicitor understands attorneys can sometimes get confused. But, Defendants have raised a series of distinct factual arguments, which prove demonstrably wrong, suggesting, at a minimum, no investigation occurred before raising such contentions.

²⁷ During the hearing, Defendants incorrectly contended that Rule 45 requires trial subpoenas to be furnished to opposing counsel before a witness under subpoena takes the stand. (Hr'g Tr. at 106–07.) No such language appears in Rule 45, SCRCP. Litigants must furnish opposing parties with subpoenas *duces tecum*, not subpoenas *testificandum*. While Defendants again make bald assertions, they cannot actually cite the Court with any authority supporting their position. Furthermore, even if such a rule existed, Defendants stipulated to receiving the Solicitor's witness list in advance of the hearing date, which supplied Defendants notice of every witness the Solicitor called. (Hr'g Tr. at 119.)

given the financial ability of the contemnor, *see Bagwell*, 512 U.S. at 837 n.5 ("[T]he imposition only of serious criminal contempt fines trigger the right to a jury trial."); *see also Ex parte Griffin*, 682 S.W.2d 261, 264 (Tex. 1984) ("[The Supreme Court] seems to require an inquiry by the court into the financial ability of the contemnor to pay the imposed fine...") (citing *Muniz v. Hoffman*, 422 U.S. 454, 477 (1975)); *N.Y.C. Tr. Auth. v. Transp. Workers Union of Am., AFL-CIO*, 822 N.Y.S.2d 579, 614 (N.Y. App. Div. 2006) (finding \$1 million fine not serious "given [contemnor's] financial circumstances") (citing *Muniz*, 422 U.S. at 477).

The sustained and serial nature of Defendants' conduct requires a comparably serious punitive sanction. Fourteen years ago, at *their* prompting, Defendants negotiated a Consent Order defining, explaining, and illustrating their obligations under the law. (2002 Order.) Defendants flagrantly disregarded their obligations under the 2002 Order, which, in no small part, resulted in the Solicitor having to initiate the Nuisance Action. (*Compare* Nuisance Petition with 2015 Order.)

One year ago and, perhaps, falling in the "fool me twice category" for the State, Defendants again executed a Consent Order. (2015 Order.) Nonetheless, within a week of reopening, Defendants *again* commenced violating their promises to the State and obligations to the Court. Accordingly, Platinum Plus has consistently flouted its obligations to both this Court and the State.

For these reasons, the State asks the Court to consider the following sanctions for criminal contempt:

- The Court should issue an injunction preventing Platinum Plus from operating for an additional period of six (6) months.²⁸
- The Court should sanction Platinum Plus a monetary fine of two-hundred and eighty thousand dollars (\$280,000.00), which would total a fine of roughly ten thousand dollars (\$10,000.00) per violation established by the Solicitor;
- The Court should imprison Gregory Kenwood Gaines for a term of no less than one-hundred and twenty (120) days.

While the Solicitor recognizes such penalties are strong, lesser penalties have previously failed and the challenges to this Court's authority by the Defendants have been serial and substantial. The Court should impose sanctions in such fashion as to safeguard the sanctity of its authority and restore the esteem of the judicial process. Otherwise, each time a litigant disregards a Court Order, without a swift and appropriate judicial response, the benchmark of judicial authority perpetually sinks a notch. Here only severe sanctions protect the Greenville County Court of Common Pleas.

(2) Remedies for Civil Contempt

Purposed to coerce compliance, civil contempt sanctions are conditioned on and terminate upon compliance with the court order. *Poston*, 502 S.E.2d at 89. Available sanctions include *inter alia* fines, whether definite or *per diem*, and/or imprisonment. (*Id.* at 90 (providing examples of civil contempt sanctions).) However, contemnors "carry the keys of their prison in their own pockets," and the contemnor must be able to reverse the sanctions

²⁸ See, e.g., *State ex rel. Love v. Howell*, 285 S.C. 53, 57 (1985) ("We hold that George L. Howell was in contempt of court...The trial judge has full authority to imprison him or fine him or both or close up his entire business operation if necessary to assure full compliance with the injunctive orders heretofore issued by the Court of Common Pleas.")

with compliance. *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 632 (1988) (quoted in *Poston*, 502 S.E.2d at 89). In one exception to this rule, unconditional compensatory damages may be awarded to reimburse the plaintiff for the harm of the contemnor's behavior. *Curlee*, 287 S.E.2d at 919-20; *see also Bagwell*, 512 U.S. at 829. These may include plaintiff's attorney's fees. *Poston*, 502 S.E.2d at 90. Unlike the punitive sanctions of criminal contempt, civil contempt sanctions are for the Plaintiff's benefit and must be calculated to exact compliance. *Hicks*, 485 U.S. at 631 (quoted in *Poston*, 502 S.E.2d at 88).

The Solicitor would ask the Court to consider the following civil contempt sanctions:

- If no closure results from criminal contempt, the Court should close Platinum Plus for a period of six (6) months as civil contempt.²⁹ Such penalty proves remedial in nature since the benefit to the State of the 2015 Order was to prevent recurrence of the public nuisance at the Subject Property. The State has not received the benefit of its bargain. Closure for six (6) months will ensure abatement occurs (*i.e.*, the objective of the 2015 Order) before any re-opening occurs.
- Upon re-opening, the Court should institute an additional six (6) month heavy monitoring program coupled with the video footage as provided for in the 2015 Consent Order. Since Platinum Plus commenced violating the 2015 Order almost immediately, the Court should prolong the non-monetary terms of the Consent Order for an equal duration.

²⁹ *See, e.g., Buffalo Wings Factory, Inc. v. Mohd*, No. 1:07-CV-612-JCC, 2008 WL 4642163 (E.D. Va. Oct. 15, 2008) (Noting in a contempt proceeding: "[T]his Court has the ability to order Defendants and Respondents to shut down the restaurant until they comply with the CO and the Contempt Order.")

- During that time, should continued infractions become unearthed, the Court should attach automatic monetary sanctions to each and every infraction.

III. CONCLUSION

Defendants continue to play games. They have evinced a disregard for state and local law and now two separate Orders of this Court. Accordingly, the Solicitor asks the Court to issue appropriate contempt sanctions.

s/Lane W. Davis
Attorneys for the Petitioner

W. Walter Wilkins, III, Solicitor
(S.C. Bar No. 16740)
Andrew Culbreath, Asst. Solicitor
(S.C. Bar No. 14107)
Lane W. Davis
(S.C. Bar No. 68796)
Special Prosecutor
Office of the Solicitor, 13th Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, S.C. 29601
(864)-467-8647
(864)-467-8623

Greenville, South Carolina

June 24, 2016

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2015GS2306040

Alicia Diane Howard

A/W#: 2015A2330201393

AKA:

Date of Offense: 2/13/2015

Race: WHITE Sex: F Age: 21

S.C. Code §: 16-15-0090

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0640

Address: [REDACTED]

City, State, Zip: Simpsonville, SC [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Prostitution / Prostitution - 1st Offense

SENTENCE SHEET

C-30 days or fine

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0090 of the S.C. Code of Laws, bearing CDR Code # 0640

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST

Culbreath, Andrew

14107
SC Bar#

Alicia Howard
Defendant

Attorney for Defendant

2513
SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ 200; provided that upon the service of days/months/years and/or payment of \$ plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Crimin Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	800.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 80.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 10.35
TOTAL	\$	\$ 501.35

days/hours Public Service Employment.

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

OCT 27 2015

ARREST WARRANT

2015A2330201393

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of Greenville

THE STATE 14-052854
against

Alicia Diane Howard

Address:

Simpsonville, SC

Phone: SSN: 5531
Sex: F Race: W Height: 4-20-15 Weight:
DL State: SC DL #:
DOB: Agency ORI #: SC0230000
Prosecuting Agency: Greenville County Sheriff's Office
Prosecuting Officer: K Price - 1219
Offense: Sex / Prostitution - 1st offense

Offense Code: 0640

Code/Ordinance Sec: 16-15-0090

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Alicia Diane Howard
on 4/2/15

R. Smith
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

AFFIDAVIT

ORIGINAL

Firm Approved by
S.C. Attorney General
April 21, 2003
SCCA 318

Personally appeared before me the affiant K Price who
being duly sworn deposes and says that defendant Alicia Diane Howard
did within this county and state on or about 2/13/2015 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)
in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on the 13th of February, the Defendant did commit a sexual act in exchange for US Currency in front of an Investigator of the
Greenville County Sheriff's Office acting in an undercover capacity. This offense occurred in Greenville County South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/13/2015 defendant Alicia Diane Howard

did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 2/17/2015

(L.S.)

James V. Hudson
Signature of Judge
James V. Hudson
Judge Code: 5031

Judge's Address Law Enforcement Center

Greenville, SC 29601-2256

Judge's Telephone (864)467-5303

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ROA 000561

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Ashley Renee Walker

AKA:

Race: WHITE Sex: F Age: 31

DOB: SS#:

Address:

City, State, Zip: Forest City, NC

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Prostitution / Prostitution - 1st Offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2306048

A/W#: 2015A2330202446

Date of Offense: 2/20/2015

S.C. Code § : 16-15-0090

CDR Code #: 0640

SENTENCE SHEET

0-30 days or fine

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0090 of the S.C. Code of Laws, bearing CDR Code # 0640

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Culbreath, Andrew

14107

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 200; provided that upon the service of days/months/years and/or payment
of \$ plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

OCT 27 2015

ROA 000563

ARREST WARRANT
2015A2330202446
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville
THE STATE 14-52854
against
Ashley Renee Walker
Address: **Forest City, NC**
Phone: **SSN:**
Sex: **F** Race: **W** Height: **5 5** Weight: **110**
DL State: **NC** DL #: **DOB:** Agency ORI #: **SC0230000**
Prosecuting Agency: **Greenville County Sheriff's Office**
Prosecuting Officer: **K Price - 1219**
Offense: **Sex / Prostitution - 1st offense**
Offense Code: **0640**
Code/Ordinance Sec: **16-15-0090**
This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.
(L.S.)
Signature of Judge
Date:

RETURN
A copy of this arrest warrant was delivered to
defendant **Ashley Renee Walker**
on **4/21/15**
R. Cantu #525 439
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

Personally appeared before me the affiant **K Price**
being duly sworn deposes and says that defendant **Ashley Renee Walker** who
did within this county and state on or about **2/20/2015** violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Greenville**)
in the following particulars:

DESCRIPTION OF OFFENSE: **Sex / Prostitution - 1st offense**

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on the 20th of February, the Defendant did commit a sexual act in exchange for US Currency in front of an investigator of the
Greenville County Sheriff's Office acting in an undercover capacity. This offense occurred in Greenville County, South Carolina.

Signature of Affiant
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville
Affiant's Address: **4 Mcgee Street**
Greenville, SC 29601-
Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about **2/20/2015** defendant **Ashley Renee Walker**
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **Greenville**) as set forth below:

DESCRIPTION OF OFFENSE: **Sex / Prostitution - 1st offense**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.
Sworn to and subscribed before me
on **3/26/2015**

Signature of Issuing Judge (L.S.)
Letonya T. Simmons
Judge Code: **5077**
Judge's Address: **Law Enforcement Center**
Greenville, SC 29601-
Judge's Telephone
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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ORIGINAL

ORIGINAL

ORIGINAL

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2302597

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville

STATE VS.

Britny Caroline Neal

AKA:

Race: WHITE Sex: F Age: 26

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Greenville, SC [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Prostitution / Prostitution - 1st Offense

INDICTMENT/CASE#: 2015GS2306057

A/W#: 2015A2330202459

Date of Offense: 3/26/2015

S.C. Code § : 16-15-0090

CDR Code #: 0640

SENTENCE SHEET

0-30 days or fine

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0090 of the S.C. Code of Laws, bearing CDR Code # 0640

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Culbreath, Andrew

14107
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 200; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$ 200.00
§ 14-1-206 (Assessments 107.5 %)	\$ 212.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$ 5.00
TOTAL	\$ 845.00

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Settled Date:

OCT 27 2015

ARREST WARRANT

2015A2330202459

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE 2014-052854

against

Brittney Caroline Neal

Address: [REDACTED]

Greenville, SC [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: F Race: W Height: 5 6 Weight: 135

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: K. Price - 1219

Offense: Sex / Prostitution - 1st offense

Offense Code: 0640

Code/Ordinance Sec: 16-15-0090

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Brittney Caroline Neal

on 3/27/15

P. Smith

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

West Greenville Summary Court

6247 White Horse Road

Greenville, SC 29611

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant K. Price who

being duly sworn deposes and says that defendant Brittney Caroline Neal

did within this county and state on or about 3/26/2015 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

On March 11, 2015 the defendant did perform in front of an Investigator of the Greenville County Sheriff's Office, acting in an

undercover capacity, a sexual act in exchange for U.S. currency. This offense did occur in Greenville County, South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-5300

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/26/2015 defendant Brittney Caroline Neal

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or

her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as

soon thereafter as is practicable

Sworn to and subscribed before me.

on 3/26/2015

L. Simmons (L.S.)

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address Law Enforcement Center

Greenville, SC 29601-

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ROA 000565

ROA 000567

ARREST WARRANT

2015A2330202471

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

THE STATE
against

Micah Nicole Dobbins

Address: **Greer, SC**

Phone: **SSN:**
Sex: **F** Race: **W** Height: **5** 4 Weight: **125**
DL State: **SC** DL #: **DOB:** **Agency ORI #: SC0230000**
Prosecuting Agency: **Greenville County Sheriffs Office**
Prosecuting Officer: **K Price - 1219**
Offense: **Sex / Prostitution - 1st offense**

Offense Code: **0640**
Code/Ordinance Sec: **16-15-0090**

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant **Micah Dobbins**
on **3-27-15**

Signature of Constable/Law Enforcement Officer **444 #1197**

RETURN WARRANT TO:
West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL **ORIGINAL** **ORIGINAL** **ORIGINAL**

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

AFFIDAVIT

ORIGINAL Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant **K Price**
being duly sworn deposes and says that defendant **Micah Nicole Dobbins**
did within this county and state on or about **3/12/2015**
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Greenville**)
in the following particulars:
violate the criminal laws of the

DESCRIPTION OF OFFENSE: **Sex / Prostitution - 1st offense**

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
That on the 12th of March, the Defendant did commit a sexual act in exchange for US Currency in front of an investigator of the
Greenville County Sheriff's Office acting in an undercover capacity. This offense occurred in Greenville County, South Carolina.

Signature of Affiant **K Price - 1219/432**

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

Affiant's Address: **4 Mcgee Street**
Greenville, SC 29601-
Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
If appearing from the above affidavit that there are reasonable grounds to believe that
on or about **3/12/2015** defendant **Micah Nicole Dobbins**
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **Greenville**) as set forth below.

DESCRIPTION OF OFFENSE: **Sex / Prostitution - 1st offense**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.
Sworn to and subscribed before me
on **3/26/2015**

Signature of Issuing Judge **Letonya T. Simmons** (L.S.)
Judge's Address **Law Enforcement Center**
Greenville, SC 29601-
Judge's Telephone
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL **ORIGINAL** **ORIGINAL**

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE - COMMON PLEAS - CASE#2015CF2302597

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Stephanie Renee Turner

AKA:

Race: WHITE Sex: F Age: 23DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Laurens, SC [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Prostitution / Prostitution - 1st Offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2306030A/W#: 2015A2330201391Date of Offense: 2/10/2015S.C. Code §: 16-15-0090CDR Code #: 0640

SENTENCE SHEET

0-30 days or fine

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-15-0090of the S.C. Code of Laws, bearing CDR Code # 0640☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Culbreath, Andrew

14107

SC Bar#

Defendant

Attorney for Defendant

1513
SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ 200; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Crimin
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$ 200.00

\$ 210.00

\$ 100.00

\$

\$

\$

\$

\$ 25.00

\$

\$

\$ 5.00

\$

\$ 545.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wickenham

Presiding Judge

Judge Code:

Sentence Date:

OCT 27 2015

ACCT

ARREST WARRANT

2015A2330201391

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

THE STATE 14-052854
against

Stephanie Renee Turner

Address: [REDACTED]
Laurens, SC

Phone: [REDACTED] SSN: [REDACTED]
Sex: F Race: W Height: 5 3 Weight: 137
DL State: SC DL #: [REDACTED]
DOB: [REDACTED] Agency ORI #: SC0230000
Prosecuting Agency: Greenville County Sheriffs Office
Prosecuting Officer: K Price - 1219
Offense: Sex / Prostitution - 1st offense

Offense Code: 0640
Code/Ordinance Sec: 16-15-0090

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant **Stephanie Renee Turner**
on **3/31/15**

M. A. Cannon
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

AFFIDAVIT

Personally appeared before me the affiant **K Price** who
being duly sworn deposes and says that defendant **Stephanie Renee Turner**
did within this county and state on or about **2/10/2015** violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Greenville**)
in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on February 10, 2015 the Defendant did perform in front of an Investigator of the Greenville County Sheriff's Office, acting in
an undercover capacity, a sexual act in exchange for US Currency. The offense occurred in Greenville County South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

Affiant's Address **4 Mcgee Street**
Greenville, SC 29601-
Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about **2/10/2015** defendant **Stephanie Renee Turner**
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **Greenville**) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on **2/17/2015**

Signature of Issuing Judge
James V. Hudson
Judge Code: **5031**

Judge's Address **Law Enforcement Center**
Greenville, SC 29601-2256
Judge's Telephone **(864)467-5303**

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ROA 000569

06/08/2016 14:28 8542944801

JUDGE DIANNE D CAGLE

PAGE 01

West Greenville Summary Court
CASE HISTORY FOR CASE 2015A2330202480

The State of South Carolina VS Tara Lynn Whiteside

FILED DATE: 3/27/2015
INDICTMENT NUMBER:

CASE TYPE: CR
ASSIGNED JUDGE: Cagle, Diane Day
DISPOSITION JUDGE: Cagle, Diane Day
ARRESTING AGENCY: Greenville County Sheriff's Office

STATUS: Disposed

CASE PARTIES:

Defendant Whiteside, Tara Lynn

[REDACTED] Inman, SC [REDACTED]

Officer Price, K

4 McGee Street, Greenville, SC 29601-

Bond Entity Whiteside, Tara Lynn

[REDACTED] Inman, SC [REDACTED]

Defendant Attorney Hiller, Randall Scott

Randall S. Hiller, P.A., 850-B Wade Hampton Blvd., Greenville, SC 29609

CASE HISTORY FOR CASE 2015A2330202480

Whiteside, Tara Lynn

[REDACTED]

Inman, SC [REDACTED]

Age: 28

DL#: [REDACTED]

DOB: [REDACTED]

SSN: [REDACTED]

CHARGE

VIOL. DATE

DISPOSITION

DISP. DATE

0640	Sex / Prostitution - 1st offense	3/26/2015	Guilty Bench Trial Credit Time Served	12/4/2015
------	----------------------------------	-----------	---------------------------------------	-----------

COST

ORIGINAL

BALANCE DUE

DISBURSED

PAY PRIORITY

Charge: Sex / Prostitution - 1st offense

Fine to General Fund

\$0.00

\$0.00

\$0.00

999

Victim Services Asm 38.0013% / 5.783

0.00

0.00

0.00

999

Victim Conviction Surcharge \$100 / \$21

25.00

0.00

25.00

999

Law Enforcement Funding Surcharge \$:

25.00

0.00

25.00

999

SC Criminal Justice Academy Training

5.00

0.00

5.00

999

State Assessment

0.00

0.00

0.00

999

Total:

\$55.00

\$0.00

\$55.00

DATE	TIME	EVENT DESCRIPTION
------	------	-------------------

3/27/2015	9:30 PM	Court event: Bond Hearing
-----------	---------	---------------------------

3/27/2015	12:00 AM	Bond 17 was set in the amount of 0 by O'Brien, Ernest Michael Patrick Sr.
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4/8/2015	1:10 PM	Filing recorded: Jury Trial Requested
----------	---------	---------------------------------------

Print Date: 06/08/2016

Print Time: 2:25:08PM

Requested By: KCORLEY

CaseHistory.rpt V6.1

Page 1 of 2

CERTIFIED COPY

DANIEL HIGGS

ROA 000570

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE - COMMON CASE#2015CP2302597

06/08/2016 14:28 8642944881

JUDGE DIANNE D CAGLE

PAGE 02

CASE HISTORY FOR CASE 2015A2330202480

4/14/2015	12:00 AM	BPERDUE recorded the following Case Note: SENT B KELLEY 4/15/15
4/15/2015	9:00 AM	Court event: Criminal/Traffic Court
4/22/2015	9:00 AM	Court event: Criminal/Traffic Court
4/27/2015	2:25 PM	Filing recorded: Solicitor File Opened
10/26/2015	12:00 AM	BPERDUE recorded the following Case Note: sent gs 10/26/15 per a culbreath
12/4/2015	9:40 AM	Received payment of \$55 from Tara Lynn Whiteside for Tara Lynn Whiteside . Printed receipt #446237.

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2302597

Print Date: 06/08/2016
Print Time: 2:25:08PM
Requested By: KCORLEY

CaseHistory.rpt V6.1

Page 2 of 2

CERTIFIED COPY
DARRILL FISHER JUDGE

ROA 000571

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE
2015A2330202480

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

THE STATE 2014-052854
against

Tara Lynn Whiteside

Address: [REDACTED]
Inman, SC [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]
Sex: F Race: W Height: 5 8 Weight: 136
DL State: SC DL #: [REDACTED]
DOB: [REDACTED] Agency ORI #: SC0230000
Prosecuting Agency: Greenville County Sheriffs Office
Prosecuting Officer: K Price - 1219
Offense: Sex / Prostitution - 1st offense

Offense Code: 0640
Code/Ordinance Sec: 16-15-0090

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Date: _____
Signature of Judge

RETURN
A copy of this arrest warrant was delivered to
defendant Tara Lynn Whiteside
on 3-27-15

D. Kigox #1374
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

AFFIDAVIT

PERSONALLY appeared before me the affiant K Price
being duly sworn deposes and says that defendant Tara Lynn Whiteside
did within this county and state on or about 3/26/2015
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville
in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On February 20, 2015 the defendant did knowingly aid and abet prostitution by arranging and permitting persons inside of 805
Frontage Rd. to expose their private parts or conduct acts of lewdness for the purposes of indecency. This offense did occur in
Greenville County, South Carolina.

Signature of Affiant
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

Affiant's Address 4 McGee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-5300

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/26/2015 defendant Tara Lynn Whiteside
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 3/26/2015

Signature of Issuing Judge (L.S.)
Letonya T. Simmons
Judge Code: 5077

Judge's Address Law Enforcement Center
Greenville, SC 29601-

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Approved by
J.C. Attorney General
April 21, 2003
SCCA 518

ROA 000572

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE VS.)
Chelsey Renee Watts)
AKA:)
Race: WHITE Sex: F Age: 24)
DOB: [REDACTED] SS#: [REDACTED])
Address: [REDACTED])
City, State, Zip: Gaston, SC [REDACTED])
DL#: 101534877 SID#: [REDACTED])
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Sex / Prostitution - 1st offense

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 2015 GS 23 ~~030007~~ 8972
A/W#: 2015A2330201397
Date of Offense: 2/5/2015
S.C. Code § : 16-15-0090
CDR Code #: 0640

SENTENCE SHEET
< 30 days or fine

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0090 of the S.C. Code of Laws, bearing CDR Code # 0640
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials) CLW
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.
ATTEST: [Signature] 14107 [Signature] 2513
Culbreath, Andrew SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 200; provided that upon the service of days/months/years and/or payment
of \$ plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Cr
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS
Recipient:

*Fine:
§ 14-1-206 (Assessments 107.5 %) \$ 200.00
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 215.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$
TOTAL \$ 545.00

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ☐
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: pay fine + costs within 30 days

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Wislenski
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code:
Sentence Date: OCT 27 2015

A Certified Copy
Paul B. Wislenski
Clerk of Court C.P. & G.S.
Greenville County, SC

535
9-23
5331
6-9-15
7015A2330201207
STATE OF SOUTH CAROLINA
County/ Municipality of
Greenville

THE STATE 14-052854
against
Chelsey Renee Watts
Address: [REDACTED]
Gaston, SC [REDACTED]
Phone: [REDACTED] SSN: [REDACTED]
Sex: F Race: W Height: 5 1 Weight: 135
DL State: SC DL #: [REDACTED]
DOB: [REDACTED] Agency ORI #: SC0230000
Prosecuting Agency: Greenville County Sheriffs Office
Prosecuting Officer: K Price - 1219
Offense: Sex / Prostitution - 1st offense

Offense Code: 0640
Code/Ordinance Sec: 16-15-0090
This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

Signature of Judge
Date:

RETURN
A copy of this arrest warrant was delivered to
defendant Chelsey Watts
on [REDACTED]
[REDACTED]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
County/ Municipality of

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
Apr 21, 2003
SCCA 518

Personally appeared before me the affiant K Price
being duly sworn deposes and says that defendant Chelsey Renee Watts who
did within this county and state on or about 2/5/2015
State of South Carolina (or ordinance of County/ Municipality of Greenville violate the criminal laws of the
In the following particulars:
DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on February 5, 2015 the Defendant did perform a sexual act in front of an Investigator of the Greenville County Sheriff's Office
acting in an undercover capacity in exchange for US currency. This offense occurred in Greenville County South Carolina.

Entered On
NCIC

Signature of Affiant

STATE OF SOUTH CAROLINA
County/ Municipality of
Greenville
COMPUTER ENTERED

Affiant's Address 4 Megee Street
Greenville, SC 29601-
Affiant's Telephone

APR 08 2015

GREENVILLE COUNTY
SHERIFF'S OFFICE
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

on or about 2/5/2015 defendant Chelsey Renee Watts
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of Greenville as set forth below:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 2/17/2015

Signature of Issuing Judge
James E. Hudson
Judge Code: 5031

(L.S.)

Judge's Address Law Enforcement Center
Greenville, SC 29601-2256

Judge's Telephone (864)467-5303

Issuing Court: X Magistrate Municipality Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE - COMMON PLEAS - CASE#20150CP2302597

ROA 000574

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE)

WARRANT NO: 2015A2330202444

2444

The State of South Carolina,)

Plaintiff.)

AFFIDAVIT OF GUILTY PLEA

v.)

Jennifer Anissa Plain)

Defendant.)

The Defendant desires to plead guilty to Prostitution 1st Offense (S.C. Code 16-15-90) committed on or about February 18, 2015 at 805 Frontage Road (Platinum Plus) in Greenville County and charged under warrant number 2015A2330202444 (attached). The Defendant certifies to the Court that the answers to the following are true:

1. The maximum sentence and penalty for my charge is Prostitution;
2. Has the State agreed to recommend a sentence to the Judge? yes;
 (1) If so, what is that recommendation? Fine;
 (2) If so, has anyone promised you anything else to get you to plead guilty or assured you as to a particular sentence?
NO
3. Has anyone promised you anything else, threatened you or put any pressure on you to get you to plead guilty? NO
 If so, who and what: _____
4. Are you under the influence of any medications, drugs or alcohol? NO
 If yes, explain: _____
5. Are you aware of any physical, mental, emotional or nervous problem you may have that might affect your understanding of this plea or this court proceeding?
 If yes, explain: NO
6. Do you understand that if you plead NOT GUILTY you have the right to have the help of a lawyer at all stages of the proceedings, and if you cannot afford to employ a lawyer, one would be provided to you free

Page 1 of 3

law enforcement, any statements you may have made, and any testing that was done or should have been

2 of 3

ROA 000575

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2302597

- of charge? YES ☒ NO ☐
7. Do you understand that when you plead guilty you give up your right to a jury trial? YES
8. Do you understand that in a trial you would be presumed to be innocent? That you would not be required to prove you were innocent or that you were not guilty? YES ☒ NO ☐
9. Do you understand that in a trial you have the right to see and hear all witnesses called to testify against you and to confront, cross examine and question them, and confront all of the evidence?
YES ☒ NO ☐
10. Do you understand that in a trial you have the right to take the witness stand and testify, or not to take the witness stand as you choose, and that you cannot be required to take the witness stand?
YES ☒ NO ☐
11. Do you understand that at a trial you would have no burden of proof, and that the burden would instead be entirely on the State to prove you were guilty, and you could only be found guilty if all 6 jurors agreed that the State had proven each and every element of the crime against you beyond a reasonable doubt?
YES ☒ NO ☐
12. Have you talked with your lawyer about and do you fully understand the elements of each crime you are pleading guilty to? YES ☒ NO ☐
13. Do you understand that if you plead NOT GUILTY and that if you do not take the witness stand, the jury (1) cannot take that as evidence against you and (2) the court would tell the jury that, like any citizen, you have the absolute right to remain silent, and that your silence cannot be held against you whatsoever?
YES ☒ NO ☐
14. Do you understand that if you plead NOT GUILTY you have a right to use the subpoena power of the Court to make witnesses attend your trial and testify, whether they want to or not?
YES ☒ NO ☐
15. Do you know that if you plead GUILTY you will be found guilty without a trial and you will have given up all the rights mentioned in questions (9) to (14) along with your right to present any defense(s), and your right to challenge or contest any of the evidence against you including any searches or seizures made by law enforcement, any statements you may have made, and any testing that was done or should have been

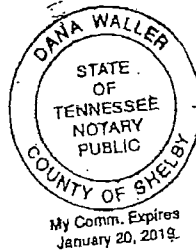
- done? YES ✓ NO
16. If you are on Parole or Probation, do you know this plea could result in a revocation?
YES ✓ NO
17. Has your lawyer gone over your rights and all circumstances of the charge(s) with you, and done everything you have asked him or her to do on your case?
YES ✓ NO
18. Are you satisfied with your lawyer? YES ✓ NO
19. Do you understand what you are doing and all the rights that you are giving up? Do you understand that if you are not a U.S. citizen, your guilty plea may result in your being deported?
YES ✓ NO
20. Are you pleading guilty of your own free choice and will because you are, in fact, guilty?
YES ✓ NO

DATE: November 17, 2015

Jennifer Anissa Plain
Jennifer Anissa Plain

SWORN to before me this
17th day of Nov, 2015

Dana Waller
Notary Public for ~~South Carolina~~ State of Tennessee
Printed Name: Dana Waller
My Commission Expires Jan 20, 2019



I certify that the above questions were answered by the Defendant after a full explanation of each question by the undersigned and in my opinion the Defendant understands the elements of the crime(s), the possible punishment(s) and his/her Constitutional rights that will be waived if the plea is accepted.

DATE: 12/4/14

[Signature]
Signature of Attorney for the Defendant

Attorney's Name Printed: Ramon S. H. [Signature]

ROA 000578

503 ARREST WARRANT

2015A2330202444

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of Greenville

THE STATE against 14-052854

Jennifer Anissa Plain

Address: Seneca, SC

Phone: SSN: Sex: F Race: W Height: 5' 4 Weight: 130 DL State: SC DL #: DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: K Price - 1219

Offense: Sex / Prostitution - 1st offense

Offense Code: 0640

Code/Ordinance Sec: 16-15-0090

This warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☐ Municipality of Greenville

The accused is to be arrested and brought before me to be dealt with according to the law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 5/26/15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of Greenville

AFFIDAVIT

Personally appeared before me the affiant K Price being duly sworn deposes and says that defendant Jennifer Anissa Plain did within this county and state on or about 2/18/2015 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on the 18th of February, the Defendant did commit a sexual act in exchange for US Currency in front of an investigator of the Greenville County Sheriff's Office acting in an undercover capacity. This offense occurred in Greenville County, South Carolina.

Entered On
NCIC

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of Greenville

APR 08 2015

GREENVILLE COUNTY
SHERIFF'S OFFICE

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/18/2015 defendant Jennifer Anissa Plain did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Prostitution - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 3/26/2015

Signature of Issuing Judge

Letonya T. Simmons (L.S.)

Judge Code: 5077

Judge's Address Law Enforcement Center
Greenville, SC 29601-

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2302597

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina on the relation of	)	
William Walter Wilkins, III, Solicitor of	)	Civil Action No. 2015-CP-23-02597
The Thirteenth Judicial Circuit,	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Elephant, Inc., Gregory Kenwood Gaines,	)	ACCEPTANCE OF SERVICE
and Frontage Road Associates, Inc.	)	
	)	
Defendants.	)	

The undersigned hereby certifies that he is duly authorized by the Defendants Elephant, Inc. and Gregory Kenwood Gaines to accept service of process in the above-captioned matter. Two copies of the following documents and pleadings are provided and one check for \$25.00 payable to Gregory Kenwood Gaines.

- PETITION FOR THE RULE TO SHOW CAUSE
- VERIFICATION
- RULE TO SHOW CAUSE
- SUBPOENA for Gregory Kenwood Gaines

I, the undersigned, do hereby certify that the herein-referenced documents were delivered to me via hand delivery.


 Randall Hiller, Esq.
 350-B Wade Hampton Blvd.
 Greenville, SC 29609
 Attorney for Elephant, Inc. and Gregory
 Kenwood Gaines

Dated: May 13TH, 2016
 Greenville, South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH CIRCUIT
C.A. NO.: 2015-CP-23-02597

State of South Carolina on the relation)
Of William Walter Wilkins, III, Solicitor)
Of the Thirteenth Judicial Circuit,)

Plaintiff,)

Vs.)

Elephant Inc. and Frontage Road Assoc.,)
Inc.,)

Defendant)

AFFIDAVIT OF KENWOOD GAINES

The undersigned, under oath, deposes and states as follows:

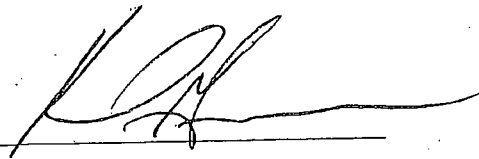
1. My name is Kenwood Gaines and I am the owner of Elephant, Inc. which operates the facility known as Platinum Plus at 850 Frontage Road, Greenville County, South Carolina, I am over the age of 18 and the statements set forth herein are made on my personal knowledge.
2. Platinum Plus has operated a gentlemen's club at this location for over 14 years. During that time period no employee of the business while engaged in their duties at the business has ever been charged with or convicted of lewdness, assignation, prostitution or repeated acts of unlawful possession or sale of controlled substances. To my knowledge no subcontractor, lessee or patron has likewise been charged or convicted while upon the premises of Platinum Plus.
3. Platinum Plus does not condone, allow or profit from any form of illegal or unlawful activity by its employees, patrons or lessees while on the premises of the business.
4. Over the course of the operation of the business if and when management became aware of any form of unlawful or illegal activity then the employee, patron or lessee are escorted from the premises and a record was made in the manager's log book and what we designate as the "black book" so that each manager and successive managers will have access to those persons who are not allowed upon the premises.
5. The Greenville County Sheriff's Office executed a search warrant on our property on March 27, 2015 and hand delivered to my local counsel a letter of same date which stated

"under SC Code Ann. Section 15-43-120 you have ten days to abate the nuisance. This will be your only notice." (See Ex. A) My attorney responded advising that we were unaware of any such alleged activity but would undertake an investigation and requesting that the Sheriff's Office and the Solicitor's Office share with us any information that they had which would in any way suggest that any unlawful, illegal or any other inappropriate activity was occurring and the names of those involved. (See Ex. B) No response or information was ever forthcoming.

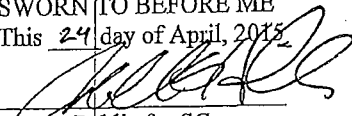
6. While we do not have any information that would confirm or support the allegations made by the Greenville County Sheriff's Office and the Thirteenth Circuit Solicitors Office, immediately upon the execution of the search warrant on our premises on March 27, 2015 affirmative steps were taken to ensure that any such allegations could not occur in the future. Specifically, a meeting was held and all employees and lessees were reminded of the club's policies with regards to conduct and that no deviation would be tolerated. Additional employees were added to continuously monitor the Champagne area as well as the couch area to ensure compliance with the forgoing. The general manager has been replaced until such time as either our investigation is complete, information is provided by the GCSO or the disposition of their pending charges, any one charged has not been allowed back upon the premises.
7. Platinum Plus employed 53 full time employees at the time of the execution of the search warrant and an additional 481 lessees derive their income from its continued operation.
8. Despite numerous requests by my attorney for its return (See Ex. C) the Petitioner has in its possession the security camera DVR system and other documents. I am personally aware that they are attempting to submit one of the 672 hours of video contained on that DVR in support of their petition while not allowing us an equal opportunity to review and submit the other 671 hours which apparently does not support their contentions.
9. According to the affidavit submitted with the Petition this club has been under investigation for a period of 12 months and yet there has not been a single charge or conviction for any of the alleged conduct during that period of time nor was any charge filed alleging improper conduct prior to February of 2015. None of which was known to us until March 27, 2015.

10. Immediately upon my becoming aware of those allegations I requested my local counsel to seek documentation or evidence which would support the allegations, suspended all parties charged and removed the general manager pending review.
11. Platinum Plus serves over 100,000 patrons on an annual basis. There are presently contracts with 481 lessees who lease a space from the club. It is inevitable in an operation this size that you will occasionally encounter an employee, a patron or a lessee who violates the terms and conditions of their right to be upon the premises. We make every effort to monitor and control that behavior but everyone is expected to know the law and what is legal or illegal and to abide by our policies. When we do discover any one of the above violating our policies then they are, depending on the severity of the violation, either suspended or refused entry into the facility. A master list is kept in the manager's office for the purpose of ensuring that previous violators who have been banned from the premises are not allowed back on the facilities.
12. My company is in the business of selling food and alcohol. Other than a flat fee that is paid by each entertainer to lease a space for the purposes of practicing their profession my facility receives no income whatsoever from their interaction with the customers. I have no incentive to condone, ignore or promote illegal or improper behavior and every incentive to avoid any such activities as it would clearly endanger my opportunity to continue the operation of this business.
13. In calendar year 2014 this business paid in excess of \$118,000.00 in taxes, almost \$900,000.00 and purchased more than \$3,000,000.00 in goods and services from the local economy. At the time of the service of the search warrant upon my business we employed 53 full time employees and on any given day over 100 people were dependent upon this business for their livelihood.
14. After diligent inquiry or all of the management and employees of my company neither "Rob" or "Mark" or any other member of the Greenville County Sheriff's Office or representatives or employees of the Greenville County Solicitor's Office has entered or been upon our business premises from March 27, 2015 through the date of the signing of this Affidavit.

FURTHER AFFIANT SAYETH NOT.



Kenwood Gaines

SWORN TO BEFORE ME
This 24 day of April, 2015


Notary Public for SC
My commission expires: 5/19/19

EXHIBIT A

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

March 27, 2015

Frontage Road Associates, Inc.
c/o Tom Schweitzer
103 Barfield Drive
Easley, SC 29642

Elephant, Inc
c/o Randall Hiller, Esq.
850-B Wade Hampton Blvd
Greenville, SC 29609

Elephant, Inc
c/o Vanseea Mascea
800 Bush River Road
Columbia, SC 29212

RE: Platinum Plus -- Public Nuisance

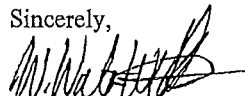
Notice to Property Owner & Business Owner:

It has come to the attention of the State of South Carolina, Office of the Solicitor, Thirteenth Judicial Circuit, that property owned or controlled by you is being used to foster and promote a public nuisance. Such property is reportedly being used for purposes of lewdness, prostitution and assignation. The business is popularly known as Platinum Plus is located at or near 805 Frontage Road, Greenville, South Carolina 29615.

This letter is an official notice to the property owner and business owner and its principals that the activity on the property known as Platinum Plus constitutes a public nuisance under the laws of the State of South Carolina and must be abated. The statutes involved are S.C. Code Ann. §15-43-10, et seq.

Under S.C. Code Ann. §15-43-120 you have ten days to abate the nuisance. This will be your only notice.

Sincerely,


W. Walter Wilkins, Solicitor
Thirteenth Judicial Circuit

WWW/smb

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2302597

ROA 000587

EXHIBIT B

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
E-MAIL: rsh@rshpa.org

(864) 232-0026
FAX (864) 242-4692

April 1, 2015

The Hon. W. Walter Wilkins
Greenville County Solicitors Office
305 E. North St.
Greenville, SC 29601

Re: Your Letter of March 27, 2015 addressed to Elephant, Inc.

Dear Walt:

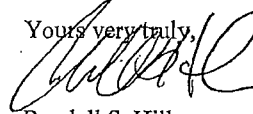
Please be advised that I represent Elephant, Inc. and have been asked to respond to your correspondence above referenced.

My client does not participate, profit, condone nor tolerate illegal or unlawful activities by any employee, lessees or patron upon its facilities. Indeed, the documents seized from my client are evidence of that fact as you will find contained within the manager's log a notation of any instance in which my client was satisfied that evidence existed of wrongful conduct and banning such individual from the premises.

If you are in possession of evidence that any person is or has engaged in any of the activities set forth in the aforementioned letter then please provide it to us immediately so that we may evaluate it and take such action as appropriate to insure that it does not occur in the future.

In the interim my client is conducting its own investigation into whether any improper or unlawful behavior has occurred and if found will be abated. In addition, my client has instituted additional procedures to ensure that no such alleged activity will reoccur.

Yours very truly,



Randall S. Hiller

RSH/ak

ELECTRONICALLY FILED - 2016 Jun 27 10:27 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2302597

EXHIBIT C

Randall S. Hiller

From: Randall S. Hiller <rsh@rshpa.org>
Sent: Tuesday, April 14, 2015 10:46 AM
To: 'Culbreath, Andrew'
Subject: RE: Platinum

Andrew:

Any update on getting the DVR and other records back?

Randall S. Hiller
Randall S. Hiller, P.A.
Attorneys at Law
850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: Culbreath, Andrew [mailto:ACulbreath@greenvillecounty.org]
Sent: Friday, April 10, 2015 9:51 AM
To: Randall S. Hiller
Subject: RE: Platinum

I'm checking on that now. There are some technical issues on getting the info copied, but I don't have all the details. I will be in touch with you shortly.

Andrew

From: Randall S. Hiller [mailto:rsh@rshpa.org]
Sent: Thursday, April 09, 2015 1:49 PM
To: Culbreath, Andrew
Subject: Platinum

Andrew:

How many more warrants have they got? It's like Platinum East over here, I'm seeing 3 entertainers a day, can't get anything else done and, most importantly, the wife's not too happy about it and I like keeping her happy.

On a more serious note can you tell me when we can get our DVR and paperwork back. They should have had ample opportunity to copy everything by now.

Randall S. Hiller
Randall S. Hiller, P.A.
Attorneys at Law
850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

**VERIFIED APPLICATION FOR ADMISSION *PRO HAC VICE*
IN THE STATE OF SOUTH CAROLINA**

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS IMMER
2016 JUN 28 AM 9 35

<u>State of South Carolina</u> Plaintiff	<u>Civil: 2015-CP-23-02597</u> Case No.	<u>Court of Common Pleas Thirteenth Judicial Circuit</u> Tribunal
vs.	Mailing Address of Tribunal:	<u>305 E. North Street</u> <u>Greenville, South Carolina</u> <u>29601</u>
<u>Elephant, Inc., and Gregory Kenwood Gaines, and Frontage Road Associates, Inc.</u> Defendant		

Comes now H. Louis Sirkin, applicant herein, and respectfully represents the following:

1. Applicant resides at:

<u>Street Address</u>			
<u>Cincinnati</u>	<u>Hamilton</u>	<u>Ohio</u>	<u>45213</u>
City	County	State	Zip Code
<u>Telephone</u>			

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of)

Santen and Hughes, with offices at

<u>Street Address</u>			
<u>Cincinnati</u>	<u>Hamilton</u>	<u>Ohio</u>	<u>45202</u>
City	County	State	Zip Code
<u>Primary Telephone</u>		<u>Cell Phone</u>	<u>Fax Number</u>
		<u>Email Address</u>	
		<u>hls@santen-hughes.com</u>	

3. Applicant has been retained personally or as a member of the above-named law firm by Elephant, Inc. to provide legal representation in connection with the above case now pending before the above-named tribunal of the State of South Carolina.

4. Since October of 1965, applicant has been, and presently is, a member in good standing of the bar of the highest court of the District of Columbia or the State of Ohio where applicant regularly practices law. Attached is a certificate of good standing dated within the last 90 days from the bar of the highest court of the District of Columbia or the State where applicant regularly practices law.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

Court:	Date Admitted:
--------	----------------

CANNED

ENTERED COMPUTER

Court:	Date Admitted:
See attached	

Applicant is presently a member in good standing of the bars of those courts listed above, except as listed below: (List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court date):

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

8. Applicant never has had any certificate or privilege to appear and practice before any court or administrative body suspended or revoked, except as provided below (give particulars, e.g., date, court, administrative body, date of suspension and reinstatement):

9. Local counsel of record associated with applicant in this case is Thomas Goldstein
of the Belk, Cobb, Infinger & Goldstein, P.A. law firm, which has offices at:

Street Address	Charleston	Charleston	South Carolina	29405-7644
City	()	County	State	Zip Code
Primary Telephone	7186	Cell Phone	Fax Number	Email Address
South Carolina Bar Number				

10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

Edward J. Rothschild v. Richland County Board of Adjustment, Case No. 97-CP-400-4273. Local counsel John D. Delgado. Application granted 1997.
Excitement Video, Inc. v. Harry County Board of Zoning Appeals, Case No. 2001-CP-26-4766. Local counsel Jill Wright Fennel. Application granted 2001.
Christian C.R. Enterprises, L.L.C. v. Richland County Board of Adjustment, Case No. 97-CP-40-4729.

Application granted 1997.

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

12. Applicant respectfully requests to be admitted to practice in the above-named tribunal for this case only.

DATED this 14th day of June, 20 16

H. Louis Dubois
APPLICANT

VERIFICATION

STATE OF South Carolina

COUNTY OF Hamilton

I, H. Louis Sirkin, do hereby swear or affirm under penalty of perjury that I am the applicant in the above-styled matter; that I have read the foregoing application and know the contents thereof; and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true. I understand that I am under a continuing duty to promptly update the information provided in the application until the tribunal has ruled on the motion for admission pro hac vice. Further, if the motion is granted, I understand that I am under a continuing duty to promptly update the information provided in the application as long as I continue to appear pro hac vice in the action or proceeding. Any updated information shall be provided to both the tribunal that granted the motion and to the tribunal in which the action or proceeding may then be pending.

H. L. Sirkin
APPLICANT/AFFIANT

Subscribed and sworn to before me this 14th day of June, 20 16

Notary Public for the State of South Carolina

My Commission Expires: April 16, 2016

LOCAL COUNSEL CONSENT

I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

DATED this 14th day of June, 20 16

Th. R. McCall
LOCAL COUNSEL OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by mail addressed to: South Carolina Supreme Court Office of Bar Admissions, PO Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this 15th day of June, 20 16

H. L. Sirkin
APPLICANT/AFFIANT

The Supreme Court of Ohio

CERTIFICATE

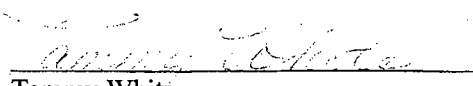
I, SUSAN B. CHRISTOFF, Director of the Attorney Services Division of the Supreme Court of Ohio, do hereby certify that I am the custodian of the records of the Office of Attorney Services of the Supreme Court and that the Attorney Services Division is responsible for reviewing Court records to determine the status of Ohio attorneys. I further certify that, having fulfilled all of the requirements for admission to the practice of law in Ohio,

Henry Louis Sirkin

was admitted to the practice of law in Ohio on October 27, 1965; has registered as an active attorney pursuant to the Supreme Court Rules for the Government of the Bar of Ohio; is in good standing with the Supreme Court of Ohio; and is entitled to practice law in this state.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court, this 9th day of March, 2016.

SUSAN B. CHRISTOFF
Director, Attorney Services Division


Tammy White
Attorney Services Manager

STATE OF SOUTH CAROLINA
GREENVILLE CO. S.C.)
COUNTY OF GREENVILLE)
PAUL D. WICKENS IMR)

IN THE COURT OF COMMON PLEAS
13th JUDICIAL CIRCUIT

CASE NO.: 2015-CP-23-025⁹⁷

State of South Carolina

Plaintiff,)

vs.)

Elephant, Inc., et al.

Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Andrew S. Culbreath, Bar No. 14107
Address:
305 E. North Street, Greenville, SC 29601
Phone: (864) 467-8647 Fax (864) 467-8623
E-mail: _____ Other: _____

Defendant's Attorney:
Thomas R. Goldstein, Bar No. 2186
Address:
2344 Cosgrove Avenue, Charleston, SC 29405-7644
Phone: (843) 554-4291 Fax (843) 554-5566
E-mail: tgoldstein@COBBLAW.NET Other: _____

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

SECTION I: Hearing Information

Nature of Motion: _____

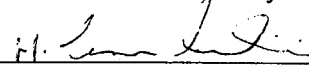
Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

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


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

June 20, 2016
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

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

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by  Date Filed: _____

☒ MOTION FEE COLLECTED: \$ 25.00

☐ CONTESTED - AMOUNT DUE: \$ _____

#27152 Santen & Hughes

STATE OF SOUTH CAROLINA)
)
 GREENVILLE COUNTY)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2015-CP-23-02597

State of South Carolina, on the)
 relation of William W. Wilkins,)
 III, Solicitor of the Thirteenth)
 Circuit)

vs.)

MOTION FOR RECONSIDERATION
 Rules 59, 60, *S. C. Rules of Civil Procedure*

Elephant, Inc., Gregory)
 Kenwood Gaines, and Frontage)
 Road Associates, Inc.,¹)
)
Defendants.)

The defendants, Elephant, Inc., and Gregory Kenwood Gaines, move for an Order of the Court altering or amending the Order entered July 27, 2016, received by counsel on July 28, 2016. This motion is based on Rules 59 and 60 of the *South Carolina Rules of Civil Procedure* and upon the following grounds:

1

The Court impermissibly blends civil and criminal contempt after the State announced the case is a criminal contempt.

The Order under review finds the defendant, Elephant, Inc., guilty of contempt of court under both criminal **and** civil contempt analyses. At the call of

¹ The parties stipulate that the defendant, Frontage Road Associates, is no longer a party to this action.

the case, the Solicitor announced the State sought a finding of criminal contempt. Under South Carolina law, the allegation of criminal contempt triggers fundamental Fifth and Sixth Amendment rights as well as the requirement for the State to prove the evidence of criminal contempt under a higher standard of proof beyond a reasonable doubt.

Despite notifying the defendants of the State's intention to seek a finding of criminal contempt—a procedure that influenced defendants' trial strategy of remaining silent—the Order under review finds the defendant, Elephant Inc., simultaneously guilty of criminal contempt **and** civil contempt under both criminal and civil analyses, including the Court's comment on the defendants' failure to offer a rebuttal to the State's evidence. See Order under Review page 5: "Alternatively, the Court also finds the evidence clearly and convincingly established Platinum Plus as being in civil contempt based upon clear and repeated violation of the Orders." See also page 6: "However, in light of the Consent Orders, the pleadings and the evidence submitted at the hearing, the Court finds that the Solicitor has sufficiently alleged and proven a basis for either criminal and/or civil contempt." See also page 16: "The Court alternatively re-imposes the sanction set forth in Paragraphs 2 & 3 *verbatim* as appropriate sanctions for Platinum Plus's civil contempt." As discussed more fully below, civil

contempt must provide a method of purging, while criminal contempt is backward looking only.

The State cannot move for criminal and civil contempt simultaneously because to do so deprives the defendants of their Fifth and Sixth Amendment rights. In a criminal contempt action, the defendants are not required to testify and their decision to not offer evidence not only cannot be used against them—as occurs in the Order under review. In addition, the State’s election of remedy prevented the defendants from offering evidence in response to the State’s allegations regarding civil contempt because of the defendants’ justifiable reliance upon the Solicitor’s statement to the Court that it sought a finding of criminal contempt. See Order under Review page 10: “Statements concerning a defendant’ failure to introduce any evidence do not implicate the Fifth Amendment.” This conclusion is a significant error of law. Moreover, the case relied upon by the Court, *Newell v. Slayton*, 468 F.2d 888 (4th Cir. 1972) provides no authority for the Court’s erroneous statement. *Newell v. Slayton* involved the Court’s denial of a writ of habeas corpus for a defendant convicted of rape when, during closing argument, the prosecutor **attacked the witness called by the defendant**. *Newell v. Slayton* does not stand for the proposition of law asserted by the Court. In fact, the opinion states the opposite:

A leading case concerning Fifth Amendment privileges is *Griffin v. California*, 380 U.S. 609, 615, 85 S.Ct. 1229, 1233, 14 L.Ed.2d 106 (1965) where the Supreme Court held:

“that the Fifth Amendment. . . forbids either comment by the prosecution on the accused’s silence or instructions by the court that such silence is evidence of guilt.”

Therefore, the *Newell* Court’s refusal to issue a writ of habeas was grounded on its conclusion that the prosecutor’s comment on the defendant’s weak witness as unreliable is always fair game. Here the defendants chose to remain silent the Court. Unlike *Newell*, they offered no witness. Thus, when the Court, in finding Elephant in contempt, draws on the defendants’ silence as grounds to justify the finding, the Court commits an error of law.

2

The record is silent as to any evidence of the necessary element of willfulness.

The Court finds that the evidence of willfulness is the result of the State providing notice to the defendants by way of its verified petition filed April 27, 2016. See Order at page 4: “Evidence established the Solicitor furnished notice to Platinum Plus of its non-compliance with the 2015 Order in January and February of 2016. (Verif. Petit., Ex. E)” This finding refutes itself, especially where the Court finds the defendant, Elephant, guilty of civil contempt because the

Order not only does not provide a means of purging, a necessary component of civil contempt, but also the Solicitor made clear that it was seeking a finding of criminal contempt, and based on the State's allegations and choice of remedy, the defendants chose to stand on their Fifth Amendment right to silence, which is **now** applied adversely to them in violation of law.

3

The Court improperly denied defendants of their right to trial by jury

The Order under review erroneously concludes that the defendants' right to trial by jury is not invoked because the State agreed that it was seeking punishment by incarceration of less than six months. See *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982):

In *Bloom v. Illinois*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968), the Supreme Court held that prosecutions for serious criminal contempts are subject to the jury provisions of Art. III, Section 2 of the Constitution, and of the Sixth Amendment, which is made binding upon the states by virtue of the due process clause of the Fourteenth Amendment. In *Codispoti v. Pennsylvania*, 418 U.S. 506, 94 S.Ct. 2689, 41 L.Ed.2d 912 (1974) the Court held that defendants in state criminal trials who are committed to imprisonment of more than 6 months are entitled to a jury trial.

However, in 1966, a majority of the U. S. Supreme Court directly addressed the matter of a jury in proceedings for civil contempt. In *Shillitani v. U. S.*, 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966), two petitioners had been sentenced to two years imprisonment for contempt of court with the proviso

that they would be released upon answering questions put to them by a grand jury. Their contemptuous conduct consisted of not testifying before a grand jury after both had been given immunity. One demanded a jury trial, but the request was denied; on both two year conditional sentences were imposed by a judge without the aid of a jury. The Court held that the conditional nature of the sentences rendered each of the actions a civil contempt proceeding, for which indictment and jury trial are not constitutionally required. The [Page 919] character and purpose of the proceedings rendered them civil rather than criminal contempt proceedings. The conditional imprisonment was for the obvious purpose of compelling the two grand jury witnesses to obey the Court's orders to testify. Continuing, the Court stated that when petitioners carry the keys of prison in their own pockets, the action is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees. If the petitioners had chosen to obey the court's order, they would not have faced jail. In *Shillitani*, both the District Court and the Court of Appeals called the petitioners' conduct criminal contempt. But despite the fact both petitioners were ordered imprisoned for a definite period, their sentences were clearly intended to operate in a prospective manner to coerce, rather than to punish. As such, their sentences related to civil contempt. While any imprisonment has punitive and deterrent effects, it must be viewed as remedial if the Court conditions the release upon the contemnor's willingness to obey the Court's order. The *Shillitani* test to determine whether contempt is civil or criminal is: What does the Court primarily seek to accomplish by imposing the sentence? In *Shillitani*, it was to obtain answers to the grand jury questions. Footnote 5 of the opinion stated that had the contempt been criminal, it would have been characterized by the imposition of an unconditional sentence for punishment [277 S.C. 385] or deterrence. The conditional nature of the imprisonment, based entirely upon the contemnor's continued defiance, justified holding civil contempt proceedings absent the safeguards of indictment and a jury.

However, the Court in *Shillitani* overturned the petitioners' two year conditional sentences because the justification for coercive imprisonment depended upon the ability of the contemnor to comply with the court's order. There the grand jury had been discharged so that the petitioners could not purge themselves of contempt by testifying before the grand jury.

Likewise, here, the Court does not provide any method of purge, and it was only the Court's discretion that prevented the defendants from being incarcerated for more than six months. The Solicitor has no power to limit the Court's exercise of its discretion and so the defendants were exposed to the possibility of a sentence greater than six months. The test is not what the Solicitor asks for by way of punishment. Rather, the test for whether the defendants did or did not have a right to trial by jury is what they were exposed to as a maximum punishment. The Solicitor's request for less than six months incarceration is not binding on the Court, and even though the Order under review did not order incarceration of either defendant in excess of six months, the defendants were exposed to a period of incarceration for up to a year for each alleged offense, thereby exposing the defendants to a potential sentence significantly greater than six months.

4

The Court violated the defendants' Fifth and Eighth Amendment rights by imposing an excessive fine forbidden by the Eighth Amendment and by relying on post-trial evidence presented in a prior court appearance to justify the imposition of a large fine, thereby depriving the defendants of the opportunity to object to the State's effort to offer such evidence.

7

ROA 000605

At the trial of this case on June 14, 2016, the State presented no evidence as to the defendants' **current** financial strength. In the record presented to the Court on June 14th, there is not a *scintilla* of evidence that allows the Court to justify such a large fine. Once the case was over, the Court itself recognized the State's failure of proof on this issue. As a result, the Court scheduled a post-trial conference call to discuss the issue of whether there was or was not sufficient evidence in the record to allow the Court to impose a fine. Realizing the record was deficient, the State's private counsel asserted a novel theory: to wit, to travel back in time from an earlier court appearance and resurrect the defendant's affidavit from a separate court appearance!² The State introduced this evidence through the novel procedure of a written "closing argument" filed June 27, 2016, 13 days after the conclusion of the trial. The Solicitor's "closing argument" contained alleged evidence not introduced at trial, and the evidence consists of allegations concerning Elephant's financial strength **before** the Court imposed heavy fines and closed the business for six months.

This novel procedure is not authorized by any rule of evidence or procedural rule. There is no procedure that allows a party to mine other files and

² This type of zealous advocacy in a criminal proceeding is why the Supreme Court cautions Solicitors against using private counsel in criminal matters.

submit post-trial evidence from other cases after the fact. Leaving aside the obvious violations of the defendants' Fifth Amendment rights, their Sixth Amendment right to confront witnesses, and the rules against hearsay, there is no way for lawyers to object to evidence submitted via out-of-court, post-trial submissions. The Court grounds its excessive fine on the following information, supplied post-trial by the State's private counsel:

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

Order at page 14

The above statement by the Court is premised on nothing more than post-trial arguments and submissions and does not acknowledge, let alone discuss, the impact flowing from the fact that the Court closed Platinum Plus from June until November 2015, pursuant to the Court's May 6, 2015, Order. Mr. Gaines' April 24, 2015, affidavit addressed Platinum Plus's financial condition **before** the Court shuttered the business for sixth months! Thus an affidavit about the business' financial strength **before** being closed for sixth months is not only misleading, but also it is shocking the State attempts to introduce such evidence after the case has been tried. Thus the Court's justification for a huge fine is based on nothing

more than speculation fueled by out-of-court, improper, post-trial submissions.

As the U. S. Supreme Court held in *United States vs. United Mine Workers of America*, fines must not only not be excessive, but also must "be based upon evidence of complainant's actual loss":

Therefore, we must determine whether appellant's contempt was civil or criminal. If it was civil, his conditional sentence of one year without a right to jury trial is proper. If it was criminal, appellant had a constitutional right to a jury trial before a sentence of more than six months could be imposed. The Order and Rule to Show Cause was to show why appellant should not be held in contempt for not returning the children. However, when the contempt hearing was held, the children had already been returned pursuant to a Nevada court order. As a result of appellant's contemptuous conduct, respondent's custodial rights were violated. In addition, respondent had gone to considerable expense in recovering the children. Appellant was given a conditional sentence: spend a year in prison or pay the respondent's expenses that she incurred in enforcing the court's order. The purpose of the sentence was obviously to compel appellant to pay the expenses, not for punishment. Appellant does not contend that he is financially unable to reimburse the respondent for her expenses. The conditional nature of the imprisonment, based entirely upon appellant's refusal to pay respondent's expenses, justified holding the civil contempt proceeding without a jury trial.

Appellant was allowed to purge himself of his one year sentence by paying to respondent compensatory contempt in the amount of \$14,960.43, \$12,658.79 for her expenses and her husband's, and \$2,301.64 for her parents' expenses.

[277 S.C. 386] Compensatory contempt is a money award for the plaintiff when the defendant has injured the plaintiff by violating a previous court order. The goal is to indemnify the plaintiff directly for harm the contemnor caused by breaching the injunction. Rendleman, *Compensatory Contempt: Plaintiff's Remedy When A Defendant Violates An Injunction*, 1980 Ill.L.F. 971. Courts utilize compensatory contempt to restore the plaintiff as nearly as possible to his original position. Therefore it is remedial.

[Page 920]

We have recognized compensatory contempt in at least two cases. In *Ex Parte Thurmond*, 1 Bailey 605 (1830), we stated that when an individual right is directly involved in a contempt proceeding, the court has the power to order the contemnor to place the injured party in as good a situation as he would have been if the contempt had not been committed, or to suffer imprisonment. In *Lorick & Lowrance v. Otley*, 69 S.C. 567, 48 S.E. 614 (1904), we held that a contemnor may be required to pay damages suffered by reason of his contemptuous action or suffer imprisonment. The defendant was ordered to pay to the plaintiff the value of the trees he had destroyed in disregard of the court's order.

When . . . property of an individual is taken or destroyed in contempt of the court's order, those interested have a right to ask of the court its restoration or payment of its value at the hands of the offender, and the court requires such restoration as part of the punishment. 49 S.E. at page 615.

Compensatory contempt awards have been affirmed also by the United States Supreme Court.

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. Where compensation is extended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss

United States v. United Mine Workers of America, 330 U.S. 258, 304-305, 67 S.Ct. 677, 701-702, 91 L.Ed. 884 (1947)

Here, there is no question but that the fine imposed by the Court is, without a doubt, a fine and being imposed purely for punishment. No "complainant" testified to any "actual loss." Therefore, the Court cannot impose a fine without having both a legal and an evidentiary basis for the amount

imposed without violating the Fifth and Eighth Amendments. Here, the only “evidence” offered by the State to justify such a huge fine was offered after-the-fact and out-of-court, in violation of the defendants’ privilege against self-incrimination and rights to fundamental due process. Since the fine is not supported by law and since there is no evidentiary basis for such a huge fine, the amount imposed is an arbitrary and unconstitutional fine.

5

The Court improperly re-writes the parties’ voluntary Consent Order Agreement

This entire matter is before the Court because the State alleges that the defendants violated a contract voluntarily entered into by the parties. After the State alleged the defendants violated the terms of the contract—which is reduced to an Order of the Court—the State announced it was seeking a finding of criminal contempt, which is, as discussed above, a backward looking form of punishment designed to vindicate the authority of the Court and punish a wrongdoer for past bad conduct. Here, however, the Court rewrites the parties’ voluntary agreement and imposes new conditions upon the defendant, Gaines: “Moving forward, Gaines may not assert ignorance of such facts to avoid the responsibilities undertaken under the 2015 Order. Having now been expressly afforded such

notice, further violations of the 2015 Order by Platinum Plus may likely result in Gaines personally being subject to contempt of court sanctions.” (Order under review page 7) The area of common ground between the parties is that the parties agreed to the terms of the voluntary consent Order that is the subject of this action, and as a signatory, Gaines, no doubt, faces the potential for sanctions for violations of the parties’ voluntary agreement. However, the Court is without authority to rewrite the agreement and impose new or additional terms upon the parties’ voluntary agreement that are greater than those contained in the agreement:

The paramount rule in interpreting contracts is to ascertain the intention of the parties and then to put these intentions into effect. To arrive at a correct conclusion as to the intention of the parties, it is proper that the contract be considered in the light of surrounding circumstances. The parties’ intention must, in the first instance, be derived from the language of the contract. If its language is plain, unambiguous and capable of only one reasonable interpretation, no construction is required and the contract’s language determines the instrument’s force and effect.

Lewis v. Premium Investment Corp., 351 S.C. 167, 568 S.E.2d 361 (2002),
RentCo v. Tamway Corp. 283 S.C. 265, 321 S.E.2d 199 (Ct. App. 1984)

Thus, to the extent that the Order under review might be read to impose new or additional responsibilities upon the defendant, Gaines, or to impose new monitoring requirements upon the defendants that exceed those agreed to in the

parties' voluntary agreement, the Court must amend its Order to make clear that the duties imposed upon the defendants continue to be defined and limited by the terms and conditions of the parties' voluntary agreement. In short, in imposing a backward looking punishment, the Court is without authority to rewrite the parties' voluntary agreement.

Conclusion

For the foregoing reasons, the defendants respectfully request that the Court reconsider its decision and amend the Order to narrow the findings to comport with the controlling principles of law set forth above. The defendants also request that the Court delete or reduce the huge fine imposed upon the defendant, Elephant, for the reasons set forth above.

Respectfully submitted,

August 4, 2016

/s/ Thomas R. Goldstein

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

/s/ H. Louis Sirkin

H. Louis Sirkin, *pro hac vice*
Santen-Hughes
600 Vine Street
Suite 2700
Cincinnati, Ohio 45202
(513) 721-4450
hls@santen-hughes.com

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

The State of South Carolina on the relation of William Walter Wilkins, III, Solicitor of The Thirteenth Judicial Circuit, respectfully submits the following response to the Motion to Reconsider filed by Defendants Elephant, Inc. ("EI") and Gregory Gaines ("Gaines"):

1. The Court's Order Does Not Impermissibly Blend Criminal and Civil Contempt.

- Defendants' objections concerning the Court's imposition of civil contempt sanctions lack merit. (*See* Def. Mot. to Recon, pp. 1-4.) As an initial matter, Defendants' own concessions prove the point.
- Defendants have conceded the Solicitor's Verified Petition embraced both civil and criminal contempt. (*See* Def. Reply, p. 15 ("In this way, the Petition also constitutes a pleading for civil contempt, as civil contempt is exercised for the coercion of compliance for the complain[ant's] [sic] benefit.") Pl. Verif. Petit., ¶16 (Defendants should "sanctioned to the maximum extent allowed by law..."))
- Defendants have conceded the Court retains sole discretion in determining what sanctions to grant for contempt. (*See* Def. Closing p. 1 "[I]t remains the Court's sole discretion to incarcerate the defendants for a period greater than six months; Def. Mot. to Recon., p. 7 ("The Solicitor has no power to limit the Court's exercise of its discretion and so the defendants were exposed to the possibility of a sentence greater than six months."))

- Defendants have similarly conceded the nature and type of sanctions—imposed in the Court's discretion—distinguishes criminal from civil contempt. (*See, e.g.*, Def. Mot. to Recon., p. 3 ("[C]riminal contempt is backward looking only" and p. 5 citing holding of *Curlee v. Howle*, 277 S.C. 377 (1982) (Holding: "[S]entences were [civil contempt because they were] clearly intended to operate in a prospective manner to coerce..."); *see also Ex parte Jackson*, 381 S.C. 253, 258, 672 S.E.2d 585, 587 (Ct. App. 2009). In this way, Defendants want the Court to believe in horsey things while denying the horse exists.
- Defendants simply err when arguing the Court cannot issue sanctions for both criminal and civil contempt in the same proceeding. *DiMarco v. DiMarco*, 393 S.C. 604, 713 S.E.2d 631, 2011 S.C. LEXIS 248 (2011) ("A judge certainly may order both a civil and a criminal contempt sanction...")
- The Solicitor would acknowledge the Court could not award criminal contempt sanctions, if a party only pursues civil contempt sanctions. This is because criminal contempt implicates constitutional safeguards, requires a willfulness showing, and exacts a higher standard of proof.
- But, the reverse does not prove true. This is because a litigant who proves the elements of criminal contempt—beyond a reasonable doubt—has also necessarily proved civil contempt by the lower evidentiary showing of clear and convincing evidence. Civil contempt similarly does not implicate constitutional safeguards such as jury trial rights. Nor does it require a showing of willfulness. *See, e.g.*, 17 Am.Jur.2d, *Elements of Civil Contempt*, §13. And, the Court, at all times, retains the inherent authority to ensure parties abide by its judgments.
- Defendants have provided neither authority nor evidence to support their arguments.
- While Defendants assert distinctions between criminal and civil contempt influenced their trial strategy, they altogether fail to explain how or why this would be true. Nor have Defendants submitted affidavits indicating what evidence they would have submitted or identifying what they would have done differently, even in cursory fashion.
- Moreover, Defendants cannot now claim to have lost an opportunity to present evidence. In a non-jury proceeding, within ten days, a party can file a motion under either (or both) Rule 52(b), SCRCP and Rule 59(a), SCRCP to re-open the record, present further evidence, and obtain additional findings. Defendants cannot wait until the mandatory window closes for such motions only to argue they lost the chance to present evidence to the Court.

- According to Defendants, civil contempt sanctions must include a method of purging the contempt. (Def. Mot. to Recon, p. 3.) Not so.
- Civil contempt sanctions can serve two purposes: to coerce compliance or to restore the petitioner's rights (*i.e.*, compensatory contempt). *See Curlee v. Howle*, 277 S.C. 377, 386 (1982). Sanctions for the former require a method for the contemnor to purge the contempt. Sanctions for the latter do not.
- South Carolina Courts have recognized the remedial aspects of civil contempt by operation of compensatory contempt sanctions since at least 1904. In the decision of *Lorick & Lowrance v. Motley*, 69 S.C. 567, 571 (1904), the South Carolina Supreme Court held:

When, on the other hand, property of an individual is taken or destroyed, in contempt of the court's order, those interested have a right to ask of the court its restoration or payment of its value at the hands of the offender, and the court requires such restoration or payment of its value as part of the punishment. In each instance the ultimate purpose is the protection of adjudicated right.

The case of *Ex parte Thurmond*, 1 Bail. 605, quoted with approval in *State v. Nathans*, 49 S.C. 199, 27 S.E. 52, lays down the rule that it is within the power of the court where individual right is directly involved, to order the contemnor to place the party injured in as good situation as he would have been if the contempt had not been committed, on pain of imprisonment. To deny such power to the courts would be to strike down one of the main safeguards of society against lawlessness and against the oppression of the weak by the strong.

Id. at 571; *see also Curlee v. Howle*, 277 S.C. 377, 386 (1982) ("[W]hen an individual right is directly involved in a contempt proceeding, the court has the power to order the contemnor to place the injured party in as good a situation as he would have been if the contempt had not been committed.").

- Where, as here, the Order violated by the contemnor involves measures obtained by the State to safeguard the public interest, monetary sanctions do not place the State "in as good situation" as it would have been if the contempt had not occurred. *Id.* In such instances, the Court can award compensatory contempt in the form of equitable relief, since it restores the petitioner's adjudicated rights.

- The decision of *State ex rel. Love v. Howell*, 285 S.C. 53, 328 S.E.2d 77, 1985 S.C. LEXIS 345 (1985) illustrates the principle. The *Howell* Court held:

The purpose of licensing architects is to protect the public. It is obvious that the public is not being protected by the actions of Howell and his disregard for the laws of South Carolina and orders of the court.

We hold that George L. Howell was in contempt of court. The trial judge should have so held. The case is remanded to the trial court not for the purpose of determining **whether Howell was in civil contempt but for the purpose of imposing sanctions**. It is apparent that Howell will not respond to the mere dictates of the court. The trial judge has full authority to imprison him or fine him or both or close **up his entire business operation if necessary to assure full compliance with the injunctive orders** herefore issued by the Court of Common Pleas.

State ex rel. Love v. Howell, 285 S.C. 53, 328 S.E.2d 77, 1985 S.C. LEXIS 345 (1985) (emphasis added). Thus, in connection with civil contempt proceedings under an Order secured to protect the public interest, the Court has discretion to restore lost rights by invoking equitable powers, not just awarding monetary damages.

- Here, the Court did exactly what was described above. The Court restored to the State the rights lost under the 2015 Order by fashioning compensatory relief mirroring the benefits the State would have obtained, but did not, had Defendants complied with the Court's Order and honored the word. Like the Nuisance Statute, the 2015 Order was designed to abate the public nuisance occurring at Platinum Plus. Instead of shuttering Platinum Plus's doors for a year, however, under the 2015 Order, the Parties agreed Platinum Plus would close its doors for only six (6) months and exchange the remaining six (6) month interval with a twelve (12) month enhanced monitoring program, so Platinum Plus could re-open more quickly.
- Within only one (1) week of re-opening, however, Platinum Plus allowed the nuisance conduct to resume on a serial and widespread basis. As a result, as a civil compensatory remedy, the Court re-imposed upon Platinum Plus the exact same terms and conditions from the 2015 Order's inception so as to restore to the State the rights lost by Defendants' contumacious conduct.

- Defendants also restate the arguments about Fifth Amendment rights against incrimination. According to Defendants, the Court misstated the holding of *Newell v. Slayton*, 468 F.2d 888 (1972). The argument is incorrect. *Newell* stands exactly for what the Court cited it; it does not support the proposition cited by Defendants. Omitted by Defendants, the *Newell* Court held:

The prosecutor in the instant case commented on defendant's failure to contradict the state's witness through other witnesses. By so doing, the state introduced the red herring of an alibi defense, which Newell hadn't himself asserted, and then attacked that purported defense.

While such overzealous tactics should not be encouraged, they in no sense violated Newell's Fifth Amendment privilege against self-incrimination.

The comments did not contain language "manifestly intended or of such character that the jury would naturally and necessarily take it to be a comment on the failure of the accused to testify."

Newell v. Slayton, 468 F.2d 888, 889 (4th Cir. Va. 1972).

- Moreover, Defendants wholly ignore the string cite of other cases also cited by the Court, *see* Order, p. 11, FN18, and, of course, cite no actual authority supporting their "uncharted" (and rejected) theorizations of Fifth Amendment jurisprudence.

2. Contrary to EI's Contentions, Both the Court's Order and the Record Evidence Cited Therein Establishes EI's Willfulness.

- Pages 4 & 5 of the Court's Order sets forth the evidentiary bases supporting the Court's finding. (Order pp. 4-5.)
- Examples of specific findings supporting the Court's findings of willfulness include *inter alia*:
 - a. Platinum Plus almost immediately began violating the 2015 Consent Order upon re-opening. (*Id.* at 4 (citing Hr'g. Tr. 31:19-24, pp. 32-29).)
 - b. The Solicitor provided notice to Platinum Plus of its non-compliance in January and February of 2016 but serial and persistent violations continued despite such notice. (*Id.* (citing Verif. Petit., Ex. E; Hr'g. Tr. 59: 18-23, 64-65, 68, 72-75, 77, 84, 96, 97).)

- c. The sheer number of serial and patent violations of the 2015 Order confirmed Platinum Plus's "willful non-compliance" (*Id.* citing Hr'g Tr. at 32, 34, 35-37, 64, 65, 68, 72, 73, 74, 77, 96-97.)
 - d. Evidence established the two Independent Monitors randomly chose three (3) nights and observed serial compliance on each occasion. (*Id.* at FN4.)
 - e. Platinum Plus's management and employees turned an institutional blind eye to violative conduct. (*Id.* (citing Hr'g Tr. at 35-36, 72-75, 96-97).)
 - f. Platinum Plus allowed dancers to wear patently violative clothing without taking corrective measures. (*Id.* (citing Hr'g Tr. at 63-64, 72, 74, 77).)
 - g. As late as March of 2016 Platinum Plus did not inform prospective dancers of what clothing and conduct proved off-limits under the Court Order. (*Id.* (citing Hr'g Tr. at 108:23-24, 114:4-18).)
 - h. Platinum Plus continued to supply prospective dancers with an Entertainment Agreement, the terms of which failed to comply with the 2015 Order. (*Id.* (citing State Ex. 7; Hr'g Tr. at 106-107).)
 - i. Platinum Plus violated Paragraph V(A)(4) of the 2015 Order by failing to provide the Solicitor video footage as requested. (*Id.* (citing Hr'g Tr. at 40:17-41:18).)
 - j. The video cameras installed by Platinum Plus did not capture reviewable video footage in "all places where Dancers" interacted with customers as required by Paragraph V(A) of the 2015 Order. (*Id.* at 5 (citing Hr'g Tr. at 26, 37-38; Verif. Petit., Ex. E at 1).)
 - k. Evidence also appeared to establish purposeful efforts to evade the mandatory video monitoring. (*Id.*)
 - l. Video footage substantially corroborated the oral testimony given by the State's witnesses concerning Platinum Plus's willfulness. (*Id.* (citing State Ex. 1-4).)
- Defendants' motion altogether fails to challenge the evidence cited by the Court's Order as supporting the Court's findings. (*See* Def. Mot. to Recon.)
 - For purposes of contempt, the element of intent "is subjective, not objective, and must necessarily be ascertained from all of the acts, words and circumstances

surrounding the occurrence." *State v. Bevilacqua (In the Interest of Douglas F.)*, 316 S.C. 122, 447 S.E.2d 213, 1994 S.C. App. LEXIS 93 (S.C. Ct. App. 1994).

- Here, ample evidence satisfies willfulness on the part of EI as reflected by the Court's Order and un-refuted by EI.
- 3. Defendants Misstate the Law When Contending They Possessed a Right to a Jury Trial.**
- According to Defendants, "[T]he test for whether the defendants did or did not have a right to a jury is what they were exposed to as a maximum punishment." (Def. Mot. to Recon., p. 7.)
 - The United States Supreme Court expressly rejected Defendants' assertion in the decision of *Taylor v. Hayes*, 418 U.S. 488, 41 L. Ed. 2d 897, 94 S. Ct. 2697 (1974). The *Taylor* Court held:

[O]ur cases hold that petty contempt like other petty criminal offenses may be tried without a jury and that contempt of court is a petty offense when the penalty actually imposed does not exceed six months...Hence, although petitioner was ultimately found guilty and sentenced separately on eight counts of contempt, the sentences were to run concurrently and were, as the Kentucky Court of Appeals held, equivalent to a single sentence of six months. The original sentences imposed on the separate counts were to run consecutively and totaled almost four and one-half years, with two individual counts each carrying a year's sentence. But the trial court itself entered an amended judgment which was understood by the Kentucky Court of Appeals to impose no more than a six-month sentence. The eight contempts, whether considered singly or collectively, thus constituted petty offenses, and trial by jury was not required.

Id. at 496 (internal citations omitted).

- Thus, in *Taylor*, the Defendant not only faced four and one-half years of imprisonment but the trial court initially imposed such a sentence before amending the same to a "six-month sentence." *Id.* Contrary to Defendants' assertions, then, under *Taylor*, "[T]rial by jury was not required." *Id.*; see also *State v. Passmore*, 363 S.C. 568, 576 (Ct. App. 2005) (Noting *Taylor*'s holding: "*Taylor v. Hayes*, 418 U.S. 488, 41 L. Ed. 2d 897, 94 S. Ct. 2697 (1974), involved a contemptuous attorney whose sentences totaled almost four and one half years in the aggregate, but ran concurrently and were "equivalent to a single sentence of six months." *Id.* at 495. The Court found the contempts were petty offenses and trial by jury was not required. *Id.* at 496.")

- For these reasons, Defendants' jury trial contentions contradict well-established precedent. See, e.g., *Frank v. United States*, 395 U.S. 147, 149 (1969) ("[S]everity of the penalty actually imposed" best indicates "is the best seriousness of the particular offense" and "[S]entences for criminal contempt of up to six months may be constitutionally imposed without a jury trial."); *Grayton v. United States*, 50 A.3d 497, 2012 D.C. App. LEXIS 339 (D.C. 2012) ("Our analysis of [Defendants'] right to a jury trial on a contempt charge is backward-looking...and turns on the sentence actually imposed."); *United States v. McCoy*, 866 F.2d 826, 830 (6th Cir. Mich. 1989) ("Even contempt of court has been held to be a "petty offense" when the penalty actually imposed does not exceed six months, and "petty contempt like other petty criminal offenses may be tried without a jury."); *United States v. Woods*, 450 F. Supp. 1335, 1340 (D. Md. 1978) ("Hence, the only relevant factor in such prosecutions is the length of the sentence actually imposed, and whether a defendant must be accorded a right to trial by jury for such a charge cannot be determined until guilt has been adjudged and sentence pronounced.")
- Defendants' motion cites *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982) in support of its position. Yet, *Curlee* actually contradicts Defendants' argument. As the *Curlee* Court noted jury trial rights only arise for "serious criminal contempts" meaning trials where Defendants "are committed to imprisonment of more than 6 months." (*Id.*) If the Court imposes a sentence of six months or less, the contempt constitutes a "petty offense" and no "trial by jury" is required. , and trial by jury was not required. *Taylor*, 418 U.S. at 496.
- Here, the Court correctly found Defendants did not possess a right to a jury trial. (Order, p. 12.) The Court did not impose incarceration as a penalty. Nor did the Solicitor seek incarceration exceeding six months. (*Id.*) And, contrary to Defendants' assertions, the State can stipulate that it is not seeking incarceration of six months to obviate a jury trial. See *Girard v. Goins*, 457 F. Supp. 369, 1978 U.S. Dist. LEXIS 15333 (E.D. Mo. 1978) ("State has a right to reduce a sentence to less than six months and thereby to obviate a jury trial. Accordingly, this Court will order the petitions of each of the petitioners be dismissed")
- Defendants have provided no analysis why the decisions cited by the Solicitor and the Court do not control. Nor have Defendants cited any authority actually supporting their assertions.
- Last, in relation to the civil contempt findings of the Court, no jury trial right attaches. *Poston v. Poston*, 331 S.C. 106, 113 (1998) ("A civil contempt proceeding does not require a jury trial.")

4. The Court Did Not Impose Excessive Fines

- According to Defendants, the fines imposed by the Court constitute excessive fines forbidden by the Eighth Amendment. (Def. Mot. to Recon., pp. 7-12.) The argument lacks merit.
- As an initial matter, Defendants improperly raise the newly minted "excessive" fine argument for the first time in their motion for reconsideration. (See Def. Closing; Def. Reply.) "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481, 1990 S.C. App. LEXIS 55 (Ct. App. 1990); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567 (2014)("[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not."); *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 652 (Ct. App. 2015).
- Here, the Solicitor's Closing requested even higher finds due to serial nature of Defendants' misconduct. (Pl. Closing, p. 40.) Defendants thereafter submitted a Reply Closing and never questioned the amount of fines requested as unconstitutionally excessive. (Def. Reply, *passim*.) Thus, Defendants could have raised any such arguments prior to judgment, but did not.
- Defendants again cite no applicable authority to support their stated position. Instead, Defendants cite *United States v. United Mine Workers of America*, 330 U.S. 258, 304-305 (1947) for the proposition that fines must "be based upon evidence of complainant's actual loss..." (Def. Reply, pp. 10-11.) However, Defendants omit the prior two sentences stating: "Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. Where compensation is intended, a fine is imposed, payable to the complainant." *Id.* at 303-304. Thus, the passage relates to civil *compensatory* contempt.
- On page 10 of their motion, Defendants also cite a passage from *Curlee v. Howle*, 277 S.C. 377, 385 (1982), although they provide no actual citation to the decision. Like the passage from *United Mine Workers*, the citation from *Curlee* also relates to civil *compensatory* contempt.
- Yet, the Court imposed a one hundred thousand dollar (\$100,000.00) for criminal contempt, not compensatory civil contempt. (Order, pp. 13-14.)
- Defendants' arguments that the Court's Order fails to set forth proper grounds supporting the amount of its fine for criminal contempt simply ignores the Order. The Court found:

- a. "The evidence overwhelmingly established Platinum Plus clearly, repeatedly, willfully and beyond a reasonable doubt violated the 2015 Order." (Order, p. 5; *see also supra* (discussing willfulness evidence set forth on pages 4-5 of the Order).
- b. The 2015 Order arose out of a civil action initiated by the Solicitor on behalf of the State to abate a public nuisance at Platinum Plus's primary place of business as prohibited by S.C. Code §15-43-10 *et seq.* (Order, p. 1; *see also* 2015 Order, p. 3, ¶I (Defendants stipulating the Solicitor possessed and could present sufficient evidence to the Court that Platinum Plus constituted "public nuisance."))
- c. The Court noted the 2015 Order actually incorporated the terms of a prior 2002 Order of the Court and the "prohibitions" set forth in the same have "been binding upon Platinum Plus for over fourteen years and twice knowingly and voluntarily agreed upon following advice from counsel." (Order, pp. 2-3 & FN6.)
- d. Prior amounts paid by Platinum Plus totaling sixty-six thousand dollars (\$66,000.00) had no deterrent effect as reflected by Platinum Plus's almost immediate violation of the 2015 Order upon re-opening in blatant and repeated fashion. (Order, p. 14, ¶1(a) & (b).)
- e. *See United States v. United Mine Workers*, 330 U.S. at 258, 303-304 (1947) (Court may consider extent of willful and deliberate defiance, seriousness of contempt, whether public interests are involved, need for deterrence; "Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge. reliance must be placed upon the discretion of the trial judge. *United States v. United Mine Workers*, 330 U.S. 258, 303 (1947).
- f. The Court also made specific findings about Platinum Plus's ability to pay the sanction. The Court found, in 2014, Platinum Plus served over 100,000 patrons, employed 53 full-time employees, and purchased more than \$3,000,000.00 in goods and services from the local economy. (Order, p. 14, FN24.) Accordingly, the Court made more than adequate findings in support of the criminal fine imposed.
- g. Defendants claim the Court's findings regarding EI's ability to pay violated their Fifth and Sixth Amendment rights because the Court relied upon "post-trial evidence from other cases after the fact." (Def. Mot. for Recon., p. 9.) Defendants also contend they lost their right to confront such affiant and the relied upon affidavit ran afoul of the rules against hearsay. (*Id.*) Not so.
- h. The only evidence relied upon by the Court regarding Defendants' ability to pay came from *this* case. And, it was Defendant Gaines' own affidavit, submitted to the Court by Gaines, and relied upon by Gaines. The Court cited the Affidavit

of Gregory Gaines as it exists in the Court's record in the above-captioned matter. (Order, p. 14, FN24.)

- The State did not submit evidence of Defendants' financial strength "after the case [was] tried," as Defendants purport to find so "shocking." (Def. Mot. to Recon., p. 9.) In so arguing, Defendants ignore an inescapable fact—evidence of Elephant, Inc.'s financial strength had already been established in the record—*by them*. When crying foul, Defendants complain about their own evidence.
- While likely not necessary, the Solicitor specifically requested the Court take judicial notice of such facts in the State's Closing. (See Pl. Closing, pp.1-2, FN1.) Defendants have never advanced a single argument challenging the request for judicial notice or the authority relied upon when doing so. (See Def. Reply.) Nor can they do so now.
- Courts routinely rely upon pre-existing filings and parties' admissions contained in the judicial record. See Rule 201, SCRE; *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that "the most frequent use of judicial notice of ascertainable facts is in noticing the content of court records."); *Doe v. Bishop of Charleston*, 407 S.C. 128, 135, FN2 (2014); 21 C. Wright & K. Graham, *Federal Practice and Procedure: Evidence* §5106 at 505 (1977).
- Nothing improper exists about a Court relying upon specified financial information set forth in party's filings and representations to a Court. See, e.g., *Von Fox v. Nava*, 2016 U.S. Dist. LEXIS 30916 (D.S.C. 2016) (Holding: "In the many different cases filed by Plaintiff in this Court so far in 2016, his different IFP motions indicate bank account balances between \$1,000.00 and \$300.00. The Court may properly take judicial notice of such records."))
- Simply because a proceeding involves contempt does not alter the Court's right to rely upon a litigant's court filings. See, e.g., *McDonald v. McDonald*, 233 Ga. 660, 212 S.E.2d 830, 1975 Ga. LEXIS 1411 (1975) ("The trial court did not err in considering evidence of which it had personal knowledge, records of prior proceedings in the same case and evidence presented at the contempt hearing in adjudicating the appellant in contempt of court.")
- This is particularly true where the filings relied upon by the Court were filed in the same civil action in which the contempt findings are sought. See, e.g., *Collins v. Collins*, 1995 OK CIV APP 56, P4 (Okla. Ct. App. 1995) ("[T]his Court may take judicial notice of its own records and prior opinions in litigation interconnected with the appeal before it.")
- Moreover, the Court may rely upon prior judicial filings at any stage of the proceeding. See Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding"); see also *CertusView Techs., LLC v. S&N Locating Servs., LLC*,

2016 U.S. Dist. LEXIS 102248 (E.D. Va. Aug. 2, 2016) ("[W]ith respect to documents previously filed on the Court's docket, the Court, pursuant to Federal Rule of Evidence 201, **may take judicial notice of public court records and parties' admissions**, because the facts within such documents can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. As such, the Court will take judicial notice of court documents in the record and the parties' prior admissions. **The Court may take such notice at any stage of the proceeding.**")(emphasis added.)

- Thus, Defendants prove mistaken in arguing: "There is no procedure that allows a party to" cite evidence already existing in the Court's record. (Def. Mot. for Recon., p. 9.)
- Similarly, no Sixth Amendment Confrontation Clause infirmity exists, as Defendants contend. (*Id.*) This is true because the evidence relied upon by the Court came from Defendant Gaines, the sole shareholder and CEO of EI. Gaines does not have a constitutional right to challenge his own sworn submittal to the Court.
- Nor does such testimony constitute inadmissible hearsay, as Defendants contend. (*Compare Id. with* Rule 801(d)(2), SCRE.)
- Last, while contesting the Court's ability to rely upon the accuracy of Gaines' own sworn statement—even portraying it as misleading—nowhere have Defendants submitted evidence refuting their submittal. Nowhere does EI even argue it lacks the ability to pay the fine imposed. Of note, Defendants had procedural recourse to do so; in non-jury proceedings, both Rule 52(b), SCRPC and Rule 59(a), SCRPC allow litigants to move the Court to re-open the record to consider additional evidence and make additional findings. But, Defendants elected not to do so within the mandatory ten (10) day period. If Defendants wished to raise such issues, the South Carolina Rules of Procedure afforded them such an opportunity. They did not do so because they cannot.

5. The Court Did Not Improperly Re-Write the Parties' Consent Order.

- In their last argument, Defendants contend the Court improperly re-wrote the Parties' Consent Order. (Order, pp. 12-14.)
- It appears Defendants do not fully understand the lenity the Court has shown Gaines. In the State's view, the Court could have easily held Gaines in contempt based upon the 2015 Order's terms and conditions and his capacity as an individual signatory, tenant, sole shareholder of EI, and EI's CEO. (*See* Order, pp. 6-7.)
- Instead, the Court granted Gaines a second chance, while making it clear how the Court interpreted the 2015 Order. The Court found: "However, going forward, the

Court provides Gaines with clear and unequivocal notice that, as Elephant, Inc.'s sole shareholder and Chief Executive Officer, and as a signatory to the Consent Order in dual capacity, the Court concludes he does possess an affirmative duty ensure Platinum Plus adheres to the 2015 Order's terms and conditions." (*Id.*)

- The Court in no way re-wrote the parties' Consent Order. Until it felt confident Gaines understood his personal obligations under the 2015 Order, which the Court's ruling made abundantly clear, the Court refrained from holding Gaines in contempt. Notably, however, the Court could just as easily find Gaines fully understood the 2015 Order because: he voluntarily executed the same in his personal capacity, he had counsel when doing so, and the 2015 Order substantially incorporated the prior Consent Order from 2002 under which EI had already operated for roughly thirteen (13) years.
- Defendants' arguments, in this regard, have no merit.

CONCLUSION

At this point in the proceedings, Defendants have advanced dozens of reasons why the Court should overlook their willful disregard of the 2015 Order. None of their arguments have a valid factual or legal basis. Defendants negotiated a deal with the State. And, they incorporated that agreement into the 2015 Order for the sole purpose of ensuring compliance with the same. At their earliest opportunity, however, Defendants broke their promises and violated the Consent Order. The Court should deny Defendants' motion and uphold the integrity of the Court's Orders.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,

s/Lane W. Davis

Attorneys for the Petitioner

W. Walter Wilkins, III, Solicitor
(S.C. Bar No. 16740)
Andrew Culbreath, Asst. Solicitor
(S.C. Bar No. 14107)
Lane W. Davis
(S.C. Bar No. 68796)
Special Prosecutor
Office of the Solicitor, 13th Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, S.C. 29601
(864)-467-8647
(864)-467-8623

Greenville, South Carolina

August 10, 2016

EXHIBITS

State of South Carolina, et al,
Plaintiff

Against
Elephant, Inc., et al,

Defendant

C.A.# 2015-CP-23-02597

ATTORNEY FOR PLAINTIFF: Andrew Culbreath

DATE OF HEARING: 6/14/16

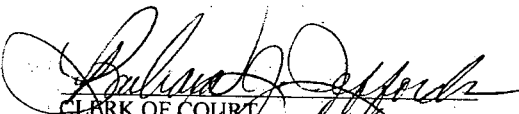
PLAINTIFF EXHIBITS

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4 CD containing videos of monitors within club	62
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COURT EXHIBITS

1 Order signed by Chief Justice Jean Hoefer Toal dated December 16, 2014	11
2 Email to tgoldstein@cobblaw.net from Andrew Culbreath dated June 9, 2016.	122


COURT REPORTER


CLERK OF COURT
DATE: 6/23/16

The Supreme Court of South Carolina

ORDER

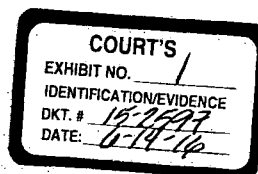
Pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that the Honorable Charles B. Simmons, Jr., Master-in-Equity for Greenville County, is hereby assigned as a Circuit Judge for the Thirteenth Judicial Circuit to assist with the docket and perform the following:

1. In civil jury matters from the date of filing, unless otherwise directed by the Chief Judge for Administrative Purposes (Civil) for the Circuit, to hear and dispose of any or all motions and pretrial proceedings, including damages hearings, and to perform all administrative duties necessary to prepare these cases for trial or other disposition, including sounding the trial roster and docket, but excepting those matters and/or proceedings reserved to the Chief Judge for Administrative Purposes (Civil) for the Circuit; and
2. In civil nonjury matters from the date of filing, unless otherwise directed by the Chief Judge for Administrative Purposes (Civil) for the Circuit, to hear and dispose of any or all motions and pretrial proceedings, and to perform all administrative duties necessary to prepare these cases for trial or other disposition, including sounding the trial roster and docket, and to try these matters to conclusion, but excepting those matters and/or proceedings reserved to the Chief Judge for Administrative Purposes (Civil) for the Circuit; and
3. Hear appeals from Magistrate, Municipal and Probate Courts, as well as cases involving judicial review and/or appeal of decisions of administrative agencies or commissions; and
4. Hear and approve or disapprove settlements of minor's interest and all other people with an incapacity, and wrongful death and survivor actions settlements; and
5. In criminal matters to accept Grand Jury returns; to preside over guilty pleas, bond hearings and probation revocations; to hear and dispose of any or all motions and pretrial proceedings and nonjury trials; to issue search warrants; and to perform all other nonjury criminal matters unless otherwise directed by the Chief Judge for Administrative Purposes (Criminal) for the Circuit; and
6. Perform such other duties as to effectuate the intent of this Order.

The purpose of this assignment is to allow Judge Simmons to assist with the docket and perform these additional duties in accordance with his schedule and taking into consideration his judicial duties as Master-In-Equity. Regular Circuit Judges shall also continue to hear these matters.

This order is effective January 1, 2015 and shall remain in effect until January 1, 2016.



December 16, 2014
Columbia, South Carolina

Jean Hoefer Toal
Chief Justice

The Supreme Court of South Carolina

ORDER

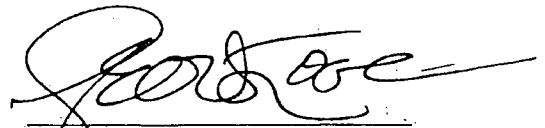
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2. In civil nonjury matters from the date of filing, unless otherwise directed by the Chief Judge for Administrative Purposes (Civil) for the Circuit, to hear and dispose of any or all motions and pretrial proceedings, and to perform all administrative duties necessary to prepare these cases for trial or other disposition, including sounding the trial roster and docket, and to try these matters to conclusion, but excepting those matters and/or proceedings reserved to the Chief Judge for Administrative Purposes (Civil) for the Circuit; and
3. Hear appeals from Magistrate, Municipal and Probate Courts, as well as cases involving judicial review and/or appeal of decisions of administrative agencies or commissions; and
4. Hear and approve or disapprove settlements of minor's interest and all other people with an incapacity, and wrongful death and survivor actions settlements; and
5. In criminal matters to accept Grand Jury returns; to preside over guilty pleas, bond hearings and probation revocations; to hear and dispose of any or all motions and pretrial proceedings and nonjury trials; to issue search warrants; and to perform all other nonjury criminal matters unless otherwise directed by the Chief Judge for Administrative Purposes (Criminal) for the Circuit; and
6. Perform such other duties as to effectuate the intent of this Order.

The purpose of this assignment is to allow Judge Simmons to assist with the docket and perform these additional duties in accordance with his schedule and taking into consideration his judicial duties as Master-In-Equity. Regular Circuit Judges shall also continue to hear these matters.

This order is effective January 1, 2016 and shall remain in effect until January 1, 2017.



Jean Hoefler Toal
Chief Justice

December 9, 2015
Columbia, South Carolina

ROA 000630

Culbreath, Andrew

From: Culbreath, Andrew
Sent: Thursday, June 09, 2016 3:02 PM
To: 'tgoldstein@cobblaw.net'
Subject: Re: State v. Elephant Inc. et. al.

Tommy,

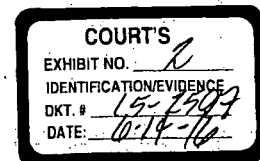
Good speaking with you earlier. Below is a list of the witnesses we may need to call during the hearing on Tuesday, June 14th:

Jorge Crumpton
Jennifer Land
Ashton Padgett
Jeff Smith
Greg Gaines
David Hinson
Rick Zurick
Kevin Ford
Randy Hiller
Claude Todd

Based on our conversation and your tentative agreement to stipulate to the admissibility of the videos from inside the club, this witness list will likely be much shorter. I'll fill the Solicitor in on our conversation, and we'll see you Tuesday if we don't speak before. Thanks

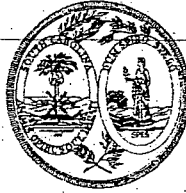
Andrew

Andrew S. Culbreath
13th Judicial Circuit Solicitor's Office
Greenville County Courthouse
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8282
aculbreath@greenvillecounty.org



State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. WALTER WILKINS

May 16, 2016

Security Manager
Platinum Plus
805 Frontage Road
Greenville, SC 29615

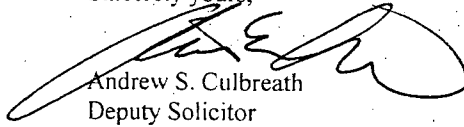
Re: *State of South Carolina v. Elephant, Inc. and Gregory Kenwood Gaines*
Civil Action No. 2015-CP-23-02597

To: Security Manager of Platinum Plus

Pursuant to the June 3, 2015 Consent Order (Incorporating prior 2003 Consent Order and the relevant provisions of Greenville County Ordinance No. 2673), I am requesting a copy of surveillance footage taken in the Couch Room on Friday, May 13, 2016 from 9:00 pm – 12:00 am and in the Champagne Room from Friday, May 13, 2016 at 10:00 pm through Saturday, May 14, 2016 at 1:00 am.

If you require additional information on this issue, please don't hesitate to contact me.

Sincerely yours,



Andrew S. Culbreath
Deputy Solicitor
Thirteenth Judicial Circuit

ASC/kmt

ROA 000632

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

State of South Carolina on the relation of
William Walter Wilkins, III, Solicitor of
The Thirteenth Judicial Circuit,
Plaintiff,

Civil Action No. 2015-CP-23-02597

vs.

Elephant, Inc., Gregory Kenwood Gaines,
and Frontage Road Associates, Inc.

Defendants.

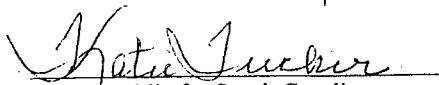
AFFIDAVIT OF SERVICE

PERSONALLY APPEARED BEFORE ME, Jeff Smith, an employee of the Greenville County
Solicitor's Office, who does state that he served Mr. Rick Zurich, General Manager of Platinum Plus
(Greenville) with a copy of the following documents via hand delivery: Letter from Deputy Solicitor
Andrew S. Culbreath to Security Manager of Platinum Plus dated May 16, 2016 requesting video footage.

Mr. Rick Zurich
General Manager
Platinum Plus
805 Frontage Road
Greenville, SC 29615

Dated: May 16, 2016
Greenville, South Carolina

Sworn to and subscribed before me
This 16th day of May 2016


Notary Public for South Carolina

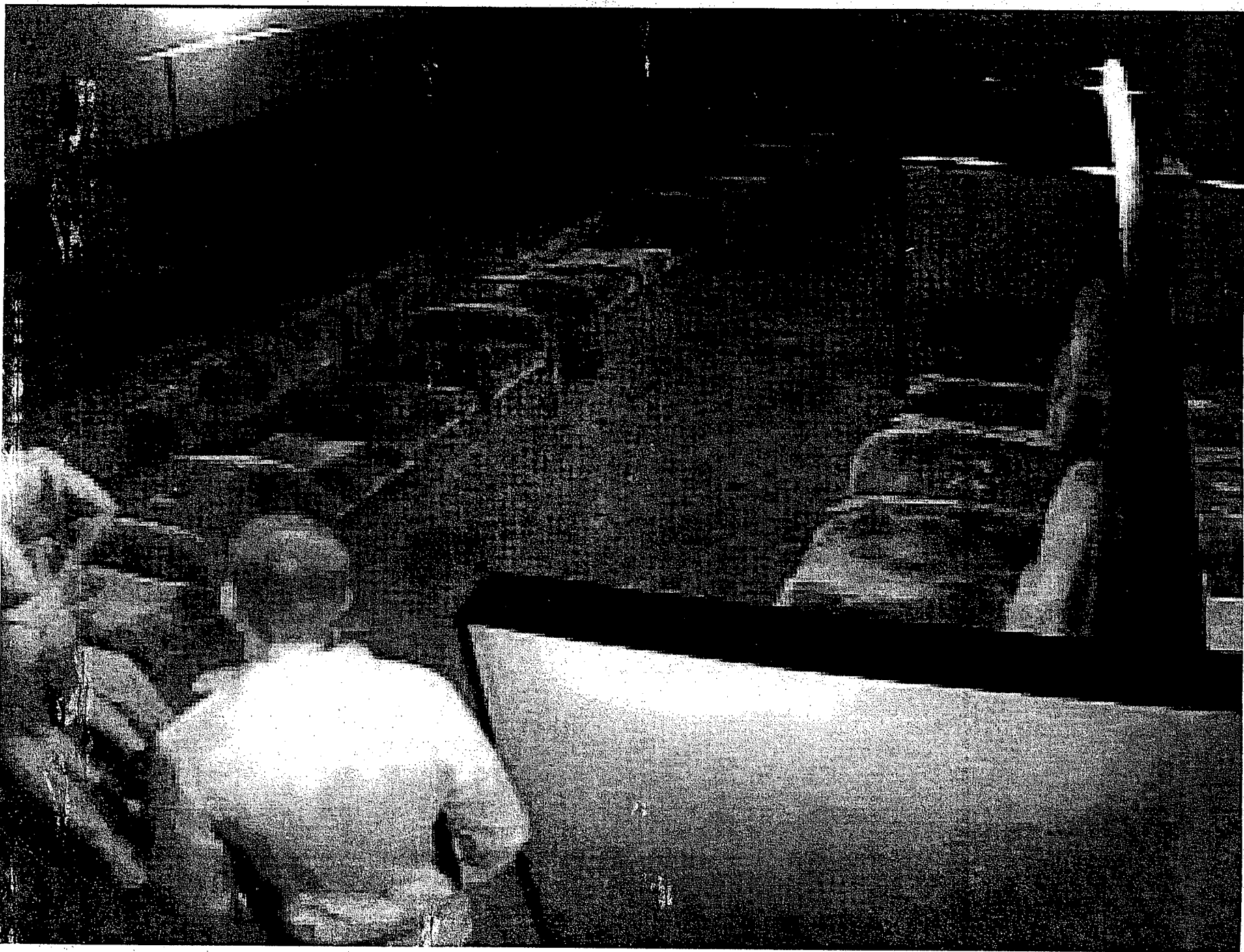
My Commission Expires: June 12, 2025

ROA 000636





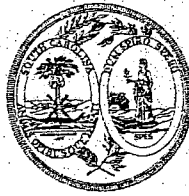
ROA 000637



ROA 000638

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. WALTER WILKINS

May 16, 2016

Security Manager
Platinum Plus
805 Frontage Road
Greenville, SC 29615

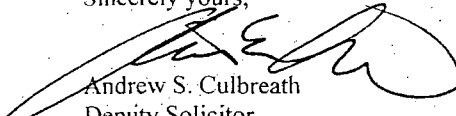
Re: *State of South Carolina v. Elephant, Inc. and Gregory Kenwood Gaines*
Civil Action No. 2015-CP-23-02597

To: Security Manager of Platinum Plus

Pursuant to the June 3, 2015 Consent Order (Incorporating prior 2003 Consent Order and the relevant provisions of Greenville County Ordinance No. 2673), I am requesting a copy of surveillance footage taken in the Couch Room on Friday, May 13, 2016 from 9:00 pm – 12:00 am and in the Champagne Room from Friday, May 13, 2016 at 10:00 pm through Saturday, May 14, 2016 at 1:00 am.

If you require additional information on this issue, please don't hesitate to contact me.

Sincerely yours,


Andrew S. Culbreath
Deputy Solicitor
Thirteenth Judicial Circuit

ASC/kmt



ROA 000639

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina on the relation of)

William Walter Wilkins, III, Solicitor of)
The Thirteenth Judicial Circuit,)

Civil Action No. 2015-CP-23-02597

Plaintiff,)

vs.)

**AFFIDAVIT OF
JORGE CRUMPTON**

Elephant, Inc., Gregory Kenwood Gaines,)
and Frontage Road Associates, Inc.)

INDEPENDENT MONITOR #1

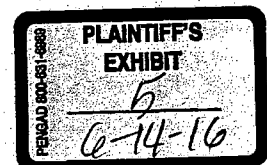
Defendants.)

Personally appeared before me the undersigned, who, being duly deposed and sworn, states as follows:

1. My name is Jorge Crumpton. I am over the age of eighteen (18) years old. I am of sound mind and I am competent to execute this affidavit. I am a South Carolina Criminal Justice Academy Certified Class 1 Law Enforcement Officer. The content of this affidavit is based upon my personal knowledge, unless otherwise indicated herein.

March 25-26, 2016

2. On March 25, 2016, at approximately 21:30, I and Jennifer Land (hereinafter "Independent Monitor #2") did enter Platinum Plus located at 805 Frontage Road in Greenville, S.C. We entered and were advised by the door greeter that men were required to pay a cover charge in order to enter the club. I paid the fee and then bought two beers from the beer stand by the entrance. Independent Monitor 2 and I then took seats close to the main stage.
3. At approximately 22:00 that evening, we were approached by a dancer named Navia. Navia asked us if we wanted to go with her over to the Couch Room for a private dance. We agreed and followed her from the main room into the Couch Room where she tried to sit us against the far wall, which I believed was out of view of the cameras. At this time, Independent Monitor #2 did request that Navia seat us at one of the booths in the middle of the room.
4. Navia began her dance by removing a black lace halter top that exposed her mid-section, as well as a short red skirt. At this point she was wearing only pasties that were covering her entire nipple area and a thin red string thong. The straps on the thong, both on the sides as well as the back, were well under one inch in coverage. Navia began her dance by grinding her buttocks on my lap. Navia stood up and pulled her thong halfway down her buttocks and left it there for the majority of the dance. Navia continued to grind and bounce her buttocks forcefully on my lap, as if attempting to replicate a sexual act. Navia then lay across my lap and spread her legs into a split and exposing the crotch of her panties. She then began slapping and rubbing herself in the crotch area several times. Navia continued grinding her pubic region against mine while dancing, and proceeded to rub her breasts on each side of my face during the dance. Navia



charged us approximately \$60 for the dance, which was approximately \$30 per song. We left the Couch Room after the second dance and returned to the main stage.

5. Independent Monitor #2 and I observed several dancers on the main stage until we observed one, later identified as Chloe (stage name "Slim"), who had tape placed over her nipples which did not cover the entire areola. Independent Monitor #2 approached Chloe and asked her if she would be willing to take us up to the Champagne Room. Chloe approached an employee wearing a suit and ear piece (white male with bald head) standing in the main room and appeared to ask him for permission to take us up to the Champagne Room.
6. At approximately 00:00, Independent Monitor #2 and I went up to the Champagne room with Chloe. We were approached by two champagne hostesses who advised us of the champagne prices. One of the hostesses, Megan, advised us that it would cost \$295 for the cheapest bottle and one hour in the room. We paid that price and then settled on a price of \$350 for Chloe to stay in the room with us for the hour. After a few moments, we were approached by the second hostess who stated that Megan was new and had been wrong about the prices and that it would cost \$353 for the cheapest bottle and one hour in the room. We then paid the difference to the second hostess at which time Chloe started her lap dance on me.
7. Chloe was completely topless with one piece of tape across each nipple and was wearing a pink thong that appeared to be one inch thick in the back and sides. Chloe began by grinding her buttocks on my lap, and then began bouncing up and down on top of my lap as if to simulate sexual intercourse while she pushed her breasts against my face. Chloe also straddled me so that her back was towards me. Chloe continued to grind her pubic region on my lap and bounce up and down during the dance to simulate sexual intercourse. Chloe also used small pieces of fruit, which were brought to us by the champagne hostesses. During her dance, Chloe pulled up my shirt and placed a piece of fruit on my stomach and licked it off.
8. Chloe continued to grind on me, but after a short while she stopped to take a break. During her break, Chloe stated that she and other underage dancers had been allowed to consume alcohol while working at the club. After her break, Chloe continued to dance on me for a few more minutes until a champagne hostess informed us that our time was about to expire. At approximately 01:48, Independent Monitor #2 and I returned to the main room of the club and sat in front of the Main Stage for approximately ten minutes before deciding to leave. The total amount of money spent during this evening was \$843.00.

April 5-6, 2016

9. On April 5, 2016, at approximately 22:47, Independent Monitor #2 and I did enter Platinum Plus located at 805 Frontage Road in Greenville, S.C. We were asked by the door hostess for identification to verify our ages, and then were advised that males had to pay a cover fee in order to enter. The fee was paid and we entered into the main area. We walked over to the bar located to the left side and ordered two beers. We then went back out onto the main floor and sat towards the back of the room.

10. We sat for approximately 35 to 45 minutes with no one approaching us, but during this time we did observe a female who was dancing on the floor with a group of males and several other strippers. The female, later identified as "Mia", had removed a white half shirt she was wearing leaving her topless but with pasties covering her nipples. She was also wearing a wide red thong. Mia finished dancing with the group, put her shirt back on, and walked away headed to the back of the room at which time Independent Monitor 2 began to speak with her. Mia took a seat at the table with us. Independent Monitor 2 told Mia that we were looking to go upstairs to the Champagne Room and wanted another girl to join us.
11. Mia said she knew someone and walked over and had grabbed another girl later identified as "Nicole". Mia and Nicole sat down with us, introduced themselves and asked our names and relationship (i.e. husband and wife or boyfriend and girlfriend). After several minutes of general conversation (where we lived and schools attended), Mia said lets go upstairs and "get the party started".
12. At approximately 23:45 to 23:50 that evening, Independent Monitor #2 and I went up to the Champagne Room with Mia and Nicole where we were met by the Champagne Hostess named "Bree" who told us to sit wherever we wanted to. Bree asked if we wanted the \$295.00 bottle of Champagne, but let us know that, with taxes included, the price would be \$354. Independent Monitor #2 agreed to the price, and Bree then stated that we could discuss the cost of the dances with the two girls. Independent Monitor 2 asked if \$350.00 per Dancer would be an acceptable price, and both Mia and Nicole agreed to dance for this amount. I paid Nicole \$350.00 and Independent Monitor 2 paid Mia another \$350.00. Mia and Nicole then started discussing what type of shots we drank. Mia ordered the shots and told us she would be right back. She said she needed to freshen up and that our one hour time period for our dance would not start until she returned.
13. Mia returned a few minutes later and was ready to start. Mia was told by Independent Monitor #2 that we wanted to watch the two of them dance. Mia took off her white half shirt and again was topless with pasties on. Mia was wearing a red wide thong over 2 inches that only exposed her butt cheeks and knee high black boots. Nicole was wearing a string thong with a flowered print bra. Nicole removed her bra and had tape covering her nipples. Nicole was told to lie down on the couch by Mia and they began to kiss each other as Mia was touching Nicole on her breast and bare buttocks.
14. Mia then stated she hated wearing the pasties and took them off, exposing her bare nipples. Nicole then removed her tape, also exposing her bare nipples. Mia started to suck on Nicole's nipples. Mia began to rub her vaginal area on Nicole's vaginal area (both were still wearing thongs) and Nicole yelled out "I am going to cum!" These acts went on for several minutes until Mia lay back on the couch with her legs up in the air and Nicole began to rub on Mia around her vaginal/pubic area outside her thong and touching Mia's breasts. Mia then turned around and got on her knees and said she wanted Nicole to spank her butt hard, which she did. Nicole then got on her knees and wanted her butt spanked, which Mia did.
15. We were then asked to go sit on the opposite couch at which time Mia began to start dancing on me with Nicole rubbing on Independent Monitor #2. Mia then lay across me and Independent Monitor #2 with her head in my lap. Nicole then began kiss and simulate oral sex on Mia. Mia started to lift up the front of her thong where I could see her exposed vaginal area. Nicole

grabbed a piece of ice from the champagne bucket and put that in her mouth, letting the ice partially hang out of her mouth as she rubbed on top of Mia's covered pubic/vaginal area.

16. Several times Champagne Hostess Bree came over to remind Mia and Nicole to put their pasties back on and even cut pieces of tape for Nicole to use. Nicole put the tape across her exposed nipples to cover them, but Mia refused to re-cover her exposed nipples. Mia and Nicole then both moved onto the floor and continued to rub and kiss on each other, and instructed us to move to the opposite couch for a better view of them.
17. Mia then got up and walked over to the bar area as Independent Monitor #2 went to the restroom. Nicole proceeded to rub her hands up my inner thighs and climbing on top of me and proceeded to kiss my neck and my ear. Nicole proceeded to turn around and place her hands on the floor with backside facing me, and started to simulate having sex with me stating "this is how I do it when I am having sex".
18. Independent Monitor #2 returned from the restroom, along with Mia, and we began talking about them doing a private party outside of Platinum and they both agreed to it. Bree came over and told us that our time was about up and we could stay longer for an additional cost above what we had already paid. We declined and I told Bree that we would come back later.
19. Phone numbers were exchanged between Nicole, Mia and Independent Monitor #2. Independent Monitor #2 and I then went back downstairs to the main floor. We left Platinum Plus at approximately 01:07. The total amount of money spent during this evening was \$1,098.

April 7-8, 2016

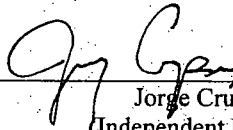
20. On April 7, 2016 at approximately 23:25, Independent Monitor #2 and I did enter Platinum Plus located at 805 Frontage Road in Greenville, S.C. We were asked for identification to verify our ages. I presented a card for free admission which I had received from a previous night at this location. We entered Platinum Plus and purchased two beers at the bar located on the left side of the main room.
21. We sat on the main floor for approximately 45 minutes before a dancer named "Cheryl" (stage name "Tasty") approached us and started a conversation. After talking for a few minutes, Cheryl agreed to go to the Champagne Room with us along with another dancer of her choosing. Cheryl went to dance on the Main Stage and then in the two smaller cages before returning to our location accompanied by a second Dancer. The second Dancer identified herself as "Delrae", which she later advised was her real name.
22. At approximately 00:30, Independent Monitor #2 and I did enter the Champagne Room with Cheryl and Delrae and sat in a booth. A price of \$300 per Dancer was agreed upon, and the cheapest bottle of wine (approximately \$354) was selected. We did tell the girls that for the majority of their dancing we did wish for the two strippers to dance with each other. Before beginning their dance, both girls ordered alcoholic beverages from the Champagne Hostess.
23. During their dance with each other, Delrae and Cheryl did both grind on one another's crotch and pubic regions as well as bounce on top of each other's crotch. Cheryl and Delrae did lick and kiss on each other, as well as grabbing and squeezing on each other's breasts. Delrae stated

that she wanted to take her pasties off but at no point did she do so. Both girls removed their tops with only tape covering their nipples. Delrae and Cheryl both had several layers of underwear on which were removed at different points throughout the dance. Delrae was wearing a bright yellow thong with the sides and back measuring approximately one inch in width. Cheryl's thong was a G-string, and measured well under one inch on the sides and back. During their dance, both girls took turns standing behind one another and thrusting their pelvis against the other girl's buttocks, simulating a sexual act.

24. Delrae and Cheryl then began dancing on me and did bounce and grind their pubic region and buttocks on my crotch area. Cheryl also ran her lips across my neck and put her face in my crotch area, simulating an oral sex act.

25. At approximately 01:30, Champagne Hostess Bree did advise us that our time was almost up so we collected contact information from both Cheryl and Delrae. We then returned to the main floor area downstairs and ultimately left Platinum Plus at approximately 01:40. The total amount of money spent during this evening was \$994.

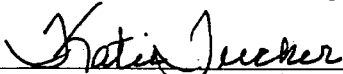
FURTHER, AFFIANT SAYETH NOT.



Jorge Crumpton
(Independent Monitor #1)

Dated: April 22, 2016
Greenville, South Carolina

Sworn to and subscribed before me
this 22nd day of April 2016



Notary Public for South Carolina

My Commission Expires: June 12, 2025

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina on the relation of)

William Walter Wilkins, III, Solicitor of)
The Thirteenth Judicial Circuit,)

Civil Action No. 2015-CP-23-02597

Plaintiff,)

vs.)

**AFFIDAVIT OF
JENNIFER LAND**

Elephant, Inc., Gregory Kenwood Gaines,)
and Frontage Road Associates, Inc.)

INDEPENDENT MONITOR #2

Defendants.)

Personally appeared before me the undersigned, who, being duly deposed and sworn, states as follows:

1. My name is Jennifer Land. I am over the age of eighteen (18) years old. I am of sound mind and I am competent to execute this affidavit. I am a South Carolina Criminal Justice Academy Certified Class 1 Law Enforcement Officer. The content of this affidavit is based upon my personal knowledge, unless otherwise indicated herein.

March 25-26, 2016

2. On March 25, 2016, at approximately 21:30, I and Jorge Crumpton (hereinafter "Independent Monitor #1") did enter Platinum Plus located at 805 Frontage Road in Greenville, S.C. We entered and were advised by the door greeter that men were required to pay a cover charge in order to enter the club. Independent Monitor 1 paid the fee and bought two beers from the beer stand by the entrance. We then took seats close to the main stage.
3. At approximately 22:00 that evening, we were approached by a dancer named Navia. Navia asked us if we wanted to go with her over to the Couch Room for a private dance. We agreed and followed her from the main room into the Couch Room where she tried to sit us against the far wall, which I believed was out of view of the cameras. At this time, I did request that Navia seat us at one of the booths in the middle of the room.
4. Navia began her dance by removing a black lace halter top that exposed her mid-section, as well as a short red skirt. At this point she was wearing only pasties that were covering her entire nipple area and a thin red string thong. The straps on the thong, both on the sides as well as the back, were well under one inch in coverage. Navia began her dance by grinding her buttocks on Independent Monitor #1's lap. Navia stood up and pulled her thong halfway down her buttocks and left it there for the majority of the dance. Navia continued to grind and bounce her buttocks forcefully on Independent Monitor #1's lap, as if attempting to replicate a sexual act. Navia then lay across his lap and spread her legs into a split. She then began slapping and rubbing herself in the crotch area several times. Navia continued grinding her pubic region against his while dancing, and proceeded to rub her breasts on each side of his face during the dance. Navia



charged us approximately \$60 for the dance, which was approximately \$30 per song. We paid Navia and left the Couch Room after the second dance and returned to the main floor area.

5. While in the main floor area I observed a dancer on the main stage, later identified as Chloe (stage name "Slim"), who had tape placed over her nipples that did not cover the entire areola of her breast. I approached Chloe and asked her if she would be willing to take Independent Monitor #1 and me up to the Champagne Room.
6. At approximately 00:00, Independent Monitor #1 and I went up to the Champagne room with Chloe. We were approached by two champagne hostesses who advised us of the champagne prices. One of the hostesses, Megan, advised us that it would cost \$295 for the cheapest bottle and included one hour in the room with the dancer. We paid that price and then negotiated a price of \$350 with Chloe for her to dance for the hour. We paid Chloe and, after a few moments, we were approached by the second hostess who explained that Megan was new and had been wrong about the champagne prices. The second Champagne Hostess stated that it would cost \$353 for the cheapest bottle and one hour in the room. We then paid the difference to the second hostess at which time Chloe started her lap dance on Independent Monitor #1.
7. Chloe was completely topless with one piece of tape across each nipple and was wearing a pink thong that appeared to be one inch thick in the back and sides. Chloe began by grinding her buttocks on Independent Monitor #1's lap, and then began bouncing up and down as if to simulate sexual intercourse with him while she pushed her breasts against his face. Chloe also straddled him so that her back was towards him. Chloe continued to grind her pubic region on his lap and bounce up and down during the dance, simulating sexual intercourse. Chloe also used small pieces of fruit, which were brought to us by the champagne hostesses.
8. Chloe continued to grind on Independent Monitor #1, but after a short while she stopped to take a break. During her break, Chloe stated that she and other underage dancers had been allowed to consume alcohol while working at the club. After her break, Chloe danced a bit more for Independent Monitor #1 and at approximately 01:48, Independent Monitor #1 and I returned to the main floor area of the club. We sat in front of the Main Stage for approximately ten minutes before deciding to leave. The total amount of money spent during this evening was \$843.00.

April 5-6, 2016

9. On April 5, 2016, at approximately 22:47, Independent Monitor #1 and I did enter Platinum Plus located at 805 Frontage Road in Greenville, S.C. We were asked by the door hostess for identification to verify our ages, and then were advised that males had to pay a cover fee in order to enter. The fee was paid and we entered into the main area. We walked over to the bar located to the left side and ordered two beers. We then went back out onto the main floor and sat towards the back of the room.
10. We sat for approximately 35 to 45 minutes with no one approaching us, but during this time we did observe a female who was dancing on the floor with a group of males and several other strippers. The female, later identified as "Mia", had removed a white half shirt she was wearing leaving her topless but with pasties covering her nipples. She was also wearing a wide red

thong. Mia finished dancing with the group, put her shirt back on, and walked away headed to the back of the room at which time I began to speak with her. Mia took a seat at the table with us. I told Mia that we were looking to go upstairs to the Champagne Room, and wanted her and another dancer to join us.

11. Mia said she knew someone and walked over and had grabbed another girl later identified as "Nicole". Mia and Nicole sat down with us, introduced themselves and asked our names and relationship (i.e. husband and wife or boyfriend and girlfriend). After several minutes of general conversation (where we lived and schools attended), Mia said lets go upstairs and "get the party started".
12. At approximately 23:45 to 23:50 that evening, Independent Monitor #1 and I went up to the Champagne Room with Mia and Nicole where we were met by the Champagne Hostess named "Bree" who told us to sit wherever we wanted to. Bree asked if we wanted the \$295.00 bottle of Champagne but let us know that, with taxes included, the price would be \$354. I agreed to the price, and Bree then stated that we could discuss the cost of the dances with the two girls. I asked if \$350.00 per Dancer would be an acceptable price, and both Mia and Nicole agreed to dance for this amount. Independent Monitor #1 paid Nicole \$350.00 and I paid Mia another \$350.00. Mia and Nicole then started discussing what type of shots we drank. Mia ordered the shots and told us she would be right back. She said she needed to freshen up and that our one hour time period for our dance would not start until she returned.
13. Mia returned a few minutes later and was ready to start. I explained to Mia that we wanted to watch her dance with Nicole. Mia took off her white half-shirt leaving her topless with pasties on. Mia was wearing a wide red-colored thong that appeared to measure over two inches wide and only exposed her butt cheeks. Nicole was wearing a string thong with a flowered print bra. Nicole removed her bra and had tape covering her nipples. Mia told Nicole to lie down on the couch and they began to kiss each other while Mia touched Nicole on her breasts and bare buttocks.
14. Mia then stated she hated wearing the pasties and took them off, exposing her bare nipples. Nicole then removed her tape, also exposing her bare nipples. Mia started to suck on Nicole's nipples. Mia then began to rub her vaginal area on Nicole's vaginal area (both were still wearing their thongs) and Nicole yelled out "I am going to cum!" These acts went on for several minutes until Mia lay back on the couch with her legs up in the air and Nicole began to rub on Mia around her vaginal/pubic area outside her thong and touching Mia's breasts. Mia then turned around and got on her knees and said she wanted Nicole to spank her butt hard, which she did. Nicole then got on her knees and wanted her butt spanked, which Mia did.
15. We were then asked to go sit on the opposite couch, at which time Mia began to start dancing on Independent Monitor #1 with Nicole rubbing on me. Mia then lay across me and Independent Monitor #1 with her head in Independent Monitor #1's lap. Nicole then began to kiss and simulate oral sex on Mia. Nicole grabbed a piece of ice from the champagne bucket and put that in her mouth, letting the ice partially hang out of her mouth and appeared to rub the ice on top of Mia's covered pubic/vaginal area.
16. Several times Champagne Hostess Bree came over to remind Mia and Nicole to put their pasties back on, and even cut pieces of tape for Nicole to use. Nicole put the tape across her exposed

nipples to cover them, but Mia refused to re-cover her exposed nipples. Mia and Nicole then both moved onto the floor and continued to rub and kiss on each other, and instructed us to move to the opposite couch for a better view of them. At some point shortly thereafter, I got up to use the restroom.

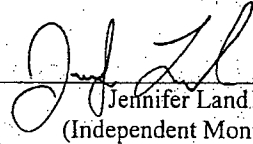
17. I returned from the restroom and we began talking about them doing a private party outside of Platinum. Bree came over and told us that our time was about up and we could stay longer for an additional cost above what we had already paid. We declined. I exchanged phone numbers with Nicole and Mia and Independent Monitor #1 and I went back downstairs to the main floor. We left Platinum Plus at approximately 01:07. The total amount of money spent during this evening was \$1,098.

April 7-8, 2016

18. On April 7, 2016 at approximately 23:25, Independent Monitor #1 and I did enter Platinum Plus located at 805 Frontage Road in Greenville, S.C. We were asked for identification to verify our ages. Independent Monitor #1 presented a card for free admission which he had received from a previous night at this location. We entered Platinum Plus and purchased two beers at the bar located on the left side of the main room.
19. We sat on the main floor for approximately 45 minutes before a dancer named "Cheryl" (stage name "Tasty") approached us and started a conversation. After talking for a few minutes, Cheryl agreed to go to the Champagne Room with us along with another dancer of her choosing. Cheryl went to dance on the Main Stage and then in the two smaller cages before returning to our location accompanied by a second dancer. The second dancer identified herself as "Delrae", which she later advised was her real name.
20. At approximately 00:30, Independent Monitor #1 and I did enter the Champagne Room with Cheryl and Delrae and sat in a booth on the left side. A price of \$300 per dancer was agreed upon with Cheryl and Delrae, and the cheapest bottle of wine (approximately \$354) was selected. We did tell the girls that for the majority of their dancing we did wish for the two strippers to dance with each other. Before beginning their dance, both girls ordered alcoholic beverages from the Champagne Hostess.
21. During their dance with each other, Delrae and Cheryl did both grind on one another's crotch and pubic regions as well as bounce on top of each other's crotch. Cheryl and Delrae did lick and kiss on each other, and grabbed and squeezed on each other's breasts. Delrae stated that she wanted to take her pasties off but at no point did she do so. Both girls removed their tops with only tape covering their nipples. Delrae and Cheryl both had several layers of underwear on which were removed at different points throughout the dance. Delrae was wearing a bright yellow thong with the sides and back measuring approximately one inch in width. Cheryl's thong was a G-string, and measured well under one inch on the sides and back. During their dance, both girls took turns standing behind one another and thrusting their pelvis against the other girl's buttocks, simulating a sexual act.

22. At approximately 01:30, Champagne Hostess Bree did advise us that our time was almost up so we collected contact information from both Cheryl and Delrae. We then returned downstairs to the main floor area downstairs and ultimately left Platinum Plus at approximately 01:40. The total amount of money spent during this evening was \$994.

FURTHER, AFFIANT SAYETH NOT.


Jennifer Land
(Independent Monitor #2)

Dated: April 22, 2016
Greenville, South Carolina

Sworn to and subscribed before me
this 22nd day of April 2016


Notary Public for South Carolina
My Commission Expires: June 12, 2025

Elephant Ink d/b/a Platinum Plus
Entertainer Agreement

NOTICE: THIS IS A LEGAL CONTRACT. DO NOT SIGN IT UNLESS YOU UNDERSTAND ALL OF ITS TERMS. ANY NEGOTIATED CHANGES TO THIS CONTRACT SHOULD BE INITIALED BY BOTH PARTIES IN THE MARGINS DIRECTLY NEXT TO THE MODIFICATIONS. WE SUGGEST THAT BEFORE SIGNING THIS CONTRACT, YOU HAVE IT REVIEWED BY AN ATTORNEY, ACCOUNTANT, OR OTHER PERSON OF YOUR CHOICE.

This Entertainment Lease (referred to as "Lease") is entered into by Elephant Ink d/b/a Platinum Plus (the "Club") and the undersigned "Entertainer" for the leasing of certain portions of the "Premises." The "Club," the "Entertainer," and the "Premises" are identified on the last page of this Lease.

PURPOSE OF LEASE:

The Club operates a bar on the Premises, and Entertainer, who is engaged in the independently established trade of professional exotic dance entertainment, desires to lease from the Club, jointly together with other similar entertainers and upon the terms contained in this Lease, the right to use certain areas of the Premises for activities related to the presentation of live semi-nude and/or nude dance entertainment to the adult public.

TERMS OF LEASE: Club and Entertainer agree as follows:

1. **Leasing of Premises.** Entertainer leases from the Club the right during normal business hours to jointly, along with other entertainers, use the stage areas and certain other portions of the Premises designated by the Club for the performing of live semi-nude or nude dance entertainment (as permitted by law) and related activities, upon the terms and conditions contained in this Lease. This Lease begins today, and ends on the earlier of:

A. December 31, 2016,
or;

B. A termination date as provided for in paragraph 16;

Notwithstanding the foregoing, in the event that this Lease is not terminated as provided for in paragraph 16, and should the Entertainer continue to perform at the Club after December 31, 2016

without the execution of a new lease, then the terms of this Lease shall continue to govern such performance until such time as a new lease is executed between the Entertainer and the Club.

Upon execution of a new lease this Lease shall terminate, although certain obligations continue post-termination as set forth herein.

2. **Club's Obligations.** The Club shall:

A. Provide to Entertainer, at the Club's expense, music for use on the Premises, lighting, and dressing room facilities; and

B. Pay any and all copyright fees due relative to the music used on the Premises.

3. **Non-Exclusivity.** By entering into this Lease, Entertainer is not limited to performing only on the Club's Premises. Rather, the Entertainer is free to perform his/her entertainment activities at other businesses and at other locations without restriction.

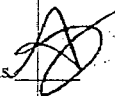
4. **Use of Premises.** Entertainer agrees to:

A. Obtain, keep in full force and effect, and have in his/her possession at all times while he/she is on the Premises and available for inspection as may be required by law, any and all licenses and/or permits;

B. Not violate any federal, state, or local laws or governmental regulations. Entertainer acknowledges, understands and agrees that any conduct by him/her that is in violation of any law and/or regulation, is beyond the scope of his/her authority pursuant to this Lease, and constitutes a material breach of the terms of this Lease; and

C. Maintain accurate daily records of all income, including tips, earned while performing on the Premises, in accordance with all federal, state, and local taxation laws.



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5. Compliance with Rules. The Club shall have the right to impose only such rules upon the use of the Premises by Entertainers, Guests, and Employees as the Club deems to ensure that:

- A. No damage to the Club's property occurs;
- B. The Premises are used in a safe fashion for the benefit of all entertainers, patrons, and others. To this end, the Club reserves the right to prohibit persons entering the Premises from wearing gang affiliated colors, gang insignias, or gang apparel, including dew rags/bandanas; and
- C. No violations of the law occur.

Entertainer agrees to comply with all such generally health and safety rules and/or those rules which are promulgated to ensure that no violation of the law occurs on the premises.

6. Nature of Performances.

A. Property Rights. The Club has no right to direct or control the nature, content, character, manner or means of Entertainer's entertainment services or of his/her performances, except to ensure that no violations of law occurs on the Premises. Entertainer agrees not to utilize any manner or means that violate the law or which endanger the health and welfare of any person and/or property on the Premises. The Entertainer understands that performing on stage is voluntary. Entertainer further understands that should he/she desire to perform on stage she must sign up for the stage rotation and preference in the rotation is given to entertainers who indicate that they wish to perform nude/semi-nude as permitted by law. Nothing in this Lease requires the Entertainer to perform at any certain time or for any amount of time.

B. Advertising. Entertainer may advertise his/her services in any manner or fashion he/she so desires at his/her sole cost and expense. Entertainer shall not utilize the trade dress, trademarks, service marks or "logos" of the Club, without having first obtained the written approval of the Club for such use.

7. Costumes. Entertainer shall supply all of his/her own costumes and wearing apparel. The Club shall not control in any way the choice of costumes and/or wearing apparel made by Entertainer, except that all clothing worn by the Entertainer on the Premises shall comply with all requirements imposed by the law.

8. Nature of Business. Entertainer understands:
1) that the nature of the business operated at the Premises is that of adult entertainment; 2) that he/she will be subjected to partial and/or full nudity

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(primarily female) and explicit language; and 3) that he/she may be subjected to advances by customers, to depictions or portrayals of a sexual nature, and to similar types of behavior. Entertainer represents that he/she is not, and will not be, offended by such conduct, behavior, depictions, portrayals, and language, and that he/she assumes any and all risks associated with being subjected to these matters.

9. Entertainment Fees. The Entertainer shall have the right to establish the fee for dance and other performances he/she engages in on the Premises (referred to as "Entertainment Fees"). Nothing contained in this Lease shall limit Entertainer from receiving "tips" and/or gratuities over and above the established price for such performances.

THE PARTIES SPECIFICALLY
ACKNOWLEDGE AND AGREE THAT
ENTERTAINMENT FEES ARE NEITHER
TIPS NOR GRATUITIES, BUT ARE
MANDATORY CHARGES TO THE
CUSTOMER AS THE PRICE FOR
OBTAINING THE SERVICE OF A
PERSONAL ENTERTAINMENT
PERFORMANCE AT THE CLUB.

10. Business Relationship of Parties.

A. The parties acknowledge and represent that the business relationship created between the Club and Entertainer is that of landlord and tenant for the joint and non-exclusive leasing of the Premises (meaning that other entertainers are also leasing portions of the Premises at the same time), and that this relationship is a material (meaning significant) part of this Lease.

THE PARTIES SPECIFICALLY
DISAVOW ANY EMPLOYMENT
RELATIONSHIP BETWEEN THEM.

The parties agree that nothing in this Lease shall be interpreted as creating an employer/employee relationship or any contract for employment. Entertainer acknowledges and represents that he/she is providing no services for or to the Club, and that the Club does not employ him/her in any capacity.

Accordingly,

i. ENTERTAINER

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UNDERSTANDS THAT THE CLUB WILL NOT PAY HIM/HER ANY HOURLY WAGE OR OVERTIME PAY, ADVANCE OR REIMBURSE HIM/HER FOR ANY BUSINESS RELATED EXPENSES, OR PROVIDE TO HIM/HER ANY OTHER EMPLOYEE-RELATED BENEFITS, AND THAT HE/SHE IS NOT ENTITLED TO RECEIVE, AND THE CLUB WILL NOT PROVIDE TO HIM/HER, ANY WORKER'S COMPENSATION BENEFITS OR ANY UNEMPLOYMENT INSURANCE BENEFITS.

- ii. In the event that the relationship between the Entertainer and the Club is ever reclassified to that of an Employer/Employee, the Entertainer acknowledges, understands, and agrees that he/she will not be entitled employee benefits of any kind, including health care, from the Club.

- iii. ENTERTAINER SPECIFICALLY REPRESENTS THAT HE/SHE DOES NOT DESIRE TO PERFORM AS AN EMPLOYEE OF THE CLUB SUBJECT TO THE EMPLOYMENT TERMS AND CONDITIONS OUTLINED IN SUB-PARAGRAPH 10B, BUT, RATHER, DESIRES TO PERFORM AS A TENANT CONSISTENT WITH THE OTHER PROVISIONS OF THIS LEASE.

- B. The Club and Entertainer acknowledge and agree that if the relationship between them was that of employer and employee, the Club would be required to collect, and would retain, all Entertainment Fees paid by customers to Entertainer. ENTERTAINER

SPECIFICALLY ACKNOWLEDGES THAT IN THE CIRCUMSTANCE OF AN EMPLOYER/EMPLOYEE RELATIONSHIP ALL ENTERTAINMENT FEES WOULD, BOTH CONTRACTUALLY AND AS A MATTER OF LAW, BE THE PROPERTY OF THE CLUB AND WOULD NOT BE THE PROPERTY OF THE ENTERTAINER. THE PARTIES ACKNOWLEDGE AND REPRESENT THAT ENTERTAINER'S RIGHT TO OBTAIN AND KEEP ENTERTAINMENT FEES PURSUANT

TO THIS LEASE IS SPECIFICALLY CONTINGENT AND CONDITIONED UPON THE BUSINESS RELATIONSHIP OF THE PARTIES BEING THAT OF LANDLORD AND TENANT AND THE PAYMENT OF THE RENT PROVIDED FOR BY THIS AGREEMENT.

IN THE EVENT THAT THE RELATIONSHIP BETWEEN THE ENTERTAINER AND THE CLUB IS EVER RECLASSIFIED AS THAT OF AN EMPLOYER/EMPLOYEE, THE ENTERTAINER UNDERSTANDS AND AGREES THAT HE/SHE WILL ACCOUNT FOR AND RETURN ANY AND ALL ENTERTAINMENT FEES RETAINED BY HIM/HER UNDER THE TERMS OF THIS AGREEMENT.

The parties also agree that in the event that that an employment relationship had existed during the period of time that the Entertainer performed at the Club, that the Entertainer would be paid on an hourly basis at a rate equal to the applicable minimum wage, reduced by any maximum "tip credit" as may be allowed by law. Accordingly, the Entertainer acknowledges being advised of the following Tip Credit Notice.

Notice of Tip Credit. In accordance with applicable regulations and statutory law, the Entertainer is advised of the following with respect to the Tip Credit:

- i. Section 3(m) of the Fair Labor Standards Act permits an employer to take a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required cash wage (which must be at least \$2.13) and the federal minimum wage. In accordance with federal law, the maximum tip credit that an employer can claim, as of the date of the drafting of this lease, is \$5.12 per hour (the minimum wage of \$7.25 minus the minimum required cash wage of \$2.13).
- ii. Entertainer understands that in the event that he/she is ever reclassified as an employee, the Entertainer will be paid both prospectively and retroactively as a tipped minimum wage employee and all of the following shall apply, both to any payment of back or front pay:

- 1) The amount of cash wage will be \$2.13 per hour (the parties acknowledge that this amount will be adjusted to

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comply with any changes in minimum wage and as required by law);

2) The amount claimed by the Club as a "tip credit" will be \$5.12 per hour (the difference between the minimum required cash wage of \$2.13 per hour and the current minimum wage of \$7.25 per hour, and the parties acknowledge that this amount will be adjusted to comply with any changes in minimum wage required by law);

3) The tip credit claimed by the Club will not exceed the amount of tips actually received by the tipped employee, which the Entertainer agrees to provide to the club;

4) All tips received by the tipped employee are to be retained by the employee except for those tips contributed by the employee to a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and

5) The tip credit will not apply to any tipped employee unless the employee has been informed of these tip credit provisions.

By executing this Agreement, the Entertainer acknowledges that he/she has been informed of the tip credit provisions and agrees that in the event he/she is ever reclassified as an employee, all back and front wages will be calculated using the tipped minimum wage.

In addition, Entertainer acknowledges and agrees that Entertainment Fees are neither tips and/or gratuities, and that no "tip credit" will be taken for Entertainment Fees and in the event of a reclassification to that of an employee, the Entertainer would be entitled to retain "tips" and/or gratuities -- but not Entertainment Fees -- that he/she may or has collected while performing on the Premises.

Additionally, the parties acknowledge and represent that were the relationship between them to be that of employer and employee, Entertainer's employment would be "at will" (meaning Entertainer could be fired at any time without cause and without prior notice or warning and could quit his or her employment at any time), and that the Club would be entitled to control, among other things, Entertainer's: Work schedule and the hours of work; job responsibilities; physical presentation (such as make-up, hairstyle, etc.); costumes and other wearing apparel; work habits; the selection of his/her customers; the nature, content, character, manner and means of his/her performances; and his/her ability to perform at other locations and for other businesses. Entertainer hereby represents that he/she desires to be able to make the all of these choices him/herself and without the control of the Club, and the Club and

Entertainer agree by the terms of this Lease that all such decisions are exclusively reserved to the control of Entertainer.

C. If any court, tribunal, arbitrator, or governmental agency determines, or if Entertainer at any time contends, claims, or asserts, that the relationship between the parties is something other than that of landlord/tenant and that Entertainer is then entitled to the payment of wages from the Club, all of the following shall apply

i. All Entertainment Fees received by Entertainer at any time he/she performed at the Club shall be deemed the income and property of the Club;

ii. In order to comply with applicable tax laws and to assure that the Club is not unjustly harmed and that Entertainer is not unjustly enriched by the parties having financially operated pursuant to the terms of this Lease, the Club and Entertainer agree that Entertainer shall surrender, reimburse and pay to the Club, any and all Entertainment Fees received by Entertainer at any time he/she performed on the Premises - all of which would otherwise have been collected and kept by the Club had they not been retained by Entertainer under the terms of this Lease - and shall immediately provide a full accounting to the Club of all tip income which he/she received during that time;

iii. Any Entertainment Fees that Entertainer refuses to return to the Club shall be deemed service charges to the customer and shall be accounted for by the Club as such. The Club shall then be entitled to full wage credit for all Entertainment Fees retained by Entertainer, and such withheld fees shall therefore constitute wages paid from the Club to Entertainer. In the event that Entertainer refuses to return Entertainment Fees to the Club, the Club shall immediately submit to the IRS and applicable state taxing authorities all necessary filings regarding such income consistent with this subparagraph 12(C)(iii); and

iv. The relationship of the parties shall immediately convert to an arrangement of

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employer and employee upon the terms as set forth in subparagraph 10B.

D. If at any time Entertainer believes that, irrespective of the terms of this Lease, he/she is being treated as an employee by the Club or that his/her relationship with the Club is truly that of an employee, Entertainer shall immediately, but in no event later than three business days thereafter, provide notice to the Club in writing of his/her demand to be fully treated as an employee consistent with the terms of the paragraph 12(B) of this Lease and applicable law, and shall also within the same time period begin reporting all of his/her tip income to the Club on a daily basis; such tip reporting being required of all tipped employees of the Club under the terms of the Internal Revenue Code.

11. **Taxes.** Entertainer shall be exclusively obligated to pay all federal and state income tax on any monies earned pursuant to this contractual relationship.

12. **Scheduling Entertainers.** The Club does not schedule entertainers in advance. Accordingly, the Entertainer may lease space on the Premises on the day that he/she desires to perform on the premise, subject to space availability.

13. **Rent.** Entertainer agrees to pay rent to the Club in accordance with the Rent Schedule attached as Exhibit A. All rent shall be paid immediately at the end of each day of performing.

14. **Material Breach by Club.** The Club materially (meaning significantly) breaches this Lease by:

- A. Failing to maintain any and all required licenses and/or permits;
- B. Failing to maintain in full force any and all leases and subleases with the owner of the Premises; or
- C. Failing to maintain in full force all utilities services for the Premises.

The Club shall not be liable for any material breach as set forth in this paragraph 16 due to acts of God or to any other cause beyond the reasonable control of the Club.

15. **Material Breach by Entertainer.** Entertainer materially (meaning significantly) breaches this Lease by:

- A. Failing to maintain any and all required licenses and/or permits;
- B. Willfully violating, or giving the impression that

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he/she is willfully violating, any federal, state, or local law or regulation while on the Premises;

C. Failing to have governmental issued photo identification on his/her persons at all times while on the Premises;

D. Failing to pay any rent when due; or

E. Violating any public health or safety rules or concerns while on the Premises.

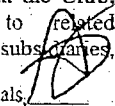
16. **Termination/Breach.** Either party may terminate this Lease, without cause, upon thirty (30) days' notice to the other party. Upon material (significant) breach, the non-breaching party may terminate this Lease upon twenty-four (24) hours' notice to the other party, or as otherwise provided by law. Nothing in this paragraph, however, shall be deemed to require the Club to allow Entertainer to perform on the Premises without a valid license or permit (if applicable) and photo identification, or to engage in conduct in violation of any laws, regulations, or public health or safety rules. This Lease may be terminated immediately and without notice should Entertainer engage in any activity that violates the provisions of Paragraph 15 (B) & (E).

17. **Severability.** In the event that any term, paragraph, subparagraph, or portion of this Lease is declared to be illegal or unenforceable, this Lease shall, to the extent possible, be interpreted as if that provision was not a part of this Lease; it being the intent of the parties that any illegal or unenforceable portion of this Lease, to the extent possible, be severable from this Lease as a whole. Nevertheless, in the circumstance of a judicial, arbitration, or administrative determination that the business relationship between Entertainer and the Club is that of employer and employee, the relationship between Entertainer and the Club shall be governed by the provisions of subparagraphs 10B and 10C of this Lease.

18. **Governing Law.** This Lease shall be interpreted pursuant to the laws of the State of South Carolina.

19. **Arbitration**

A. **Binding Arbitration.** Any and all claims and/or controversies between the Entertainer and the Club (and any other persons or entities associated with the Club, including but not limited to related corporations, parent corporations, subsidiaries,

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affiliates, officers, directors, shareholders, members, managers, employees, and/or agents), including any and all claims that arises from conduct that predates this Agreement or which arises thereafter, and regardless of whether such claims sound in contract, tort, are based upon a federal or state statute, a local regulation or as arise from any other source, (except for an administrative charge before an administrative agency) shall be exclusively decided by final and binding arbitration held pursuant to and in accordance with the Federal Arbitration Act ("FAA") as provided below. Entertainer and Club waive any right to litigate such controversies, disputes, or claims in a court of law, and waive the right to trial by jury.

The arbitrator shall only have the authority to hear a claim brought on behalf of a single individual against the Club; and has no authority to hear a claim brought by multiple individuals, or a class, or to consolidate the claims of multiple individuals into a single proceeding, except with the signed consent of all parties to the proceeding. In the event an action is brought in arbitration on behalf of multiple individuals or a class, then in the absence of an agreement to proceed on behalf of multiple individuals or on behalf of a class that is signed by the Club, the Entertainer, and all parties, the arbitrator shall have only the authority to divide the action into individual proceedings, each then to be heard by a separate individual arbitrator.

The disputes or claims that must be arbitrated, by way of example only, include claims regarding the terms of this Agreement, as well as claims under federal, state and local statutory or common law, such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended (including the amendments of the Civil Rights Act of 1991), the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act or other wage statutes, the WARN Act as well as contract and tort claims. It includes all claims by Entertainer against any employee, officer, director, trustee, agent, benefit plan administrator, successor or assign of the Club that arise out of or relate to their actions on behalf of Company.

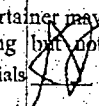
The arbitration shall be conducted before a single arbitrator. In the event that the dispute relates to an "Employment Related Claim" (i.e. one arising under an actual or asserted employment law, statute, regulation, or asserts that Entertainer is an employee, and/or one which would otherwise be administered by AAA under its Employment

Rules) then the arbitration will be conducted in accordance with and governed by the Arbitration Association ("AAA") Employment Arbitration Rules and Mediation Procedures ("AAA Rules"), except as expressly or implicitly modified by this Agreement. All other disputes shall be governed by the AAA Commercial Rules. The AAA Employment Arbitration Rules and the Commercial Rules can be obtained online at www.adr.org, by calling 1-800-778-7879, or upon request to the Club by contacting a manager on duty.

In arbitration, all parties shall have the right to be represented by legal counsel, and will have the right to conduct reasonable discovery in such arbitration proceeding as determined by the arbitrator relating to the actual claim(s) then pending before the arbitrator. All discovery, including responses and documents produced shall be deemed confidential and shall only be used and/or disclosed in relationship to the then pending proceeding. The parties shall have the right to subpoena witnesses in order to compel their attendance at hearing and to cross-examine witnesses, and the arbitrator's decision shall be in writing and shall contain findings of fact and conclusions of law. The arbitrator will have the authority to award any remedy that would have been available had the claim been litigated in court and will apply whatever statute of limitations would be applicable to the claim if it were filed in court. The arbitrator's decision shall be final and binding, subject only to review under standards set forth in the FAA.

Entertainer and Club understand that they are waiving the right to have a court or a jury determine their rights, including under federal, state and local statutes prohibiting employment discrimination, including sexual harassment, and retaliation, and regarding the payment of wages and overtime.

Entertainer understands that Entertainer still may file administrative charges or complaints with the National Labor Relations Board, Wage and Hour Division of the Department of Labor, Equal Employment Opportunity Commission, Occupational Safety and Health Administration or similar federal, state or local agencies, but that upon receipt of a right to sue letter or similar administrative determination, Entertainer shall arbitrate any claim that Entertainer may have against the Club, including but not

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limited to related corporations, parent corporations, subsidiaries, affiliates, officers, directors, shareholders, members, managers, employees, and/or agents. However, Entertainer understands and agrees that to the maximum extent permitted by law, Entertainer is precluded from receiving any monetary or other relief obtained by any federal, state, or local agency on Entertainer's behalf, in any suit relating to Entertainer's alleged employment with the Club.

Any award by the arbitrator may be entered as a judgment in any court having jurisdiction.

The parties understand that if either the Club or Entertainer files a lawsuit regarding a claim they are required to arbitrate, the other party may use this Agreement in support of its request to the court to dismiss the lawsuit and require instead the use of arbitration. In that case, upon dismissal of such a lawsuit, the party who brought the lawsuit will be liable to pay the other party's reasonable costs and attorney's fees incurred in connection with the lawsuit.

If any paragraph, provision, or clause of this Section 19 is held invalid, then that paragraph, provision or clause will not affect any other paragraph, provision or clause that can have effect without the invalidated paragraph, provision or clause, and thus is severable one from the other.

B. Costs and Fees. The Club shall pay all arbitration fees and costs that Entertainer would not have had to pay in a court proceeding. Entertainer's fee for filing an arbitration shall not exceed \$200 and the Club shall pay the cost of the arbitrator's compensation.

C. Survival. All provisions and subparagraphs of this paragraph 19 shall survive termination of this agreement.

20. Class and Collective Action Waiver.

Entertainer agrees that all claims or disputes between the Entertainer and the Club (and any other persons or entities associated with the Club, including but not limited to related corporations, parent corporations, subsidiaries, and affiliates, officers, directors, shareholders, members, managers, employees, and/or agents) will be brought individually; that he/she will not consolidate his/her claims with the claims of any other individual; that he/she will not seek class or collective action treatment for any claim that

he/she may have; that he/she will not participate in any class or collective action against the Club or against any persons or entities associated with the Club. If at any time Entertainer is made a member of a class in any proceeding, he/she will "opt out" at the first opportunity, and should any third party pursue any claims on his/her behalf, Entertainer shall waive his/her rights to any monetary recovery from such action. In other words, the Entertainer expressly waives his/her right to prosecute, participate in, or pursue a class or collective action and/or other joint proceeding against the Club and any other persons or entities associated with the Club, including but not limited to related corporations, parent corporations, subsidiaries, and affiliates, officers, directors, shareholders, members, managers, employees, and/or agents).

This Paragraph 20 shall survive any judicial determination that the arbitration agreement contained herein is unenforceable for any reason.

BECAUSE OF LEGAL RESTRICTIONS, THE CLUB WILL NOT ENTER INTO A LEASE WITH AN ENTERTAINER WHO IS UNDER THE AGE OF 18 AND THIS LEASE IS NULL AND VOID IF ENTERTAINER IS NOT OF SUCH AGE. ENTERTAINER SPECIFICALLY REPRESENTS THAT HE/SHE IS OF THIS LAWFUL AGE OR OLDER, THAT HE/SHE HAS PROVIDED APPROPRIATE IDENTIFICATION VERIFYING HIS/HER

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Initials 

AGE, AND THAT SUCH IDENTIFICATION IS VALID AND AUTHENTIC. ENTERTAINER ALSO REPRESENTS THAT HE/SHE IS LAWFULLY ENTITLED TO WORK AND/OR PERFORM IN THE UNITED STATES, AND HAS OR WILL OBTAIN, PRIOR TO PERFORMING AT THE CLUB, ANY AND ALL LICENSES OR PERMITS AS MAY BE REQUIRED BY LAW.

BY SIGNING THIS DOCUMENT, ENTERTAINER REPRESENTS THAT HE/SHE HAS RECEIVED A COPY OF, AND HAS FULLY READ, THIS LEASE, THAT HE/SHE UNDERSTANDS, AND AGREES TO BE BOUND BY, ALL OF ITS TERMS; AND THAT HE/SHE HAS BEEN PERMITTED TO ASK QUESTIONS REGARDING ITS CONTENTS AND HAS BEEN GIVEN SUFFICIENT OPPORTUNITY TO HAVE IT REVIEWED BY PERSONS OF HIS/HER CHOICE, INCLUDING ATTORNEYS AND ACCOUNTANTS AND HAS USED THAT OPPORTUNITY TO THE EXTENT DESIRED. TO ENSURE ENTERTAINER HAS SUFFICIENT TIME TO CONSULT WITH AN ATTORNEY OR OTHER PERSON OF HIS/HER CHOOSING, ENTERTAINER HAS THE RIGHT TO RESCIND THIS LEASE, WITHOUT PENALTY, BY PROVIDING WRITTEN NOTICE TO ANY MANAGER AT THE CLUB WITHIN THREE CALENDAR DAYS OF THE ENTERTAINER SIGNING THIS LEASE.

THIS LEASE IS NOT BINDING UNTIL SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE CLUB.

CLUB"

ELEPHANT INK d/b/a PLATINUM PLUS

By:

[signature]

Tim Ford

[printed name]

Its:

[position]

"PREMISES:" Platinum Plus, 805 Frontage Road,
Greenville, SC 29615

DATE:

3-28-16

"ENTERTAINER"

By:

[signature]

ANTHONY PADGETT

[printed name]

Mia

[stage name]

864 735 3480

[phone number]

350 W. M. CRF Church Rd.

Greenville, SC

[address]

DATE:

03/28/16

EXHIBIT A
RENT SCHEDULE

On the floor between:

Before 11 am
11:01 am – 3:59 pm
4:00 pm – 6:59 pm
7:00 to close

Rent
\$20
\$30
\$40
\$50

The Club reserves the right to institute temporary rent reductions from time to time for any reason it chooses. For example, on a specified day the Club might decide to offer a \$5.00 rent discount voucher to all entertainers who perform on stage at least three times that day. Any such rent reductions are temporary, and the Club may stop offering rent reductions at any time of its choosing. Any such rent reductions shall not operate as a waiver of the right of the Club to charge the full amount of rent during times when no rent reduction is in force. Rent reductions are the exception rather than the rule, and unless the Club offers a rent reduction, the rent schedule above is the default. No entertainer will be required to participate in the rent voucher program.

BUSINESS STATUS SELECTION BY APPLICANT

In light of your desire to perform as an entertainer at and for ELEPHANT INK, d/b/a Platinum Plus (hereafter referred to as the Club), we would like you to select the business arrangement under which you are interested in performing. If the Club decides that it would like to extend to you the opportunity to perform here, you can do so either as: 1) an INDEPENDENT PROFESSIONAL ENTERTAINER, or 2) an EMPLOYEE.

We have listed below some of the general distinctions between performing here as an Independent Professional Entertainer or as an Employee. After reviewing this information, we would like you to select the circumstances under which you would be willing to perform. The Club management expresses no opinion on this matter. This is your choice to make.

Making this selection does not constitute an offer of employment or an offer by the Club to enter into an Independent Professional Entertainer agreement with you. After review of your qualifications, you will be notified as to whether the Club is interested in permitting you to perform at this location. If it is, you will be offered the ability to enter into the business arrangement that you select at the end of this document.

You are free to consult with any persons of your choice, including attorneys, accountants and/or tax professionals, prior to making this selection. In addition, if you would like to see a copy of the contract that the Club uses for Independent Professional Entertainers (called an "Entertainment Agreement") prior to making your decision, please just ask and we will be happy to provide you with a copy to review.

<u>INDEPENDENT PROFESSIONAL ENTERTAINER ("LEASEE") STATUS</u>	<u>EMPLOYEE STATUS</u>
- As an Independent Professional Entertainer, you will enter into a written contract with the Club which will be for a certain period of time; which will specify in writing the rights, duties and obligations of both you and the Club; and which cannot be changed except upon the mutual agreement of both you and Management. - As an Independent Professional Entertainer, all of your earnings will come directly from your customers. YOU WILL NOT RECEIVE ANY PAY FROM THE CLUB, EITHER BY WAY OF AN HOURLY WAGE OR A SALARY. You will charge your customers for your dance performances; the money that you receive from them, either by way of Entertainer Fees or tips (which are discussed in number 3 immediately below), will be your money to keep (the "Entertainment Fee" is the mandatory Customer Charge for the Services you provide, excluding tips and gratuities; and you will be able to take home that money at the end of the day.	As an Employee, your employment will be "at will," meaning that your employment can be terminated by the Club at any time, without cause and without prior notice. The Club will have the right to change the terms of your employment at its discretion at any time. The following notice is given regarding the At-Will nature of the Club's At-Will Employment Policy in the event that you are offered employment with by the Club: <u>ALL EMPLOYMENT BY THE CLUB IS "AT WILL." NOTHING IN THIS DOCUMENT, OR ANY OTHER EMPLOYMENT RELATED DOCUMENT, INCLUDING THE COMPANY HANDBOOK IS INTENDED TO, NOR SHALL IT EXPRESSLY OR BY IMPLICATION, BE DEEMED TO CREATE AN EXPRESS OR IMPLIED CONTRACT OF EMPLOYMENT. NO ONE, OTHER THAN THE COMPANY'S MANAGING MEMBER IS AUTHORIZED TO ALTER, CHANGE, OR OFFER ANY TERM OF EMPLOYMENT OTHER THAN</u>



You will pay a fee to the Club for the ability to perform at the Club. You can review a copy of the contract that the Club uses in order to see the current amount of those fees.

- As an Independent Professional Entertainer, you will be required to pay the Club rent in order to provide services as an Independent Professional Entertainer at the Club. Club Rent is a fixed fee per shift that you will pay for the right to use the Club's premises to offer your services as an Independent Professional Entertainer at the Club.

- As an Independent Professional Entertainer, all tips that you earn (gratuities paid by a customer over and above the posted Entertainment Fees, as well as stage tips) are yours to keep. You will not be required to share your tips, or "tip out," to anyone, including management or other club employees.

Whether to tip and how much to tip, if you choose to do tip others, shall be in your sole and absolute discretion.

- As an Independent Professional Entertainer, the Entertainer Fees, based upon the terms of the Entertainment Agreement are yours to keep.

- As an Independent Professional Entertainer, you are not required to perform on stage or place yourself on the stage rotation. Whether you perform on stage or place yourself on the stage rotation is entirely up to you. You may remove yourself from the stage rotation at any time.

EMPLOYMENT "AT WILL" AND EVEN THEN SUCH OFFER SHALL ONLY BE EFFECTIVE IF IT IS IN WRITING, SIGNED BY THE CLUB'S MANAGING MEMBER.

- As an Employee, you will be paid in accordance with the Club's standard payroll practices and paid on the Club's normal pay date. Your employment with the Club will be as a tipped minimum wage employee. The applicable "tipped" minimum wage is (as of the time this document was prepared, \$2.13 per hour). This means that you will be paid a cash wage by the Club of \$2.13 per hour and a portion of your tips, will be used to satisfy the difference between this rate and the "full" minimum wage of \$7.25 per hour (current as of the date this document was prepared). If you do not earn enough from tips to earn minimum wage during a work week, the club will make up the difference between the tipped minimum wage and the non-tipped minimum wage.

- As an Employee, you will be expected to arrive at work on time, will be required to clock in when you arrive at work and clock out at the end of your shift. You may not be at the Club unless you are scheduled to work, absent prior approval by Club management.

- As an Employee, you will be required to perform on Stage and be on the stage rotation. The number of stage performances required of you per shift will vary depending on the needs of the Club.

- As an Employee, all of the "Entertainment Fees" (i.e the mandatory fixed fees for service(s) you provide, such as dances, and/or time in private rooms) you charge customers belong to the Club. You will have to turn them over to Management before the end of your shift. You will not be entitled to retain any Entertainment Fees. You will be entitled to retain tips and/or gratuity. For purposes of your employment with the Club, a tip

• As an Independent Professional Entertainer, you will be responsible for taking care of and paying all taxes and other withholdings due on your income. • As an Independent Professional Entertainer, you keep track of your own income. You do not report your Entertainment Fees or tip income to the Club. You can take tax deductions as allowed by law. • As an Independent Professional Entertainer, you will set your own schedule. In addition, you can perform as many hours per day as you desire, although you will receive no "overtime" pay from the Club. • As an Independent Professional Entertainer, whether you take any breaks, when you take your breaks, and the number and duration of any breaks, are totally up to you. • As an Independent Professional Entertainer, you will only perform on those days and weeks you select, so the amount of "vacation" time you can take is unlimited. However, you will not receive any paid vacation time. • As an Independent Professional Entertainer, you can perform for whoever you choose, and can reject any customers you want. • As an Independent Professional Entertainer, you will never be required by the Club to give "free" dances to anyone. • As an Independent Professional Entertainer, you will never be required to engage in any Club promotions or advertising, although you are able to do so if you so desire.	and/or gratuity means a discretionary payment by a customer. These include, for example, payments the Entertainer may receive from customers during their stage performances, and amounts paid to the Entertainers by customers that <i>exceed</i> the established price of services provided by you at the Club. In no circumstance, do tips and/or gratuities mean Entertainment Fees. • As an Employee, the Club will take out of your pay all taxes and other withholdings required by law. You will be responsible for accurately reporting all tips and/or gratuities received by the Entertainer to the Club on a nightly basis. You will be required to complete an IRS Form 4070 (Employees Report of Tips to Employer) at the conclusion of each pay period. • The Club is required by law to pay to the IRS, out of the wages due to you, taxes owed on your tip income. If you make a substantial amount in tips, this could then result in your receiving a "zero" pay check. If you have questions about this, consult an accountant. • As an Employee, the Club will select your schedule (both days and times) for you. In general, the Club will not permit you to work any "overtime" during any week. However, at the discretion of Management, you may be required to work overtime, and you will be paid time and one-half for any hours that you work during a week in excess of 40 hours. • As an Employee, the Club will determine the time, number and duration of your breaks, subject to the requirements and limitation imposed by law. • As an Employee, if you work "full time" (at least 30 hours a week) you will be entitled to one week's unpaid vacation after one year of employment and two weeks' unpaid vacation after two years of employment. However, the time of your vacations must be approved by Management in advance. The Club does not
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	provide paid sick leave.
• As an Independent Professional Entertainer, you will have the freedom to choose your own costumes, and you will be required to provide your own costumes. • As an Independent Professional Entertainer, you will determine your own appearance. • As an Independent Professional Entertainer, you will not be given any training. You will be expected to come to the Club with the necessary skills to perform as an exotic dancer. You may perform in any lawful manner of your own choosing. • As an Independent Professional Entertainer, if you are injured at the Club, you will not be covered by Workers' Compensation Insurance. • As an Independent Professional Entertainer, you will not be entitled to unemployment compensation benefits either if your contract expires or if the Club terminates it early for any of the reasons listed in the agreement. • As an Independent Professional Entertainer, you will be acknowledging that you are not entitled to benefits under the Fair Labor Standards Act (minimum wage and overtime laws), Equal Employment Opportunity laws, or other laws that protect employees, and you will not be afforded any employee benefits. • In connection with the execution of your Entertainer Agreement, you will be asked to sign an arbitration agreement that contains a class and collective action waiver	• As Employee you will be required to perform for all customers of the Club. • As an Employee, you may, at the direction of Management, be required to give "free" dances to certain customers. • As an Employee, you may be required to participate in various Club promotions and advertising. • As an Employee, you will be required to wear the costumes selected by the Club, which will be provided to you by the Club. You will be expected to reasonably care for them. • As an Employee, your appearance must comply with the Club standards. Management will tell you how to wear your hair, and how your makeup should look. • As an Employee, you will be required to undergo dancer training, you must perform consistent with the standards set in that training, and you will be expected to meet certain dance minimum quotas. • As an Employee, if you are hurt at work, your sole recourse against the Club will be for "Worker's Compensation" benefits. You will not have to prove the Club was at fault, but you will be subject to the limits of that coverage. • As an Employee, if you are fired you may be entitled - if you have worked a sufficient period of time and satisfied other legal requirements - to unemployment compensation benefits. These benefits are for a fixed period of time and are set

THIS SPACE IS INTENTIONALLY BLANK	by law. - As an Employee, you will be entitled to certain legal protections under the Fair Labor Standards Act, the Equal Employment Opportunity laws, and other laws that protect employees. If you have questions about these protections, consult an attorney or obtain information from the internet. Certain federal information can be obtained at www.dol.gov/esa/whd/flsa and your state government website may contain similar information. You may also be entitled, depending upon the amount of time you work, to other employee benefits. If you have any questions about this, ask a Club manager. - In connection with your employment, you will be asked to sign a document outlining the terms of the offer of employment. This document will contain an arbitration agreement and class and collective action waiver. NOTICE: Club employees are employed via the Club's third party employee leasing company - Quality Business Solutions, Inc. You will be required to complete various employment documents as required by QBS.
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AFTER HAVING REVIEWED THE ABOVE AND HAVING CONSIDERED THESE MATTERS:

☒

I am applying to be an Independent Professional Entertainer

☒

I am applying for a position as an Employee Entertainer

Applicants Signature

Benton Padgett

Applicants Name

mla

Stage Name

Dated:

3/28/16

4835-7134-5702, v. 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina on the relation) C.A. No. 2015-CP-23-02597
of William Walter Wilkins, III,)
Solicitor of The Thirteenth Judicial)
Circuit,)

Plaintiff,)

vs.)

Elephant, Inc., Gregory Kenwood)
Gaines,)

Defendants.)

**MEMORANDUM COMPLETING
COURT RECORD AS TO
CORRESPONDENCE REGARDING
ENFORCEMENT OF ORDER AND
PENDING MOTION AS SENT
BETWEEN THE PARTIES AND
THE COURT**

Correspondence attached as Exhibit A to this Memorandum contains emails between
counsel and the Court regarding enforcement of order and pending motion in this matter.

Respectfully submitted,

s/Lane W. Davis
Attorneys for the Plaintiff

W. Walter Wilkins, III, Solicitor
(S.C. Bar No. 16740)
Andrew Culbreath, Asst. Solicitor
(S.C. Bar No. 14107)
Lane W. Davis
(S.C. Bar No. 68796)
Special Prosecutor
Office of the Solicitor, 13th Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, S.C. 29601
(864)-467-8647
(864)-467-8623

Greenville, South Carolina

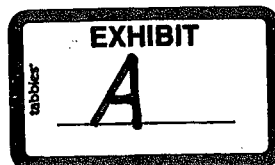
August 17, 2016

From: Thomas Goldstein [mailto:tgoldstein@COBBLAW.NET]
Sent: Wednesday, August 10, 2016 3:22 PM
To: csimmons@greenvillecounty.org
Cc: Sirkin, H. Louis; Sirkin, H. Louis; aculbreath@greenvillecounty.org; Lane Davis
Subject: Notice of Appeal: 2015-CP-23-02597

Dear Judge Simmons,

I'm sure both the Bench and Bar of Greenville County will be relieved to know you won't have Tommy Goldstein to kick around anymore. (For you young lawyers, that's an allusion to Richard Nixon, who was President of the United States before you were born.) As much as it has been a privilege to appear before your Honor and to be the beneficiary of many courtesies from the Greenville Bar, we have decided to withdraw the Motion for Reconsideration and file a Notice of Appeal. The Notice of Appeal will go out in today's mail, and I will momentarily start my many attempts at trying to file it through the Greenville Clerk of Court's electronic filing. In the event my efforts to maneuver through the complexities of electronic filing prove fatal, it has been a pleasure knowing you all.

Tommy Goldstein



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ROA 000667

From: Lane Davis
Sent: Thursday, August 11, 2016 4:55 PM
To: Simmons, Judge Charles
Cc: 'Kimbrell, Karen'; Culbreath, Andrew (ACulbreath@greenvillecounty.org); Wilkins, Walt (wwilkins@greenvillecounty.org); hls@santen-hughes.com; tgoldstein@COBBLAW.NET; 'rsh@rhpa.org'
Subject: State of South Carolina v. Elephant, Inc. & Greg Gaines: 2015-CP-23-02597

Everyone:

At approximately 4 PM this afternoon, the Solicitor satisfied the obligations imposed upon the State by the Court's July 27, 2016 Order directing the property at 805 Frontage Road to be secured and Platinum Plus's business operations suspended. To provide a complete record as to the bases for satisfying such obligations, the Solicitor notes (below) the legal authority supporting the same as relating to the automatic stay issues raised by Platinum Plus. It is the State's hope this will help ameliorate any confusion the Defendants may have relating to the operation of the same, as requested by Defendants, below:

- The material provisions of the July 27, Court Order imposing civil contempt sanctions state:

B. Civil Contempt Sanctions:

1. The Court incorporates herein by reference Paragraph 2 (Injunction Against Business Operations) and Paragraph 3 (Extension of Enhanced Monitoring), above.
2. The Court alternatively re-imposes the sanctions set forth in Paragraphs 2 & 3 *verbatim* as appropriate sanctions for Platinum Plus's civil contempt.
 - a. In light of the fact that the State is a party to this action, the Court finds such sanctions serve the remedial purpose of delivering to the Solicitor the benefits contemplated by the 2015 Order, namely, upholding the integrity of this Court's Order, the abatement of the public nuisance at the Subject Property and compliance with state law, local ordinance, and prior order of this Court.
 - b. Platinum Plus's non-compliance with the 2015 Order deprived the State of such benefits.
 - c. The Court finds imposition of such sanctions, in this case, restores to the State, in remedial fashion, the agreed upon reciprocal benefits set forth in the 2015 Order, which Defendants failed to deliver and/or comply with.

- In turn, the incorporated provisions into the civil contempt sanctions state:

1. **Injunction Against Business Operations.** As a further sanction for Platinum Plus's criminal contempt, the Court enjoins Platinum Plus, as operated by Elephant, Inc., from continuing its business operations for a period of one-hundred and eighty (180) consecutive days ("Injunction Period"). This is the closure period sought by the State.
 - a. Platinum Plus, by and through Elephant, Inc., shall have fourteen (14) days following the issuance of this Order and its receipt by defense counsel to wind-down ("Wind-down Period") and cease Platinum Plus's operations, as operated by Elephant, Inc., at 805 Frontage Road in Greenville, South Carolina 29615 ("Subject Property").
 - b. Absent further Court Order, Platinum Plus shall remain closed and shall not resume operations at the Subject Property or any other location during the Injunction Period.

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ROA 000668

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

➤ The following constitutes the authority about the correct operation of appellate court stay provisions in South Carolina:

- 1) Rule 241(b), SCACR states: "The exceptions to the general rule are found in statutes, court rules, and case law."
- 2) In turn, South Carolina decisional law and authority states:
 - ***State v. Smith (In re Decker)*, 322 S.C. 212, 471 S.E.2d 459, 1995 S.C. LEXIS 110 (1995).**

"The Rule also recognizes that exceptions to this general rule can be found in "statutes, court rules, and case law" and then sets forth "[a] list of some, but not all, of the types of orders" which are not automatically stayed by an appeal.

Regarding civil contempt, this Court implicitly recognized in *Brunson v. Brunson*, 91 S.C. 411, 74 S.E. 928 (1912), that civil contempt is not automatically stayed. Therefore, we conclude that an order holding a person in civil contempt is not automatically stayed by the taking of an appeal. *See also* 17 C.J.S. *Contempt* § 121(b)(1963)("generally, an appeal will not of itself stay a judgment for contempt. The giving of a bond may be required").

Having determined that there is no automatic stay, this Court must determine if we should exercise our discretion to issue a writ of supersedeas."

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- *Wilson v. Walker*, 340 S.C. 531, 532 S.E.2d 19, 2000 S.C. App. LEXIS 83 (Ct. App. 2000).

"However, an order ruling a person in civil contempt is not automatically stayed by filing an appeal."

- *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156, 2003 S.C. LEXIS 21 (2003).

"An order of civil contempt is not automatically stayed on appeal. An order that is not automatically stayed remains enforceable while pending appeal unless the party seeks a stay."

- *State ex rel. Love v. Howell*, 285 S.C. 53, 328 S.E.2d 77, 1985 S.C. LEXIS 345 (1985) (Relative to civil contempt).

"The trial judge has full authority to imprison him or fine him or both or close up his entire business operation if necessary to assure full compliance with the injunctive orders heretofore issued by the Court of Common Pleas."

- 3) Rule 241(b)(8), SCACR states: "An appeal from an order granting an injunction or temporary restraining order."

- The Court Order, p. 14, ¶A(2) & pp. 15-16(B)(1) & (2) states: "Injunction Against Business Operations."

- The Court Order, p. 14, ¶A2 & pp. 15-16(B)(1) & (2) states: "The Court enjoins Platinum Plus, as operated by Elephant, Inc., from continuing its business operations for a period of one hundred and eighty (180) consecutive days ("Injunction Period")."

- Toal, Jean C.J., *Appellate Practice in South Carolina*, 2d Ed. (2002).

"Additionally, an order holding a person in civil contempt is not automatically stayed by the taking of an appeal."

- 4) In addition, as defense counsel recalls, counsel for the State specifically alerted him (yesterday)—by phone at 4:01 PM—of the need to ask the trial court to suspend its order before a petition for writ of supersedeas could be filed.

Best regards,

Lane Davis
Nelson Mullins Riley & Scarborough, LLP

000004

From: Thomas Goldstein [<mailto:tgoldstein@COBBLAW.NET>]
Sent: Thursday, August 11, 2016 2:27 PM
To: Lane Davis; Simmons, Judge Charles; Kimbrell, Karen
Cc: hls@santen-hughes.com; Culbreath, Andrew (ACulbreath@greenvillecounty.org); Wilkins, Walt (wwilkins@greenvillecounty.org)
Subject: RE: State of South Carolina v. Elephant, Inc. & Greg Gaines: 2015-CP-23-02597

I just walked in from court and I've been in the office about 20 seconds, and I must have a dozen e-mails. I really do not know what to say. It is so obvious the Order is stayed pending appeal. (See attached rule.) I can't speak for my client because I have not had a chance to consult, but I respectfully request that you instruct the Sheriff's Office to stand down pending a decision from the appellate courts. I do not see how there can be the slightest doubt about the fact the a notice of appeal: (1) divests the lower court of jurisdiction, and (2) stays enforcement. If you continue to use law enforcement to achieve what is an OBVIOUS unlawful use of force, I will recommend that my client sue anybody and everybody involved, including Nelson, Mullens. This is EXACTLY the kind of action the Supreme Court warns against every time it takes up the question of private counsel acting as an arm of the State. If you can identify some authority to the contrary, I'm happy to re-think my position, but if the Sheriff takes action against the club prior to the expiration of the appeal process, then that is a clear violation of law, and grounds for a lawsuit for damages. I am astonished we are even having this conversation.

Tommy

From: Lane Davis [<mailto:lane.davis@nelsonmullins.com>]
Sent: Thursday, August 11, 2016 12:12 PM
To: Simmons, Judge Charles; Kimbrell, Karen
Cc: hls@santen-hughes.com; Thomas Goldstein; Culbreath, Andrew (ACulbreath@greenvillecounty.org); Wilkins, Walt (wwilkins@greenvillecounty.org)
Subject: State of South Carolina v. Elephant, Inc. & Greg Gaines: 2015-CP-23-02597
Importance: High

Dear Judge Simmons:

This morning the Solicitor's Office dispatched the Greenville County Sheriff's Office ("GCSO") to secure the Platinum Plus location on 805 Frontage Road in Greenville, S.C. ("Subject Property") as provided by the Court's July 27, 2016 Order ("Order"). The Court's Order required someone from Platinum Plus to be on site to grant GCSO access by 9 AM. (Order, p. 15, ¶12(d).) However, when GCSO arrived this morning, no one was on site.

Thereafter, the State sent an email to defense counsel, with carbon-copy to Your Honor, at 10:20 AM. The email sought to clarify any misunderstanding on the part of Defendants to the extent they errantly concluded that filing a notice of appeal automatically stayed civil contempt findings and orders granting injunctive relief. The email also requested that defendants confirm someone would arrive to grant GCSO access to the Subject Property so it could be secured. Defendants ignored the correspondence.

The Solicitor then dispatched law enforcement to the Subject Property, at or about 11:45 AM, to ascertain if any personnel from Platinum Plus had yet arrived to grant GCSO access to the Subject Property. On this occasion, an employee did answer and told law enforcement that Platinum Plus had

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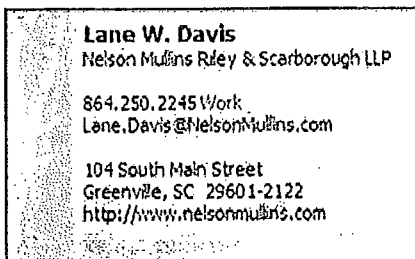
ROA 000671

filed an appeal and planned to open this afternoon at 5 PM. Notably, Elephant, Inc. has not filed a petition for writ of supersedeas, nor, before appealing, did it move this the court to suspend the effect of its order. As noted earlier, then, the civil contempt sanctions, including the sanction of shut-down issued in the form of an injunction, remain un-stayed and in full force and effect pending appeal.

While we hate to continue bothering the Court with these matters, the Solicitor's Office felt it was important to write so as to notify the Court: (1) Elephant, Inc. is in violation of the Court's Order; (2) due to the non-compliance, the Solicitor's efforts (through GCSO) to shut-down and secure the Subject Property, as directed by the Order, are being frustrated; (3) unless GCSO can obtain access, by mid-afternoon, the Subject Property will likely be unable to be secured by 5 PM as directed by the Court's Order; (4) to ensure defense counsel is furnished notice of their clients' non-compliance; (5) to ask the Court to direct Defendants to grant GCSO access to the Subject Building so it can be secured and otherwise prohibit Elephant, Inc. from opening this evening in violation of the Court's Order—or, alternatively--otherwise direct the State how to proceed; and (6) to grant the State any such relief the Court deems appropriate so as to ensure Defendants' compliance with the unstayed portions of the Court's Order.

Best regards,

Lane Davis
Nelson Mullins Riley & Scarborough, LLP



From: Lane Davis
Sent: Thursday, August 11, 2016 10:20 AM
To: tgoldstein@COBBLAW.NET; hls@santen-hughes.com
Cc: Wilkins, Walt (wwilkins@greenvillecounty.org); Culbreath, Andrew (ACulbreath@greenvillecounty.org); Simmons, Judge Charles
Subject: State v. Elephant, Inc.

Dear Tommy & Louis:

Under the South Carolina Appellate Court Rules and applicable precedent, no automatic stay operates as to findings of civil contempt or injunctive relief. Compare Order, p. 14, ¶¶2-3; *Id.* at 15-16, ¶¶1-2 with SCACR 241(8) ("An appeal from an order granting an injunction or temporary restraining order" is not automatically stayed); *In re: Decker*, 322 S.C. 212, 471

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ROA 000672

S.E.2d 459 (1995) ("An order of civil contempt is not automatically stayed on appeal.") Note, the Solicitor reserves all rights pertaining to how the automatic stay provision operates as to all other provisions in the Order.

As per the Court's July 27th Order, then, Platinum Plus must cease operations as of today and the Greenville County Sheriff's Office ("GCSO") must secure 805 Frontage Road in Greenville by 5 PM today. (Order, pp. 14-16.) The Solicitor's Office previously furnished notice of the shut-down date as per the communications set forth below. In addition, the correspondence below confirms receipt of the Order by defense counsel following its issuance as of July 27, 2016 confirming today as the proper date for the shut-down.

The Court's July 27th Order also required Platinum Plus to grant GCSO access to Platinum Plus's facility, beginning at 9 AM today, in order to secure the same. GCSO remains on standby to return to the facility immediately so it can secure the same. Please confirm Platinum Plus has personnel on site to grant GCSO access to the facility.

As the automatic stay provisions do not apply to the provisions identified above (without reference to the others), the trial court retains jurisdiction to ensure compliance with its Order. (See SCACR 241(a) ("The lower court...retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal."))

For that reason, I have copied Judge Simmons to this correspondence to notify him of the State's efforts to comply with the Court's Order and so he can stay apprised of any issues that may arise during the shut-down process.

Please let us know immediately if Platinum Plus has personnel on site, at this point, to meet the GCSO as per the Court Order.

Best regards,

Lane Davis
Nelson Mullins Riley & Scarborough, LLP



000007

ROA 000673

From: Thomas Goldstein [<mailto:tgoldstein@COBBLAW.NET>]
Sent: Wednesday, July 27, 2016 2:50 PM
To: Culbreath, Andrew
Subject: RE: State v. Platinum Plus

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Thanks.

Tommy

From: Culbreath, Andrew [<mailto:ACulbreath@greenvillecounty.org>]
Sent: Wednesday, July 27, 2016 2:48 PM
To: Thomas Goldstein; Sirkin, H. Louis
Cc: Lane Davis
Subject: Re: State v. Platinum Plus

Tommy and Louis,

I have attached the Court's Final Order in case you did not receive one via the e-filing system.

Andrew

Andrew S. Culbreath
13th Judicial Circuit Solicitor's Office
Greenville County Courthouse
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8282
aculbreath@greenvillecounty.org

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ROA 000674

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From: Culbreath, Andrew
Sent: Thursday, August 04, 2016 1:47 PM
To: 'rsh@rshpa.org'; 'Hannah Metcalfe'; Sirkin, H. Louis; tgoldstein@COBBLAW.NET
Subject: Re: PP Closure and Video Requests

Attorneys for Elephant, Inc. and Gregory Kenwood Gaines,

I'm not sure which of you to send this request to, so I decided to send it to you all out of an abundance of caution.

In accordance with the provisions of the 2015 Consent Order, we are requesting a copy of video footage from Platinum Plus Greenville for the following dates, times, and locations within the club:

August 4, 2016	Champagne Room	10:30pm – 1:00am
August 4, 2016	Couch Room	10:30pm – 1:00am
August 4, 2016	Main Stage	10:30pm – 1:00am

August 5, 2016	Champagne Room	10:30pm – 1:00am
August 5, 2016	Couch Room	10:30pm – 1:00am
August 5, 2016	Main Stage	10:30pm – 1:00am

August 6, 2016	Champagne Room	10:30pm – 1:00am
August 6, 2016	Couch Room	10:30pm – 1:00am
August 6, 2016	Main Stage	10:30pm – 1:00am

Also, by my calculation, it appears that the process of locking and securing the Subject Property will commence at 9:00am on Thursday, August 11, 2016. Greenville County Sheriff's Deputies and other authorized personnel will be present at that time to lock the property, close off the parking area, and post the required signage. It is my understanding that the chains and locks used for the prior closure are still located at the club, and will be made available to the deputies upon arrival. If this is not correct, please advise.

To avoid potential delay and confusion, please let me know who your point-of-contact will be at the club by the close of business tomorrow so we can begin coordination of the closure effort.

Thank you in advance for your cooperation.

Andrew S. Culbreath

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ROA 000675

13th Judicial Circuit Solicitor's Office
Greenville County Courthouse
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8282
aculbreath@greenvillecounty.org

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ROA 000676

From: Simmons, Judge Charles [<mailto:CSimmons@greenvillecounty.org>]
Sent: Thursday, August 11, 2016 4:20 PM
To: Wilkins, Walt; Thomas Goldstein; Lane Davis; Kimbrell, Karen
Cc: hls@santen-hughes.com; Culbreath, Andrew
Subject: RE: State of South Carolina v. Elephant, Inc. & Greg Gaines: 2015-CP-23-02597

To All:

In light of the appeal apparently being perfected, I believe that the issues now being raised will necessarily have to be resolved by the Court of Appeals.

Judge Simmons

Charles B. Simmons, Jr., Judge
Greenville County Courthouse
305 East North Street, Suite 313
Greenville, SC 29601

Phone: (864) 467-8556

Fax: (864) 467-8401

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ROA 000677

From: Simmons, Judge Charles [<mailto:CSimmons@greenvillecounty.org>]
Sent: Thursday, August 11, 2016 1:40 PM
To: Culbreath, Andrew; Lane Davis; Kimbrell, Karen
Cc: hls@santen-hughes.com; tgoldstein@COBBLAW.NET; Wilkins, Walt; Randall S. Hiller; Kimbrell, Karen
Subject: RE: State of South Carolina v. Elephant, Inc. & Greg Gaines: 2015-CP-23-02597

To All,
Absent an Order staying implementation of the July 27 Order, I expect the terms of the July 27 Order to be complied with in all respects.
Judge Simmons

Charles B. Simmons, Jr., Judge
Greenville County Courthouse
305 East North Street, Suite 313
Greenville, SC 29601

Phone: (864) 467-8556
Fax: (864) 467-8401

From: Culbreath, Andrew
Sent: Thursday, August 11, 2016 1:35 PM
To: Lane Davis; Simmons, Judge Charles; Kimbrell, Karen
Cc: hls@santen-hughes.com; tgoldstein@COBBLAW.NET; Wilkins, Walt; Randall S. Hiller
Subject: RE: State of South Carolina v. Elephant, Inc. & Greg Gaines: 2015-CP-23-02597

Judge Simmons,

I just received a call from Randy Hiller who states that he is once again representing the defendants in this matter. It is my understanding that he was retained today to assist in the appeal and any issues currently pending with regard to the enforceability of the current order pending appeal.

Mr. Hiller states that he is available for a phone conference today if the Court deems one is necessary.

Thank you.

Andrew

Andrew S. Culbreath
13th Judicial Circuit Solicitor's Office
Greenville County Courthouse
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8282
aculbreath@greenvillecounty.org

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ROA 000678



Greenville County 13th Judicial Circuit Public Index



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[Family Court Public Index](#)

[Switch View](#)

South Carolina State Of vs. Elephant Inc , defendant, et al

Case Number:	2015CP2302597	Court Agency:	Greenville County Common Pleas	Filed Date:	04/17/2015
Case Type:	Common Pleas	Case Sub Type:	Permanent Injunc 830	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:			
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	07/29/2016	Disposition Judge:	Simmons, Charles B. Jr.
Original Source Doc:		Original Case #:		Restore Reason:	Reopened Case
Judgment Number:		Court Roster:			

[Case Parties](#) [Judgments](#) [Tax Map Information](#) [Associated Cases](#) [Actions](#) [Financials](#)

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
South Carolina State Of	Master/Order/Ruling on Frontage Rd's Motion	Order		02/10/2017-11:43		
Frontage Road Associates Inc	Order/Order Cover Sheet \$25.00	Filing		02/01/2017-11:16		
Frontage Road Associates Inc	Notice/Notice of Hearing and Service	Filing		01/04/2017-15:03		
Frontage Road Associates Inc	Motion/Other	Motion		12/05/2016-12:11		
Frontage Road Associates Inc	Notice/Notice of Appearance	Filing		11/09/2016-09:46		
South Carolina State Of	Memo Completing Court Record as to Correspondence Regarding	Filing		08/17/2016-14:27		
South Carolina State Of	Exhibits to Memo Completing Court Record as to Correspondence	Filing		08/17/2016-14:27		
Elephant Inc	Motion/Supersedeas	Motion		08/11/2016-15:04		
Elephant Inc	Notice/Appeal	Filing		08/10/2016-16:20		
Gaines, Gregory Kenwood	Notice/Appeal	Filing		08/10/2016-16:20		
South Carolina State Of	State's Response to Defendants' Motion to Reconsider	Filing		08/10/2016-16:02		
Elephant Inc	Defs/Elephant Inc Motion/Reconsider	Motion		08/05/2016-10:39		
South Carolina State Of	Order/Other-Sanctions For Contempt	Order		07/27/2016-10:24	07/29/2016-10:24	
Elephant Inc	Order/Pro Hac Vice On Attorney H. Louis Sirkin	Order		07/05/2016-12:11	07/29/2016-12:11	
Elephant Inc	Reply to State's Written Closing Argument	Filing		07/01/2016-11:18	07/29/2016-11:18	
Gaines, Gregory Kenwood	Reply to State's Written Closing Argument	Filing		07/01/2016-11:18	07/29/2016-11:18	
Elephant Inc	Memorandum of Law	Filing		07/01/2016-11:18	07/29/2016-11:18	
Gaines, Gregory Kenwood	Memorandum of Law	Filing		07/01/2016-11:18	07/29/2016-11:18	
Elephant Inc	Affidavit of H Louis Sirkin	Filing		06/28/2016-09:55	07/29/2016-09:55	
Elephant Inc	Def/Elephant Veried Application/Pro Hac Vice/CoS	Motion		06/28/2016-09:54	07/29/2016-09:54	
Elephant Inc	Letter/Letter From Supreme Court Office Of Bar Admissions	Filing		06/28/2016-09:05	07/29/2016-09:05	
South Carolina State Of	Exhibits to Closing Argument for the State of South Carolina	Filing		06/27/2016-10:27	07/29/2016-10:27	
South Carolina State Of	Service/Certificate Of Service	Filing		06/27/2016-10:27	07/29/2016-10:27	
South Carolina State Of	Closing Argument for the State of South Carolina	Filing		06/27/2016-10:27	07/29/2016-10:27	
South Carolina State Of	Order/Rule To Show Cause	Order		05/12/2016-12:07	07/29/2016-12:07	
South Carolina State Of	Order/Order Cover Sheet \$25.00	Filing		05/10/2016-15:42	07/29/2016-15:42	
South Carolina State Of	Certification/Attorney Certification	Filing		05/10/2016-15:39	07/29/2016-15:39	

ROA 000679

South Carolina State Of	Order/Rule To Show Cause	Order		04/29/2016-12:07	07/29/2016-12:07	
South Carolina State Of	Order/Order Cover Sheet \$25.00	Filing		04/27/2016-15:00	07/29/2016-15:00	
South Carolina State Of	Petition/Order for Supplemental Proceedings	Filing		04/27/2016-14:33	07/29/2016-14:33	
South Carolina State Of	Order/Dismissing Appeal with Court of Appeals	Order		07/01/2015-08:20	07/29/2016-08:20	
South Carolina State Of	Motion/Motion Filing Fee	Motion		06/04/2015-11:55	07/29/2016-11:55	
South Carolina State Of	Order/Consent Order	Order		06/04/2015-09:31	06/04/2015-09:31	
South Carolina State Of	Service/Affidavit Of Service on Platinum Plus	Filing		05/26/2015-09:17	06/04/2015-09:17	
South Carolina State Of	Service/Affidavit Of Service on Gregory Kenwood Gaines	Filing		05/26/2015-09:12	06/04/2015-09:12	
South Carolina State Of	Summons to Alicia Diane Howard	Filing		05/15/2015-16:28	06/04/2015-16:28	
South Carolina State Of	Summons to Ashley Renee Walker	Filing		05/15/2015-16:27	06/04/2015-16:27	
South Carolina State Of	Summons to Stephanie Renee Turner	Filing		05/15/2015-16:27	06/04/2015-16:27	
South Carolina State Of	Summons to Jordyn Nicole Sierra	Filing		05/15/2015-16:26	06/04/2015-16:26	
South Carolina State Of	Summons to Brittany Caroline Neal	Filing		05/15/2015-16:26	06/04/2015-16:26	
South Carolina State Of	Summons to Micah Nicole Dobbins	Filing		05/15/2015-16:26	06/04/2015-16:26	
South Carolina State Of	Summons to Gregory Kenwood Gaines	Filing		05/15/2015-16:25	06/04/2015-16:25	
South Carolina State Of	Summons to Elephant, Inc. & Front Road Assoc	Filing		05/15/2015-16:24	06/04/2015-16:24	
South Carolina State Of	Amended Petition	Filing		05/15/2015-16:24	06/04/2015-16:24	
South Carolina State Of	Exhibit List#3232	Filing		05/14/2015-14:00	06/04/2015-14:00	
South Carolina State Of	Notice/Appeal of Order Granting TI/Service	Filing		05/06/2015-16:52	06/04/2015-16:52	
South Carolina State Of	Order/Granting Temporary Injunction	Order		05/06/2015-12:02	06/04/2015-12:02	
South Carolina State Of	Order/Redacting Documents	Order		05/01/2015-16:28	06/04/2015-16:28	
South Carolina State Of	Consolidated Summary of Reply to 4/29 Filings	Filing		04/30/2015-09:42	06/04/2015-09:42	
Elephant Inc	Def Elephant Inc's Summary of Law Re: Analysis Applicable PI	Filing		04/29/2015-08:44	06/04/2015-08:44	
Elephant Inc	Def Elephant Inc's Argument Summary - Service of Process	Filing		04/29/2015-08:43	06/04/2015-08:43	
Elephant Inc	Def Elephant Inc's Argument Summary - Abatement	Filing		04/29/2015-08:43	06/04/2015-08:43	
Elephant Inc	Def Elephant Inc's Argument Summary - Admissibility	Filing		04/29/2015-08:30	06/04/2015-08:30	
South Carolina State Of	Affidavit/Affidavit of Jeffrey Smith	Filing		04/28/2015-14:31	06/04/2015-14:31	
South Carolina State Of	Affidavit/Affidavit of Sgt. Claude Todd	Filing		04/28/2015-14:30	06/04/2015-14:30	
Elephant Inc	Elephant's Motion/Strike	Motion		04/24/2015-13:39	06/04/2015-08:57	
Elephant Inc	Elephant's Motion/Strike Affidavit of Robert Curtis/CoS	Motion		04/24/2015-13:38	06/04/2015-13:38	
South Carolina State Of	Rule 11 Certification	Filing		04/24/2015-11:58	06/04/2015-11:58	
South Carolina State Of	Argument Summary - Service of Process	Filing		04/24/2015-09:06	06/04/2015-09:06	
South Carolina State Of	Summary of Response - Habitual & Number of People Impacted	Filing		04/24/2015-09:03	06/04/2015-09:03	
South Carolina State Of	Argument Summary - Admissibility	Filing		04/24/2015-08:53	06/04/2015-08:53	
South Carolina State Of	Sum of Response - Nuisance Statute Does Not Violate 1st Amd.	Filing		04/24/2015-08:52	06/04/2015-08:52	
South Carolina State Of	Summary of Response - Abatement Has Not Occurred	Filing		04/24/2015-08:52	06/04/2015-08:52	
Elephant Inc	Memo in Support of Def's Motion to Strike Afdvt of R. Curtis	Filing		04/24/2015-08:49	06/04/2015-08:49	
South Carolina State Of	Memo Of Law in Support Motion For Temporary Injunction/Cert	Filing		04/22/2015-16:44	06/04/2015-16:44	
South Carolina State Of	Service/Affidavit Of Service	Filing		04/22/2015-	06/04/2015-	

	on Mr. Rick Zurich			09:34	09:34	
Wilkins, William Walter III	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2015- 09:22	06/04/2015- 09:22	
Culbreath, Andrew Scott	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2015- 09:22	06/04/2015- 09:22	
Davis, Lane Whittaker	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2015- 09:19	06/04/2015- 09:19	
Davis, Lane Whittaker	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2015- 09:18	06/04/2015- 09:18	
South Carolina State Of	Plts Motion/Temporary Injunction	Motion		04/17/2015- 14:27	06/04/2015- 14:27	
South Carolina State Of	Summons & Complaint	Filing		04/17/2015- 13:13	06/04/2015- 13:13	
Elephant Inc		Event			04/27/2015- 00:00	

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MAR 23 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity, Circuit Court Judge

Case No. 2015-CP-23-02597
Appellate Case No. 2016-001695

State of South Carolina on the relation of William
Walter Wilkins, III, Solicitor of the Thirteenth Judicial
Circuit, ... Respondent,

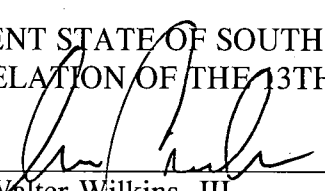
v.

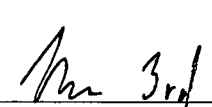
Elephant Inc., Gregory Kenwood Gaines, and Frontage
Road Associates, Inc., Defendants,
of which Elephant Inc. and Gregory Kenwood Gaines
are the Appellants.

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.

RESPONDENT STATE OF SOUTH CAROLINA
ON THE RELATION OF THE 13TH CIRCUIT SOLICITOR

By: 
W. Walter Wilkins, III
Thirteenth Circuit Solicitor, S.C. Bar No. 16470
Andrew Culbreath
Deputy Solicitor 13th Cir., S.C. Bar No. 14107
aculbreath@greenvillecounty.org
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8647

 , 2017
Greenville, South Carolina