

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No. 18-ALJ-17-0002-CC

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SC Court of Appeals

Rooftop Bar, LLC, d/b/a Rooftop Bar and Lounge.....Respondent,

v.

South Carolina Department of Revenue.....Respondent,

and

Thomas R. Gottshall and April C. Lucas.....Intervenors, Appellants.

RECORD ON APPEAL – VOLUME I OF III

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Rooftop Bar, LLC, d/b/a Rooftop Bar &
Lounge,

Docket No. 18-ALJ-17-0002-CC

Petitioner,

vs.

South Carolina Department of Revenue,

FINAL ORDER

Respondent,

and

Thomas R. Gottshall and April C. Lucas,

Intervenors.

APPEARANCES: For the Petitioner: Michael H. Montgomery, Esquire
For the Respondent: Patrick A. McCabe, Esquire
For the Intervenors: Richard A. Harpootlian, Esquire
For the Protestants: *Pro se*

This matter comes before the Administrative Law Court (ALC or Court) for a contested case hearing pursuant to the following sections of the South Carolina Code of Laws: Sections 1-23-310 et seq. (2005 & Supp. 2017); 61-2-260 (Supp. 2017); 61-4-525 (Supp. 2017); and 61-6-1825 (Supp. 2017). Rooftop Bar, LLC, d/b/a Rooftop Bar & Lounge (Petitioner) seeks an on-premises beer and wine permit, and restaurant liquor by the drink license for its location at 638 Harden Street, Columbia, South Carolina (location).

Polly Felton Morrison, April C. Lucas, John J. Stucker, Karen R. Belser, Judith Holliday, Kathryn S. Smith, the University of South Carolina, James M. Daniel, III, Luther J. Battiste, III, Michael Drennen, Kathryn Fenner, Richard Ackerman, and Thomas R. Gottshall (Protestants) filed a protest to the application.¹ On December 6, 2017, Respondent South Carolina Department of Revenue (Department) denied the application based upon the receipt of the Protestants' valid

¹ On February 16, 2018, counsel for Intervenors filed a Notice of Withdrawal of Protest for Polly Felton Morrison, John J. Stucker, Judith Holliday, Kathryn R. Smith, Luther J. Battiste, III, Michael Drennen, Karen R. Belser, Kathryn Fenner, and Richard Ackerman.

FILED

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

public protests pursuant to Section 61-6-1825.² S.C. Code Ann. § 61-6-1825 (2009); On January 4, 2018 Petitioner requested a contested case hearing.

On February 1, 2018, this Court issued an Order Granting Motions to Intervene for Protestants Thomas R. Gottshall and April C. Lucas. A hearing was held on May 14 and 15, 2018, at the ALC in Columbia, South Carolina. The parties and Protestants appeared at the hearing and presented evidence and argument on the issue of whether Petitioner should be granted an on-premise beer and wine permit and/or a liquor by the drink license. After carefully weighing all the evidence, I find that Petitioner meets the requirements for the issuance of an on-premises beer and wine permit, and restaurant liquor by the drink license.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility and taking into consideration the burden of persuasion by the parties, the Court makes the following Findings of Fact by a preponderance of the evidence.

Notice of the time, date, place and subject matter of the hearing was given to all parties and Protestants.

Petitioner seeks an on-premises beer and wine permit, and restaurant liquor by the drink license for its business Rooftop Bar, LLC, d/b/a Rooftop Bar and Lounge, located at 638 Harden Street, Columbia, South Carolina. The proposed location is in Richland County, within the municipal limits of the City of Columbia. The general area is often referred to as Five Points.

Permits to sell beer and wine, and licenses to sell liquor by the drink have been issued to various businesses at the location for many years. The most recent previous business at the location was The Attic. No evidence was produced that a license had been revoked or that the location was previously cited for any violations of the alcoholic beverage laws of the State.

On January 2, 2018, the Department issued its determination denying Petitioner's application for the permit and license based on the receipt of the Protestants' valid public protests. The Department otherwise found that Petitioner met all of the statutory requirements to be granted an on-premises beer and wine permit, and liquor by the drink license. The South Carolina Law

² Initially, there was also a question regarding the restaurant having a Grade A Retail Food Establishment Permit prior to the issuance of a license pursuant to S.C. Code Ann. §§ 61-6-20(2) and 61-6-1820(1). This was resolved prior to the hearing and the only basis for denial at the commencement of the hearing was the public protests. The record provided by the Department reflects that the A rating was received by DOR on December 7, 2017.

Enforcement Division (SLED) and the Department investigated the location and, as the Department's Supervisor of Alcohol Beverage Licensing testified, "found everything in order."

Petitioner's principals are over the age of twenty-one. Each is a legal resident of the State of South Carolina, and each has maintained his principal place of abode in this state for at least thirty days before making this application. Notice of the application was lawfully posted at the location and in a newspaper of general circulation.

The Protestants are residents who live in the neighborhoods surrounding Five Points. They have raised several concerns and objections to granting the permit and license for the location. Their primary concerns are:

- Whether all principals of Petitioner were disclosed on the application;
- Whether the proposed business is a bona fide restaurant.
- Whether the business will attract or enable illegal activity in the form of underage drinking;
- Whether the business will burden law enforcement resources;
- Whether the business and its patrons will be a nuisance to nearby businesses and residences; and
- Whether the location is suitable, because they contend the Five Points district is oversaturated with businesses that serve alcohol.

Ownership and Control of Rooftop Bar and Lounge

Petitioner's owners are 4TBs, LLC (owned by Stephen Bland), Mongo, LLC (owned by Adam Rounala), and Schatze Capital (owned by Brenda Wells). Brenda Wells owns the majority interest in Petitioner (sixty percent equity based on a \$54,500 investment), while Bland and Rounala hold minority interests (based on \$10,000 and \$7,000 investments, respectively). The business was purchased from Rob Mara for \$85,000 in a seller-financed purchase. Protestants assert that Daniel Wells (Brenda Wells' son who owns or owned another bar purchased by these same individuals) is involved in the business and is an undisclosed principal. I do not find evidence that convinces me that Daniel Wells is an undisclosed principal in this business. There is no evidence Daniel Wells ever had an ownership interest or management role at this location. There is nothing other than speculation to suggest that Brenda Wells' majority ownership interest is held on behalf of Daniel. Therefore, I find that there are no principals of the business that have not been disclosed on the application.

SLED and the Department found that all principals are over twenty-one years of age, are legal residents of South Carolina who have been residents for at least thirty days before the date of application and have maintained their principal places of abode in South Carolina for at least thirty days before the date of application, are of good repute and have not had a license relating to the sale of alcoholic liquors revoked within five years preceding the application filing.

Restaurant

Ruonala and Bland testified that in the weeks since the Court's decision in Five Points Roost, LLC v. S.C. Dept. of Revenue, 2018 WL 1724696 (S.C. Admin. Ct., April 3, 2018), they have made significant efforts to increase the food offerings to establish that Petitioner qualifies as a *bona fide* restaurant. Ruonala testified that they have worked to boost food sales by creating an "image" around the sale of grilled cheese sandwiches and brunch. They have worked with a local food truck chef to create a menu and that chef comes in to prepare brunch at the location. Petitioner's staff also prepares menu items in the kitchen at the location. Petitioner produced a color menu with photographs of the various items served, which consists of hot sandwiches. Petitioner's menu is displayed on a menu board on the street during the day, is posted in its establishment in the evenings, and scrolls on its televisions inside.

Sunday brunch items are served from 11:30 am to 2:00 pm on Sundays. In addition to Sunday brunch, Petitioner serves food in the establishment from 11:30 am until 2:00 am six days a week. Its daily fare includes gourmet grilled cheese sandwiches with multiple combinations of toppings. Petitioner's kitchen equipment includes a refrigerated preparation station, at least forty cubic feet of refrigeration, a stainless-steel preparation table, a griddle, a convection oven, a microwave oven, a freezer, and a food warmer display.

The business has focused on developing a new menu and image. Its certified public accountant testified about Petitioner's growth in food sales. During the combined months of March and April of 2018, food sales averaged approximately twelve percent of gross sales. In April food sales were fifteen percent of gross sales. In May, Petitioner enrolled to sell its food for delivery through Uber Eats and has seen some success with food sales through that platform, grossing approximately \$80 per day in delivery sales. Petitioner incorporates food sales as a material part of its business and invests a substantial amount of its day-to-day operations in providing hot meals, cooked on its premises to its customers.

Underage Students and Five Points

Several witnesses testified concerning the environment in the Five Points hospitality district where the proposed location is situated. Nearby residents, law enforcement, and a professor and administrator from the University of South Carolina (USC) all testified to the prevalence of crowds of college students congregating in the area, underage drinking, and illegal or obnoxious behavior by intoxicated students driving or walking through nearby neighborhoods. I find that Five Points is an area where underage college students congregate and loiter. Many of them have falsified identification and are entering the bars and drinking to excess. However, that finding must be weighed against the evidence that Five Points has historically been a hospitality district serving the USC and the midlands area. The location at issue is one that has been operated as a restaurant or bar for many years serving beer, wine, and liquor. While the Protestants presented ample evidence of nuisance behavior by patrons of Five Points establishments generally, there is no evidence that this particular location has been the source of illegal or problematic behavior.

Bland and Ruonala testified that they have instituted state-of-the-art practices to detect fraudulent identification and turn away underage patrons. To discourage the overconsumption of alcohol, they have adopted a policy of pricing all drinks over \$3.00. Petitioner has pledged to operate the business in a responsible manner and to utilize best practices to prevent underage drinking in the establishment, including compliance walk-throughs by law enforcement to check that patrons have valid identification demonstrating they are of age to purchase alcohol.

Law Enforcement Resources

There is ample evidence that the Five Points area generally presents law enforcement challenges, and requires significant law enforcement attention and resources. However, no evidence was presented indicating that the issuance of a license at the proposed location will create any negative change or require increased law enforcement presence. The location has been open with a temporary license and permit for more than six months without incident or complaint.

The City of Columbia's police chief testified that he was unaware of any reports or complaints relating to this location since it reopened last September, and that he did not recall any arrests at this location under the previous owner. He noted that the police department works with businesses to develop good practices and that he had no information that Petitioner was not complying with those best practices. Law enforcement resources in the Five Points area have been static for at least four years. The police chief described Five Points as a busy area with a high

concentration of young adults and students. He noted that any area that attracts crowds of people requires extra attention and personnel; the Five Points entertainment district is such an area.

Protestants' Testimony

Anna Edwards testified as a representative of USC. She is the Associate Vice President for Student Life. USC is protesting the permit and license because it would like to decrease the number of bars in Five Points to reduce the accessibility and availability of alcohol. Ms. Edwards testified that twenty-five percent of USC students reported drinking in a high-risk manner. The evidence establishes that many students under the age of twenty-one are drinking at establishments in Five Points. She also testified about the efforts that USC makes to educate its students about alcohol and alcohol use. Ms. Edwards did not present any evidence relating to this particular location either under former management or since Petitioner opened at the location. She testified that the high density of bars and the availability of alcohol in Five Points promotes a culture of overconsumption.

April Lucas, Olufemi Olulenu, and William Lamb testified about the concerns of the Protestants and Intervenors who are residents of nearby neighborhoods. Resident witnesses all reported incidents of public intoxication, public urination, harm to property, and late-night disturbances stemming from nightlife in Five Points. The residents are concerned with the number of bars concentrated in the Five Points area (approximately forty-two licensed establishments). Ms. Lucas testified that the Five Points area is "an attractive nuisance," drawing many underage students who drink to excess and then perpetrate minor crimes. She also testified that these students also become vulnerable targets as victims of more serious crimes.

CONCLUSIONS OF LAW

Jurisdiction and Legal Standards

Based upon the foregoing findings of fact, the Court concludes the following as a matter of law:

Jurisdiction over this case is vested with the Court pursuant to the following sections of the South Carolina Code: Sections 61-2-260 (2009); 1-23-310 et seq. (Supp. 2017); 61-4-525 (2009); and 61-6-1825 (2009). Unless otherwise specified, the standard of proof in an administrative proceeding such as this is a preponderance of the evidence. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988); see also S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2017). "A 'preponderance of the evidence' is evidence which convinces as to its truth."

Gorecki v. Gorecki, 387 S.C. 626, 633, 693 S.E.2d 419, 422 (Ct. App. 2010) (citation omitted). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity, and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

Alcohol Licenses and Permits

Section 61-2-260 of the Code grants the Court the responsibility to determine contested case matters governing alcoholic beverages, including beer, wine and liquor. S.C. Code Ann. § 61-2-260 (2009). The factual determination of whether an application is granted or denied is usually the sole prerogative of the executive agency charged with rendering that decision. Palmer v. S.C. ABC Comm'n, 282 S.C. 246, 317 S.E.2d 476 (Ct. App. 1984). As the trier of fact, an administrative law judge is authorized to determine the fitness of an applicant for alcohol permits and licenses using broad, but not unbridled, discretion. Byers v. S.C. ABC Comm'n, 281 S.C. 566, 316 S.E.2d 705 (Ct. App. 1984). The requirements for a beer and wine permit are set forth in Section 61-4-520 of the Code. South Carolina Code Ann. § 61-4-520 (2009). The requirements for a liquor by the drink license are contained in Section 61-6-1820. South Carolina Code Ann. § 61-6-1820 (2009 and Supp. 2017).

Suitability of Location

For the issuance of a beer and wine permit, Section 61-4-520 includes the criteria that the location be a proper and suitable one:

- (5) The location of the proposed place of business of the applicant is in the opinion of the department a proper one.
- (6) The department may consider, among other factors, as indications of unsuitable location, the proximity to residences, schools, playgrounds, and churches. This item does not apply to locations licensed before April 21, 1986.

S.C. Code Ann. § 61-4-520(5) and (6) (2009). Case law provides that a liquor license may be denied if the location is not suitable. See generally, Schudel v. S.C. Alcoholic Beverage Control Comm'n, 276 S.C. 138, 276 S.E.2d 308 (1981). "Proper location" is not statutorily defined, but broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location for the requested permit and license. See generally, Fast Stops, Inc. v. Ingram, 276 S.C.

593, 281 S.E.2d 118 (1981). In determining whether a location is suitable, it is proper for this tribunal to consider any evidence that shows adverse circumstances of location. Kearney v. Allen, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985).

This determination “involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact on the community wherein it is to be situated.” Id. A liquor license or permit may be refused on the grounds that the “location of the establishment would adversely affect the public interest, that the nature of the neighborhood and . . . premises is such that the establishment would be detrimental to the welfare . . . of the inhabitants, or . . . the manner of conducting the establishment would not be conducive to the general welfare of the community.” 48 C.J.S. Intoxicating Liquors § 196 (Sept. 2016 update). Thus, the decision as to whether the proposed location is improper for a beer and wine permit or liquor license must be made on a case-by-case basis resting upon the peculiar facts of each application. After carefully weighing the evidence and applying the law as discussed above, the Court finds the location to be suitable for the type of business Petitioner intends to operate with the conditions discussed below.

Underage Students

The presence of crowds of underage USC students, many armed with sham identification and intent upon drinking in Five Points bars, is a factor tending to indicate that the proposed location may not be suitable for the type of business Petitioner intends to operate. Proximity to a place “where young people congregate and loiter” has been recognized by the South Carolina Court of Appeals as a factor demonstrating that a particular location is unsuitable for the sale of beer and wine. Palmer, 282 S.C. at 250, 317 S.E.2d at 478. Here, the evidence demonstrates that crowds of young people gather in Five Points. Many of them become intoxicated, putting their own safety at risk as well as causing problems for law enforcement and disturbing the peace of the nearby residents.

On the other hand, the Five Points area has historically served as a primary hospitality district for the Columbia area as well as USC. Recognizing this role, the Court concludes that a proper balance must be struck. To that end, in order to protect the underage young adults that gather in the area, only those establishments that can be expected to operate utilizing best practices related to security and detection of false identification should be licensed or permitted to sell alcohol in the area. Petitioner has testified to measures it has taken to prevent underage students from purchasing alcohol at its establishment. Petitioner’s principals testified that it is their practice

to price all alcoholic beverages at \$3.00 or above, and to not offer drink specials. This has the added effect of discouraging overconsumption among students who are of a legal age to drink. I find that if Petitioner abides by the business and security practices to which its principals attested at the hearing, the likelihood of underage students obtaining alcohol at this location is greatly reduced. In particular, Petitioner's owners testified that they:

1) Scan all identification cards (IDs) with the same type of blacklight used by the federal Transportation Security Administration to check for forged identification;

2) Scan each ID utilizing a state-of-the-art scanner that verifies the ID is bona fide and also flags any ID that has already been used in the same evening to prevent patrons who enter the business from sharing their IDs with underage individuals waiting in line.

3) Work with law enforcement to encourage compliance walk-throughs of the business during which law enforcement checks for proper identification. The regular practice of these compliance walk-throughs has the effect of deterring underage students from attempting to gain entry with falsified IDs.

4) Price all drinks at \$3.00 or more and offer no drink specials.

I conclude that the risk of serving underage individuals and overserving patrons is greatly reduced with the utilization of these measures.

Law Enforcement Resources

In determining if a location is suitable for an alcohol license or permit, consideration must be given to the impact the issuance of the permit or license will have on law enforcement. Fowler v. Lewis, 260 S.C. 54, 194 S.E.2d 191 (1973); Roche v. S.C. Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975). Evidence that the granting of a permit will place a strain upon police to adequately protect the community must be weighed. Moore v. S.C. Alcoholic Beverage Control Comm'n, 308 S.C. 160, 162, 417 S.E.2d 555, 557 (1992). Denial is appropriate where the public areas surrounding the proposed location have been the source of constant law enforcement problems or significant problems with public intoxication. Roche, 263 S.C. at 451, 211 S.E.2d at 243. Another pertinent factor is whether police have been summoned to the scene on prior occasions when licensed to another party. Schudel, 276 S.C. at 141-42, 276 S.E.2d at 309-10. It is also relevant whether the location is near other locations that have either been a constant source of law enforcement problems or are locations where young people congregate and loiter. Palmer, 282 S.C. at 250, 317 S.E.2d at 478.

Here, there is no doubt that the Five Points entertainment district is an area that regularly requires significant law enforcement resources. The City of Columbia's police chief testified that he staffs the Five Points area according to what is going on, and that any area with a high concentration of people requires extra attention and personnel. He testified that the law enforcement resources allotted to Five Points has been static for the past four years. He generally increases police resources in response to drink specials, private parties, and events at USC, especially sporting events. The police chief indicated that he allots law enforcement resources to Five Points similarly to the way he treats The Vista, Columbia's other predominant hospitality district. He testified that he was not aware of any arrests at Petitioner's location.

In light of the historic role of Five Points as a hospitality district, this Court concludes that the proper balance for preventing the location from becoming a strain on law enforcement is to assure that only those establishments that can be expected to operate with best practices related to security and crowd control should be licensed or permitted to sell alcohol in the area. In particular, the police chief mentioned that offering drink specials is something that a restaurant/bar owner might do that requires additional law enforcement personnel to be deployed. As discussed above, Petitioner's principals have represented to this Court that:

- 1) it will not sell any alcoholic drinks for less than \$3.00;
- 2) it will never offer alcoholic drink specials;
- 3) all of its advertising promotes the food offered at the location, and not alcoholic beverages;
- 4) it maintains a roped-off area outside its entrance for patrons waiting in line for admittance so that law enforcement can easily distinguish between individuals waiting in line versus other individuals who may be loitering; and
- 5) it conscientiously implements the best practices related to security, including all those requested by law enforcement.

I find that under these conditions, along with the ones enumerated above, the risk of Petitioner becoming a strain on law enforcement resources is greatly reduced.

Nuisance

Section 61-4-580(5) of the Code prohibits a permittee from knowingly allowing "any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this state" to occur on the licensed premises. S.C. Code Ann. § 61-4-580 (Supp. 2017).

Licensed or permitted premises have been said to include not only the interior of the licensed business, but also the areas immediately adjacent to the entrance and exit, as well as the parking areas. Compare S.C. Code Ann. § 61-4-1700 (2009) (as relates to brew pubs, Section 61-4-1700(2) provides in part that “‘Permitted premises’ means those areas normally used by the permittee or licensee to conduct his business and includes, but is not limited to, the selling areas, brewing areas, food preparation areas, and parking areas.”). “[O]ne who holds a license to sell alcoholic beverages is responsible for supervising the conduct of his clientele, both within the licensed premises and in the immediate vicinity, in order to ensure that his operations do not create a nuisance for the surrounding community.” Dayaram Krupa, LLC v. S.C. Dept. of Revenue, 2007 WL 1219343 *4 (S.C. Admin. Law Ct., March 19, 2007) (citing S.C. Code Ann. § 61-4-580(5) (Supp. 2006) and A.J.C. Enters., Inc. v. Pastore, 473 A.2d 269, 275 (R.I. 1984)). The court in A.J.C. Enterprises held that a liquor licensee “assumes an obligation to supervise the conduct of its clientele so as to preclude the creation of conditions within the surrounding neighborhood which would amount to a nuisance to those who reside in the area.” A.J.C. Enters., Inc., 473 A.2d at 275. In the event that a licensed location becomes a public nuisance to the surrounding community, the Department may revoke or refuse renewal of the license for the location. See S.C. Code Ann. § 61-4-580(5) (Supp. 2017).

A nuisance is a substantial and unreasonable interference with another individual’s use and enjoyment of his property. O’Cain v. O’Cain, 322 S.C. 551, 561, 473 S.E.2d 460, 466 (Ct. App. 1996). Where a business is operated in an unlawful or unreasonable manner so as to produce material injury or great annoyance to others or unreasonably interferes with lawful use and enjoyment of their property, it will constitute nuisance. Id.

In this case, while there is abundant evidence of nuisance behavior by patrons of Five Points establishments generally, there is no evidence that this particular business is, or has been, operated in an unlawful or unreasonable manner, or in a manner that promotes such nuisance behavior. If the Petitioner is operated consistent with the testimony of its principals at the hearing, it would be expected to be an example of the type of establishment that implements best practices to avoid the types of behaviors that vex and annoy the nearby residents, and about which the Protestants complain.

Suitability of Location Previously Licensed

In support of its position that the location is a suitable one for the sale of alcohol, Petitioner points to the fact that the proposed location has been the locale of businesses with alcohol licenses for many years. In Taylor v. Lewis, the South Carolina Supreme Court held:

We agree with the lower court that the relevant testimony of those who oppose the requested permit consists entirely of opinions and conclusions which are not supported by any facts. The claimed detriment to the wellbeing of the community or the lack of adequate police protection are without factual support.

* * * *

Respondent began the operation of a business at the present location after the building was constructed in 1967. The State issued to him a retail permit for the sale and consumption of beer on the premises and he operated under such license at this location for about three (3) years. He then sold the business to a third party who also was issued a retail permit to sell beer at this location for a period of two years. Respondent recently repurchased the business and made the present application. It is undisputed that beer had been sold at the location in question under permits issued by appellant for approximately five (5) years prior to the present application. The record is devoid of any showing that the location is any less suitable for the sale of beer now than during the prior five (5) year period.

Taylor v. Lewis, 261 S.C. 168, 171-72, 198 S.E.2d 801, 802 (1973).

Here, the location has been the site of a restaurant/bar selling alcohol for many years. Unlike the facts in Taylor, this case presents facts that demonstrate that circumstances in the general Five Points area are less suitable for the sale of beer, wine and liquor than they have been in years past. In particular, the evidence demonstrates that the Five Points area has increasingly become the scene of problems related to unruly and unlawful behavior and underage drinking, especially underage students with fraudulent identification. These issues have progressively become a greater nuisance to residents in the nearby neighborhoods.

After carefully weighing the evidence and applying the law as discussed above, the Court finds it inappropriate for the decision in this case to turn on the history of licensed alcohol sales at the location. The history of alcohol sales and the fact that Five Points is a recognized hospitality district militates in favor of granting the license and permit sought under the Taylor rationale. However, the overwhelming evidence demonstrates that circumstances in Five Points have deteriorated to the point that underage drinking, unlawful behavior, and nuisance behavior have become a matter of serious concern for area residents. Because of that change in circumstances, I find the Taylor decision distinguishable from the circumstances in this case. In Taylor, there was no factual evidence in the record showing that the location was unsuitable. The denial of the license

was based solely upon the protestants' testimony concerning their fears. In Taylor, the Supreme Court found that, "the relevant testimony of those who oppose the requested permit consists entirely of opinions and conclusions which are not supported by any facts." Id. at 170. Here, there is overwhelming factual evidence that Five Points is the scene of problematic behavior, and that crowds that would likely be attracted to the business could contribute to the existing strain on local law enforcement resources, underage drinking, and public drunkenness. The lack of evidence that led the Supreme Court to conclude that, "a determination of unsuitability ... is wholly unsupported by any competent evidence" in Taylor is not the case here. Id. The focus of this Court's inquiry must be whether this location is suitable at this time, not upon the fact that the location has a history of alcohol sales. Kan Enterprises, Inc. v. S.C. Dept. of Revenue, 240 S.C. 596, 605, 803 S.E.2d 882, 887 (Ct. App. 2017). Therefore, I conclude that the fact that a business selling alcohol has been licensed at the location for many years is not a significant factor influencing the decision to grant the permit and license in this case.

Restaurant

Section 61-6-1820(1) of the Code provides that an applicant may receive a license upon the finding that "[t]he applicant is a bona fide nonprofit organization ... or the applicant conducts a business bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging." S.C. Code Ann. § 61-6-1820(1) (Supp. 2017). This requirement mirrors the language of the mandate of our state's constitution. S.C. Const., art. VIII-A § 1. Section 61-6-1610(I)(3) defines "primarily" to mean that "the serving of the meals by a business establishment is a regular source of business to the licensed establishment, that meals are served upon the demand of guests and patrons during the normal mealtimes that occur when the licensed business establishment is open to the public, and that an adequate supply of food is present on the licensed premises to meet the demand." S.C. Code Ann. § 61-6-1610 (Supp. 2017). A "meal" is defined as "prepared foods available to guests...during the normal mealtimes that occur when the licensed business establishment is open to the public. Sandwiches, boiled eggs, sausages, and other snacks prepared off the licensed premises but sold there are not a meal." S.C. Code Ann. § 61-6-1610 (I)(2) (Supp. 2017). Section 61-6-20(2) defines "[b]ona fide engaged primarily and substantially in the preparation and serving of meals" to mean:

a business that provides facilities for seating not fewer than forty persons simultaneously at tables for the service of meals and that:

- (a) is equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals upon customer request at normal meal times;
- (b) has readily available to its guests and patrons either menus with the listings of various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and
- (c) prepares for service to customers, upon the demand of the customer, hot meals at least once each day the business establishment chooses to be open.

S.C. Code Ann. §61-6-20(2) (Supp. 2017). Regulation 7-401.3 elaborates further:

A. Any business establishment that applies for or holds a sale and consumption license pursuant to Section 61-6-1610 of the Code and is not engaged in the furnishing of lodging, must:

1. Be equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals; and
2. Have readily available to its guests and patrons either “menus” with the listings of the various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and
3. Prepare for service to customers hot meals at least once each day the business establishment chooses to be open.
4. If such establishment advertises, a substantial portion of its advertising must be devoted to its food services.

B. The following definitions shall be used in conjunction with Section 61-6-1610 of the Code and this Regulation:

1. “Meal” means an assortment of various prepared foods which shall be available to guests on the licensed premises during the normal “mealtimes” which occur when the licensed business establishment is open to the public. Sandwiches, boiled eggs, sausages and other snacks prepared off the licensed premises but sold thereon, shall not constitute a meal.
2. “Kitchen” means a separate and distinct area of the business establishment that is used solely for the preparation, serving and disposal of solid foods that make up meals. Such area must be adequately equipped for the cooking and serving of solid foods, and the storage of same, and must include at least twenty-one cubic feet of refrigerated space for food and a stove.
3. “Primarily” means that the serving of meals by a business establishment constitutes a regular and substantial source of business to the licensed establishment and that meals shall be served upon the demand of guests and patrons during the normal “mealtimes” which occur when the licensed business establishment is open to the public and that an adequate supply of food is present on the licensed premises to meet such demand.

S.C. Code Ann. Reg. 7-401.3 (Supp. 2017).

The statute and regulation set forth above provide detailed definitions and requirements concerning what constitutes “bona fide engaged primarily and substantially in the preparation and serving of meals.” Petitioner presented testimony, and I have found that it meets the requirements defined by the statutes and the regulation. Petitioner has seating for at least forty. The kitchen includes a griddle and at least twenty-one cubic feet of refrigerator space for food. Petitioner has created a menu featuring many variations on grilled cheese sandwiches, and a Sunday brunch menu. It opens for lunch at 11:00 am each day. It enrolled the restaurant in Uber Eats and is earning revenue from sandwiches sold and delivered through the Uber Eats program. Hearing testimony indicates that up to fifteen percent of the business’ revenue in the most recent two months was from food. This represents a significant change from the time Bland’s deposition was taken on February 12, 2018, when he testified that approximately five percent of revenue came from food.

Intervenors argue that Petitioner cannot be found to be a restaurant because the sale of food contributes only five to twelve percent of revenue to the business. In Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Comm’n, 273 S.C. 782, 260 S.E.2d 452 (1979), our Supreme Court held that where only ten percent of a business’ gross revenues were attributed to food sales, the business was not primarily and substantially engaged in the preparation and serving of meals. In response, Petitioner notes that the South Carolina General Assembly has amended the statute defining “bona fide engaged primarily and substantially in the preparation and serving of meals” several times since the Brunswick case was decided, rendering the percentage of sales attributable to food an irrelevant test of a restaurant’s bona fides. While it is true that the language and code section number of the definition has changed since Brunswick was decided, a specific definition of “bona fide engaged primarily and substantially in the preparation and serving of meals” was codified in statute and considered by the Brunswick court. The Supreme Court held that despite a specific definition of “bona fide engaged primarily and substantially in the preparation and serving of meals” (found in Code Section 61-6-20(2) at that time) a business must not only meet the technical requirements outlined in the statute, but also must actually be “primarily” engaged in the preparation and serving of meals. Id.

In this case, Petitioner has taken affirmative steps to increase the food service component of its business since Bland’s deposition, and this Court’s April 3, 2018 decision in Five Points Roost, LLC, supra, finding that another bar owned by these same parties was not bona fide engaged primarily and substantially in the preparation and serving of meals. I conclude that, so long as

Petitioner continues to operate consistent with the representations made in Bland and Runoala's testimony at the hearing of this case, it is bona fide engaged primarily and substantially in the preparation and serving of meals. By opening at 11:30 am daily, serving food from 11:30 am to 2 am, and maintaining enrollment in Uber Eats, Petitioner has demonstrated that it is devoting significant energy and resources to the preparation and service of meals at the location.

Given all the circumstances and facts in this case, I conclude that, as long as the Petitioner continues to serve food daily at all times it is open, beginning at 11:30 am, and to sell menu items through Uber Eats or a similar service, it is a business that is bona fide engaged primarily and substantially in the preparation and serving of meals. Because it is apparent that these changes to Petitioner's business model have been motivated by its desire to obtain the liquor license, I conclude that the license should be granted with the condition that those newly-adopted practices continue.

CONCLUSION

After carefully weighing the evidence and applying the law as discussed above, the Court finds the location to be suitable for the permit and license sought by Petitioner so long as the conditions enumerated below are met. If Petitioner operates in the manner its owners have testified that they intend to, the risk of adding to the strain on law enforcement resources or enabling underage drinking and overconsumption of alcohol will be minimized. Under those circumstances the business is not likely to be a nuisance to the community.

ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the application for a beer and wine permit, and restaurant liquor by the drink license by Rooftop Bar, LLC, d/b/a Rooftop Bar and Lounge at 638 Harden Street, Columbia, South Carolina is **GRANTED** contingent upon the following conditions. Petitioner will:

- 1) Scan all ID's with the same type of blacklight used by the federal Transportation Security Administration to check for forged identification;
- 2) Scan each ID in a scanner that verifies the ID is bona fide and flags any identification that has already been used in the same evening to prevent patrons who enter the business from sharing an ID with an underage individual waiting in line;

3) Work with law enforcement to encourage compliance walk-throughs of the business in which law enforcement checks for identification;

4) Price all alcoholic drinks at \$3.00 or more and offer no alcohol promotion;

5) Exclude the promotion of alcohol from its advertising;

6) Implement all best practices requested by law enforcement;

7) Serve lunch and brunch each day the business is open beginning no later than 11:30 am; and

8) Offer menu items for sale and delivery through Uber Eats or a similar service.

Violation of any of the above-listed conditions shall be deemed a violation of the permit and license.

AND IT IS SO ORDERED.

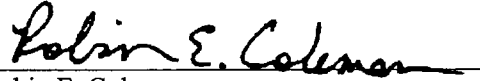
A handwritten signature in black ink, reading "Deborah Brooks Durden". The signature is written in a cursive style with a horizontal line underneath.

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 5, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

September 5, 2018
Columbia, South Carolina

FILED

September 5, 2018

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Rooftop Bar, LLC, d/b/a Rooftop Bar and
Lounge,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent,

and

Thomas R. Gottshall and April C. Lucas,

Intervenors.

Docket No. 18-ALJ-17-0002-CC

**ORDER DENYING
INTERVENORS' MOTION
TO ALTER OR AMEND
THE FINAL ORDER**

This matter is before the Administrative Law Court (Court) pursuant to the motion of counsel for Intervenors, Thomas R. Gottshall and April C. Lucas, seeking to alter or amend the Court's Final Order issued on September 5, 2018. The motion merely reiterates the arguments made at the hearing, which were carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

IT IS HEREBY ORDERED that Respondent's Motion to Alter or Amend the Final Order is **DENIED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

October 3, 2018
Columbia, South Carolina

FILED

October 3, 2018

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in black ink that reads "Robin E. Coleman". The signature is fluid and cursive, with the first name "Robin" being more prominent.

Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

October 3, 2018
Columbia, South Carolina

FILED

October 3, 2018

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Rooftop Bar, LLC, d/b/a
Rooftop Bar & Lounge,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent,

and

Thomas R. Gottshall and
April C. Lucas,

Intervenors.

Docket No. 18-ALJ-17-0002-CC

[Intervenors' Proposed]
FINAL ORDER

APPEARANCES: For the Petitioner: Michael H. Montgomery, Esquire
For the Respondent: Patrick A. McCabe, Esquire
For the Intervenors: Richard A. Harpootlian, Esquire
For the Protestants: *Pro se*

This matter comes before the Administrative Law Court (ALC or Court) for a contested case hearing pursuant to S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2017), 61-2-260 (Supp. 2017), 61-4-525 (Supp. 2017) and 61-6-1825 (Supp. 2017). Rooftop Bar, LLC d/b/a Rooftop Bar & Lounge (Petitioner/Rooftop) seeks an on-premises beer and wine permit, and restaurant liquor by the drink license renewal for its location at 638 Harden Street, Columbia, South Carolina (location). Thomas R. Gottshall and April C. Lucas (Intervenors) filed a protest to the application, along with Richard Ackerman; Luther J. Battiste, III; Karen R. Belser; Jim Daniel; Michael Drennan; Katheryn Fenner; Judith Holliday; Polly F. Morrison; Kathryn S. Smith; John J. Stucker and the University of South Carolina (USC) (Protestants).¹ On January 2, 2018, Respondent South Carolina Department of Revenue (Department) denied Petitioner's reapplication under S.C. Code Ann. § 61-4-525 (2009), citing public protests challenging the suitability of the location. Petitioner requested a hearing. On January 25, 2018, the Court issued an Order granting Intervenors leave to intervene.

¹ On February 16, 2018, counsel for Intervenors filed a Notice of Withdrawal of Protest for Ackerman, Battiste, Belser, Drennan, Fenner, Holliday, Morrison, Smith, and Stucker.

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After proper notice, a hearing was held on May 14 and 15, 2018, at the ALC in Columbia South Carolina. The parties and Protestants appeared at the hearing. Evidence was introduced and testimony was given. After carefully weighing all the evidence, I find that Petitioner's request for an on-premises beer and wine permit, and restaurant liquor by the drink license should be denied.

ISSUES

1. Is the location a suitable one for the sale of on-premises consumption of beer and wine, and liquor by the drink?
2. Is the business engaged primarily and substantially in the preparation and service of meals?
3. Are Petitioner's principals of good moral character?
4. Did Petitioner fail to disclose all principals on its application?

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility, and taking into consideration the burden of persuasion by the parties, the Court makes the following Findings of Fact by the preponderance of the evidence.

Notice of time, date, place, and subject matter of the hearing was given to all parties and Protestants.

Petitioner Rooftop Bar, LLC d/b/a Rooftop Bar & Lounge (Rooftop) seeks an on-premises beer and wine permit, and restaurant liquor by the drink license for its location at 638 Harden Street, Columbia, South Carolina. Petitioner has entered into a lease for use of the location. (Resp. Ex. 1 at 37-48.) The location is in Richland County, and is within the municipality of the City of Columbia, specifically in a region of the City known as "Five Points."

The Department denied Petitioner's application for the permit and license based on receipt of valid public protests challenging the suitability of the location. Intervenors and Protestants are residents who live in the neighborhoods surrounding Five Points whose concerns include:

1. The suitability of the location based on bar density in the Five Points district and proximity to residential neighbors;
2. Whether Petitioner and its patrons will be a nuisance to nearby businesses and residences;
3. Whether the business will attract or enable illegal activity in the form of underage drinking and other crimes arising from or attracted to crowds of underaged patrons;

4. The strain the business is expected to place upon law enforcement resources; and
5. Whether the proposed business is a *bona fide* restaurant.

Five Points and Underage Students

Rooftop's 638 Harden Street location is on a block where bars have achieved high density. The bars begin on the northeast end of the 600 block (near Devine Street) with Lucky's, followed by Pinch, Latitude 22, Rooftop (located above Latitude 22), Cotton Gin, and Bar None. (See Hr.'g Tr., 256:14–18, 542:7–15; Int.'s Ex. 6 (map of Five Points bars).) Rooftop sells a large number of liquor drinks to Five Points patrons. The establishment's capacity is just 150 patrons at any one time. (See Hr.'g Tr. 218:8.) However, in just March and April 2018—the most recent, complete sales data available to the Court (see Hr.'g Tr. 118:17–23 & 128:22–129:2 & Pet. Ex. 2.)—the Rooftop had total liquor by the drink sales of \$54,000 in March and \$41,668 in April. (Pet.'s Ex 3) Part-owner Adam Ruonala attributed the \$14,000 increase in March profits to the St. Patrick's Day sales. (Hr.'g Tr. 257:15–258:6.) At a cost of \$3 per drink for house liquor (see Hr.'g Tr. 298:23–299:5), Petitioner would have served approximately 32,000 drinks during these two months. Students line the street Thursday through Saturday nights with more than 150 waiting at times to enter Rooftop. (Hr.'g Tr. 255:5–7, 375:8–9 & 510:14–24; see also Hr.'g Tr. 289:8–13 (Rooftop's line spans north to Pinch; Pinch's line runs north to Lucky's on Harden Street).) Near midnight, an “incredible” number of pedestrians travel up and down the 600 block. (Hr.'g Tr. 542:17–19; see also Hr.'g Tr. 380:12–14.) Holidays, football games, and other special occasions make the noise and confusion “unbearable” to some living in the area. (See Hr.'g Tr. 376:10–20.) This unruliness disturbs the peace and enjoyment of local businesses and residences adjacent to the Five Points district.

Resident witnesses all reported incidents of public intoxication, public urination, harm to property, and more stemming from Five Points nightlife. As an initial matter, the Court notes several witnesses in this action offered similar or substantially the same testimony in Five Points Roost, LLC v. South Carolina Department of Revenue, 18-ALJ-17-0005-CC, 2018 WL 1724696 (S.C. Admin. Law. Ct. Apr. 3, 2018) (hereafter, “Roost”). These neighbors' testimony highlight the collateral consequences of nightlife in the Five Points' district spilling out of what neighborhood association president and 42-year University Hill resident Tom Gottshall described as an “attractive nuisance” for college students. (Hr.'g Tr. 538:3–4; 539:1–3; 518:3–5.) The Court

takes note of the recent testimony in Roost as probative of neighborhood concerns here and considered it while also carefully considering the record in this action.

William Lamb, a 37-year resident of the Five Points area, described minor inconveniences of living near Five Points, including noise and littering, (Hr.'g Tr. 372:22-25), and more serious problems such as late-night screaming, throwing things, and dumping of trashcans (Hr.'g Tr. 373:8-10.) Lamb stated a brick was thrown through his next-door neighbor's window and residents have had vehicles sideswiped by cars driving through the neighborhood from Five Points. (Hr.'g Tr. 373:10-12; 378:11-12.) In describing the "problems that go along with the high concentration of bars and high concentration of students in one area", Lamb noted that as he walks through his neighborhood he carries a trash bag because he sees "beer cans, beer cans, and more beer cans" littering the ground. (Hr.'g Tr. 374:13-21.)

April Lucas, who lives within walking distance of the Five Points area in University Hill, shared that she fears driving through Five Points because she worries about students stepping out in front of her car. (Hr.'g Tr. 493:7-14.) In the 30 years since Lucas moved to this area, she has noticed the issues related to drunk and disorderly conduct have permeated throughout the neighborhood. (Hr.'g Tr. 498:3-7.) Lucas stated that she has "personally witnessed everything from public urination to vandalism" (Hr.'g Tr. 504:1-12.), but noted that the "real disturbing kind of noise" is waking up to a girl's scream. (Hr.'g Tr. 504:20-23.) Describing her personal experience with the crime, Lucas testified about being awoken in the middle of the night by an intoxicated young man banging on her door thinking her house is someone else's (Hr.'g Tr. 505:21-506:4), having her car sideswiped five times, as well as keyed, and witnessing neighbors' cars being jumped on by drunk students and their property vandalized. (Hr.'g Tr. 507:8-508:5.)

North of the 600 block, a longtime Martin Luther King neighborhood resident, Olufemi Olulenu, described a similar experience. (See Hr.'g Tr. 330:18-331:16.) Living just two blocks from Five Points, Olulenu observes intoxicated people in the neighborhood "very -- regularly." (Hr.'g Tr. 332:6-333:1.) Echoing Lucas, Olulenu explained, "After 10:00, 11:00, 12:00, step outside and see how many of these young people drunk out of their heads coming to knock on doors not knowing where they're going." (Hr.'g Tr. 333:5-21.) Olulenu also cited public urination and public nudity as acts he's witnessed in and near his neighborhood. (Hr.'g Tr. 333:25-334:20 & 335:19-336:5.) He described the perpetrators of this disorderly conduct as "Mostly -- 99 percent of them are students." (Hr.'g Tr. 334:22-24.)

In Roost, the Court found Leslie Wiser, a University of South Carolina (USC) criminology professor, former FBI special agent in charge, and former CPD deputy chief, qualified to offer expert testimony as a criminologist with knowledge and experience based on a distinguished career assessing crime and crime statistics. (Hr.'g Tr., 460:7–14.) The Court again finds Professor Wiser qualified in that capacity. As a law enforcement officer, Professor Wiser was responsible for deploying police resources to meet community needs. (Hr.'g Tr. 451:12–16.) As an active member of the Carolina Community Coalition, Prof. Wiser has researched the relationship between crime and alcohol density in the Five Points area. (Hr.'g Tr. 453:16–18.) As a professor, he has continued to examine the relationship between alcohol and crime. In his research paper, Time for a Change, Prof. Wiser sought to “make a determination about the effect of alcohol density in Five Points” and to compare Five Points with other areas, such as the Vista. (Hr.'g Tr. 454:11–14.) Based on his research, Wiser concludes there is a positive correlation between the density of alcohol outlets and alcohol-related harms and crimes (e.g., hospitalization from over consumption, sexual assaults). (See Hr.'g Tr. 463:5–11; 477:10–12.) To support this conclusion, Prof. Wiser offered examples from his work, like survey data collected from a university shuttle. After an undergraduate was shot in Five Points while waiting for a cab, the university began shuttling students to and from Five Points. (See Hr.'g Tr. 553:1–5.) Of 160 shuttle riders who agreed to be interviewed, 77 percent reported traveling to Five Points to drink alcohol and 69 percent admitted to being under 21. (Hr.'g Tr. 466:4–8 & 467:12–18.) Other scholars have reached similar conclusions, “that alcohol outlet density is associated with increased alcohol consumption and related harms, including medical harms, injuries, crime and violence; this convergent evidence comes both from studies that directly evaluated outlet density, or changes in outlet density...” (Hr.'g Tr. 452:19–24; see also, Campbell, C., Hahn, R., Elder, R., Brewer, R., Chattopadhyay, S., Fielding, J., Naimi, T., Toomey, T., Lawrence, B., & Middleton, J., “The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms,” *American Journal of Preventive Medicine*, 37 (6), pp. 556–69 (2009)).

The University of South Carolina (USC), with freshman residences just a few blocks from 600 Harden Street, opposes the permit and license on the grounds (among others) that bar density in Five Points is too high. Associate Vice President for Student Life Anna Edwards testified the university sought to reduce the number bars because it would benefit students and diminish “high risk” behavior in Five Points. (Hr.'g Tr. 388:1–13.) The university’s position in this matter is

supported by evidence collected by its Substance Abuse Prevention and Education Office. (Hr.'g Tr. 388:19–25.) USC requires students 23 years of age and younger to complete an online alcohol education program call AlcoholEDU, which has a 98 percent response rate. (Hr.'g Tr. 389:7–9.) First year students are surveyed before they come to campus and again 45 days after living at USC. (Hr.'g Tr. 398:6–24.) USC's Carolina Community Coalition receives a summary of the data as an annual Impact Report that provides USC-specific findings with comparisons to national data. (Hr.'g Tr. 389:2–25; 397:5–7.) Edwards is involved in collecting USC student data regarding high risk behavior. (Hr.'g Tr. 387:2–4; 388:18–23.) She explained USC uses the data to improve “strategic planning for better education and prevention of high risk behaviors and unintended consequences.” (Hr.'g Tr. 391:9–11.)

The USC 2016–2017 Impact Statement includes data based on responses from 5,433 USC students who completed all three AlcoholEDU for College surveys, with the answers to particular questions summarized. (See Int.'s Ex. 3 at 12.) This student population consists “primarily” of underage students. (Hr.'g Tr. 410:25–411:1.) In 2016–17, 25 percent of students assessed “reported drinking in a high-risk way,” most commonly pregaming and doing shots. (Int.'s Ex. 3, at 12, 19.) The two most frequently reported drinking-related consequences were a hangover and blacking out. (Int.'s Ex. 3 at 20.) Thirty-nine percent of students reported their most common drinking location to be bars or nightclubs. (Int.'s Ex. 3 at 17.) USC students engage in high risk drinking behaviors—including, pregaming, shots, high-alcohol content drinks, and chugging—at a higher rate than the national average. (Int.'s Ex. 3 at 19.) More USC freshman reported performing poorly on an assignment as a result of drinking than the national average. (Int.'s Ex. 3 at 20.) Of those students who drank in the prior two weeks, 13 percent reported being taken advantage of sexually; five percent said they took advantage of someone else. (Int.'s Ex. 3 at 21.) Summarizing the 2017–18 Impact Statement's findings at USC, Edwards explained the number of freshmen who reported drinking at a bar or nightclub in the prior two weeks had increased three percent to 42 percent. (Hr.'g Tr. 406:20–24.)

The university's opposition is consistent with testimony it provided in Roost where, although it did not file an official protest, it testified in opposition to the permit and license. Edwards published the university's protest its rationale in this case:

... Continuing to expand the number of establishments contributing to the [drinking] problem is counterproductive to these efforts [to find solutions to late night drinking]. USC invests significant financial and human resources in creating

education and counseling programs directed at curbing drinking among students. ... Excessive drinking poses a risk, not only to the students' physical and mental health, but also significantly impedes academic performance. While these issues are not unique to USC, our students are exposed to a higher density of bars surrounding campus than other colleges and universities across the country. ... Research from the National Institutes of Health tells us that, while our education efforts are important, one of the most effective ways to curb alcohol overconsumption is to limit its availability. Too often, bars in Five Points turn a blind eye to high-risk behaviors and have helped create an environment where drinking beyond one's limit is celebrated rather than discouraged. ...

(Hr.'g Tr. 409:14–410:22; see also Hr.'g Tr. 411:8–9 (university's concern is "availability" and "density").) Other indicators bolster USC's cause for concern for students who drink. The percentage of USC students who say they have blacked out has risen from 42 to 47 percent (Hr.'g Tr. 406:24–407:3.) and the number who have passed out has risen from 23 to 28 percent. (Hr.'g Tr. 407:4–8.) Of particular note is the fact that the national average for students drinking at bars or nightclubs is only 11 percent—30 points lower than USC's poll. (See Int. Ex. 3 at 17, 34.)

Considering the totality of the evidence presented, I find that re-issuance of a permit and license would contribute to the problem of underage drinking in Five Points. Moreover, I find that the density of alcohol-related establishments in Five Points (see Int. Ex. 6.), particularly in the 600 block of Harden Street, interferes with the peace and enjoyment of surrounding neighborhoods. The evidence supporting these conclusions is overwhelming and includes firsthand observations from longtime residents of neighborhoods surrounding Five Points and empirical data collected by USC and a criminology professor. The Court remains cognizant of testimony by Rooftop's managers claiming certain practices have been implemented to detect and exclude underage patrons (see Roost, 2018 WL at *5); however, the Court remains skeptical that faithful adherence to these policies can exclude false identification cards or other methods used by underaged patrons to evade detection by staff and police. Indeed, while Rooftop's owners sought to minimize the number of incidents during its temporary licensure, they identified at least two incidents at the location: an underaged patron ticketed by law enforcement and an assault on one of its bouncers. (Hr.'g Tr. 221:25–223:9; 302:10–303:3.) Moreover, their testimony is far outweighed by the witnesses and data demonstrating an ongoing and escalating problem with underage drinking and overconsumption in Five Points. For these reasons, I find re-issuance would contribute to the problem of underage drinking and interfere with the peace and enjoyment of local residents.

Law Enforcement Resources

Chief Skip Holbrook of Columbia Police Department (CPD) is responsible for allocating police resources for the City. (Hr.'g Tr. 351:17–21.) In preparation for this testimony, Chief Holbrook reviewed police statistics for the area and brought a police log. (Hr.'g Tr. 355:15–20.) The police chief was familiar with and testified about the 600 block of Harden Street generally and the Rooftop's location specifically, and the impact on City police forces. He testified about his familiarity with the location and the former bar there, the Attic. (See Hr.'g Tr. 354:9–12.) He categorized the Five Points bar clientele as predominately young adults and students. (Hr.'g Tr. 352:7–11.) Holbrook expressed concern about his force in Five Points, explaining: "Any time, whether it be Five Points or, you know, any area in the city, that has a high concentration of people at any given time requires extra attention and often times extra personnel to ensure public safety." (Hr.'g Tr. 352:18–25.) For CPD, Five Points is one of those areas. (Hr.'g Tr. 353:1–3.) Chief Holbrook described the row of bars in the 600 block as causing "more problems" than having a single bar (Hr.'g Tr. 359:4–7.) and agreed Rooftop's location is near others that have posed a consistent source for law enforcement problems stemming from large numbers of young people congregating, with a significant number in a state of public intoxication. (Hr.'g Tr. 359:8–18.) Chief Holbrook summarized:

We have seen, since I've been here and I think historically have seen, when we have areas of high concentrations of alcohol establishments, especially with young adults that are part of that clientele, that at times, and depending on the day of the week and the events going on, that it causes us to put significant resources and attention to that specific area or wherever it may be.

(Hr.'g Tr. 361:7–15.)

Holbrook took issue with the fact he was not consulted for completion of the SLED questionnaire during the Rooftop licensing review that sought information concerning problems at the location. (See Hr.'g Tr. 365:8–20.) The form questions asked whether law enforcement previously had problems with public intoxication at or near the proposed location (Hr.'g Tr. 356:6–11.), to which CPD would have answered affirmatively had Holbrook been made aware of the questionnaire because his department had indeed had problems with public intoxication at or near the proposed location. (Hr.'g Tr. 356:6–12.) The second question in the SLED form asked whether police have been summoned to the location on prior occasions; Holbrook's answer was "yes." (Hr.'g Tr. 356:13–16.) A third question asked if the location is near other locations that are a

constant source of law enforcement problems or a location where young people congregate and loiter; again, the police chief testified Rooftop is such a location. (Hr.'g Tr. 356: 17–21.) Had he been presented with these questions, Chief Holbrook would have answered affirmatively in response to each one. (Hr.'g Tr. 357:22– 358:2.)

I find that the proposed location is a matter of law enforcement concern on account of the crowds it attracts to Five Points and specifically the 600 block, the underaged and young adult clientele the location serves, and its contribution to overconsumption, crime, and disorderly conduct. I find further that this places law enforcement at greater risk and taxes limited City resources in maintaining order at and near the location. Notably, the Court finds that but-for a paperwork oversight, CPD would have returned responses to the SLED questionnaire confirming a history of intoxicated patrons and prior police presence at a location where young people congregate and loiter. This testimony weighs heavily against granting the permit and license.

Restaurant

Ruonala acknowledged efforts in recent months to boost food sales by creating an “image” around the sale of grilled cheese sandwiches and brunch. (See Hr.'g Tr. 176:22–177:18.) These “grillies” are displayed in what used to be Rooftop’s pizza warmer. (Hr.'g Tr. 178:14–17; 179:9.) Co-owner Stephen Bland conceded Rooftop’s food sales were “under ten percent,” but claims the enterprise’s delivery business, via Uber Eats, is now generating \$80 to \$100 in delivery sales per day. (Hr.'g Tr. 284:3–13; 286:6–8.) Rooftop advertises its food offerings with a sandwich board on the street. (Hr.'g Tr. 186:12–21.) These offerings have replaced Rooftop’s prior offerings of reheated pizza from Village Idiot, which was sold as recently as April. (Hr.'g Tr. 246:1–7; 248:7–13.) On Sunday, Rooftop opens for brunch from 11:30 am to 2:00 pm with some additional food offerings. (Hr.'g Tr. 181:22–182:13; 250:10–13.) Exactly when Rooftop began serving brunch is a matter of some dispute as Bland testified Brunch began in March, contrary to an affidavit he signed on April 27 indicating brunch service would start “Sunday this week.” (Hr.'g Tr. 306:15–307:13 (“It might have been the wrong date written. I’m not sure.”).) After relaunching its food offerings and opening for brunch, Bland claimed food sales are now 15 percent of Rooftop’s gross receipts. (Hr.'g Tr. 321:22–323:1; 324:9–18.) This testimony, purporting to establish Rooftop’s upward emphasis on food sales, is the latest iteration seeking to modify Bland’s deposition testimony claiming Rooftop’s food sales were just five (5) percent of gross receipts. (Int. Ex. 1 at

118; see also Hr.'g Tr. 321:24–322:4; but see Int. Ex. 2 (purporting to change deposition testimony on the errata sheet).)

In Roost, the Court found neither Bland nor Ruonala to be credible witnesses and found their testimony concerning their ownership and control of the business “unreliable.” Roost, 2018 WL at *3. The Court reaches the same conclusion here. Credibility notwithstanding, the upper bound of Rooftop’s food sales is just 15 percent, while the predominant emphasis of the business is the sale of alcohol, and first and foremost, liquor.

Ownership and Control of Rooftop

Rooftop’s primary investor, Brenda Wells, is the mother of Daniel Wells, the former owner of the Pour House, which operated in the 800 block of Harden Street before surrendering its license in response to a CPD nuisance action. See also Roost, 2018 WL at *2–4. In Roost, the Court found neither Bland nor Rounala to offer a credible explanation concerning the organization and financing of the business and found the “[t]he only plausible explanation is that Daniel Wells is still controlling the business and has simply reorganized it and transferred his majority ownership interest into an LLC controlled by his mother.” Id. at 5. Although the percentages have changed slightly, many of the operative facts supporting that conclusion in Roost are also present here.

Rooftop’s owners are 4TBs, LLC (owned by Bland), Mongo, LLC (owned by Rounala), and Schatze Capital (owned by Brenda Wells). (Hr.'g Tr. 225:20; 226:20–227:5.) Similar to the ownership arrangement in Roost, Brenda Wells owns the majority interest in Rooftop (60 percent equity based on a \$54,500 investment), while Bland and Rounala hold minority interests (based on \$10,000 and \$7,000 investments, respectively). (Hr.'g Tr. 239:15–20; 241:8–14.) According to Rounala, the business approach for Rooftop is “the same approach” previously taken with Roost. (See Hr.'g Tr. 242:2–13.) Unlike Roost, however, Rooftop was not purchased from Daniel Wells, but from an individual named Rob Mara for \$85,000 in a seller-financed purchase. (Hr.'g Tr. 279:19–22 & 311:5–312:9.) While Rounala disclaimed any connection between the money Daniel Wells owed his mother from the Pour House enterprise and her majority interest in Rooftop, Ruonala nevertheless offered explanations suggesting the opposite, stating that he told Brenda Wells “we would be able to pay her quicker if we had two revenue streams.” (See Hr.'g Tr. 239:21–241:1.) Likewise, Bland attempted to retract his deposition testimony describing Brenda Wells involvement in the Roost and Rooftop purchases as structured to recoup Well’s investment in Daniel Well’s establishment, Pour House. (See Hr.'g Tr. 313:7–316:17 (“... Well, your question

says that, but when I was responding, I was referring to The Roost. The Rooftop was completely owner-financed and separate. ...”); 318:5–319:7 (same).) According to Bland’s deposition, Brenda Wells received equity in Roost and Rooftop through a deal negotiated by her son to satisfy his debt of \$300,000. (Hr.’g Tr. 317:5–318:10; 319:14–321:23.) Bland’s contrary explanation during the hearing was not credible.

As was the case in Roost, the evidence indicates Daniel Wells is an undisclosed principal in Rooftop. Cf. Roost, 2018 WL at *3–4. Prior to the Roost and Rooftop enterprises, Bland and Ruonala had no prior relationship except through Wells. While Bland offered conflicting explanations of his interaction and negotiation with Brenda Wells, he conceded her interest in Rooftop flows from the same debt her son incurred in conjunction with the Pour House enterprise. Thus, with respect to the ownership arrangement, I find the Roost and Rooftop to be part of the same, still murky agreement between Daniel Wells, Bland and Ruonala. Bland’s explanation that Rooftop’s second stream of revenue would help Brenda Wells recoup her investment bolsters this conclusion. Indeed, there is still no credible explanation for Brenda Wells involvement in this enterprise other than as an effort to conceal Daniel Wells involvement by transferring his ownership interest in Pour House to his mother and including her in Rooftop so he (Wells) could more quickly recoup his interest.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court makes the following conclusions as a matter of law:

Jurisdiction and Legal Standards

Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to South Carolina Code §§ 61-2-260 (2009), 1-23-310 et seq. (Supp. 2017), 61-4-525 (2009), and 61-6-1825 (2009). The standard of proof in an administrative proceeding such as this is a preponderance of the evidence, unless otherwise specified. Anonymous v. State Bd. of Med. Exam’rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988); see also S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2017). “A ‘preponderance of the evidence’ is evidence which convinces as to its truth.” Gorecki v. Gorecki, 387 S.C. 626, 633, 693 S.E.2d 419, 422 (Ct. App. 2010) (citation omitted). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the

...best position to judge the witness's demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

Alcohol Licenses and Permits

South Carolina Code § 61-2-260 (2009) grants the Administrative Law Court the responsibility to determine contested case matters governing alcoholic beverages, including beer, wine and liquor. The factual determination of whether an application is granted or denied is usually the sole prerogative of the executive agency charged with rendering that decision. Palmer v. S.C. ABC Comm'n, 282 S.C. 246, 317 S.E.2d 476 (Ct. App. 1984). As the trier of fact, an administrative law judge is authorized to determine the fitness of an applicant for alcohol permits and licenses using broad, but not unbridled, discretion. Byers v. S.C. ABC Comm'n, 281 S.C. 566, 316 S.E.2d 705 (Ct. App. 1984). The requirements for a beer and wine permit are set forth in South Carolina Code § 61-4-520 (2009). The requirements for a liquor by the drink license are contained in South Carolina Code § 61-6-1820 (2009 and Supp. 2017).

Suitability of Location

For the issuance of a beer and wine permit, Section 61-4-520 includes the criteria that the location be a proper and suitable one:

(5) The location of the proposed place of business of the applicant is in the opinion of the department a proper one.

(6) The department may consider, among other factors, as indications of unsuitable location, the proximity to residences, schools, playgrounds, and churches. This item does not apply to locations licensed before April 21, 1986.

S.C. Code Ann. § 61-4-520(5)–(6) (2009). Case law provides that a liquor license may be denied if the location is not suitable. See generally Schudel v. S.C. Alcoholic Beverage Control Comm'n, 276 S.C. 138, 276 S.E.2d 308 (1981). “Proper location” is not statutorily defined, but broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location for the requested permit and license. See generally Fast Stops, Inc. v. Ingram, 276 S.C. 593, 281 S.E.2d 118 (1981). In determining whether a location is suitable, it is proper to consider any evidence that shows adverse circumstances of location. Kearney v. Allen, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985); see also Zodiac Private Club v. S.C. Dep't Rev., 08-ALJ-17-0054-CC, 2008 WL 2300384, at *3 (S.C. Admin. Law Ct. 2008) (“it is proper for this tribunal to consider any evidence that shows adverse circumstances of location.” (collecting cases)). This

determination “involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact on the community wherein it is to be situated.” Kearney, 287 S.C. at 326, 338 S.E.2d at 33. A liquor license or permit may be refused on the grounds that the “location of the establishment would adversely affect the public interest, that the nature of the neighborhood and . . . premises is such that the establishment would be detrimental to the welfare . . . of the inhabitants, or . . . the manner of conducting the establishment would not be conducive to the general welfare of the community.” 48 C.J.S. Intoxicating Liquors § 196 (Sept. 2016 update). Factors courts have considered in this analysis include geography, traffic risks, nature of the business vis-à-vis the neighborhood, community impact, existing alcohol establishments, and the strain on law enforcement. See, e.g., Moore v. S.C. ABC Comm’n, 308 S.C. 160, 162, 417 S.E.2d 555, 557 (1992); Kearney, 287 S.C. at 326, 338 S.E.2d at 337; Schudel, 276 S.C. at 141–42, 276 S.E.2d at 309–10; Fast Stops, 276 S.C. at 596, 281 S.E.2d at 120; Palmer, 282 S.C. at 249, 317 S.E.2d at 478; Barfly Enter., LLC v. S.C. Dep’t Rev., 13-ALJ-17-0452-CC, 2013 WL 6620406 at *5 (S.C. Admin. Law Ct. 2013); Zodiac, 2008 WL at *3–4. Thus, the decision as to whether the proposed location is improper for a permit or license must be made on a case-by-case basis resting upon the peculiar facts of each application.

After carefully weighing the evidence and applying the law as discussed above, the Court finds the location unsuitable for the business Petitioner intends to operate for reasons that follow.

Underage Students

Large crowds of underage USC students drinking in Five Points bars weighs heavily against the proposed location for re-permitting and licensure. See Roost, 2018 WL at *8. This is of particular concern where Petitioner’s business model entails attracting these crowds of students and young people, many of which line the public sidewalk waiting to enter the establishment. Thus, this business contributes to an already overcrowded area in Five Points with a high concentration of alcohol establishments in the immediate vicinity that also attract crowds of students and lines of people waiting to enter. Proximity to a place where young people congregate and loiter has been and continues to be a valid consideration demonstrating a particular location is unsuitable for alcohol sales. Id. (citing Palmer, 282 S.C. at 250, 317 S.E.2d at 478). Here, the evidence demonstrates that individuals in these crowds routinely become intoxicated and engage in disorderly and illegal conduct, which requires law enforcement to respond.

These concerns are heightened further still by USC's position in this litigation. The university opposes re-issuance of the permit or license out of concern for the health and safety of its students. These are not abstract concerns, but ones supported by empirical data collected broadly among underaged students. The Court finds there is an underaged drinking problem at USC traceable in large part to the Five Points entertainment district. Given the weight of this evidence presented, re-issuing a permit or license to Rooftop at this location will exacerbate an ongoing problem.

Law Enforcement Resources

In determining if a location is suitable for an alcohol license or permit, consideration must be given to the impact the issuance of the permit or license will have on law enforcement. Fowler v. Lewis, 260 S.C. 54, 194 S.E.2d 191 (1973); Roche v. S.C. Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975). Evidence that the granting of a permit will place a strain upon police to adequately protect the community must be weighed. Moore, 308 S.C. at 162, 417 S.E.2d at 557. Denial is appropriate where the public areas surrounding the proposed location have been the source of constant law enforcement problems or significant problems with public intoxication. Roche, 263 S.C. at 451, 211 S.E.2d at 243. Another pertinent factor is whether police have been summoned to the scene on prior occasions when licensed to another party. Schudel, 276 S.C. at 141-42, 276 S.E.2d at 309-10. It is relevant whether the location is near other locations that have either been a constant source of law enforcement problems or are locations where young people congregate and loiter. Palmer, 282 S.C. at 250, 317 S.E.2d at 478; see also Barfly, 2013 WL at *5 (citing Schudel, and Palmer, *supra*).

The density of bars in the 600 block of Harden is particularly relevant. The evidence is overwhelming that Rooftop's operation at this location will contribute to the strain placed on law enforcement by attracting crowds of young people disposed to overconsume, engage in disorderly conduct, and fall victim to criminals looking to prey on intoxicated patrons. The location continues to pose a concern for City police and the Court credits Chief Holbrook's testimony that the location is one that poses concerns to him and his force. This factor also weighs heavily against granting a permit or license.

Nuisance

A nuisance is a substantial and unreasonable interference with another individual's use and enjoyment of his property. Where a business is operated in an unlawful or unreasonable manner

so as to produce material injury or great annoyance to others or unreasonably interferes with lawful use and enjoyment of their property, it will constitute nuisance. O'Cain v. O'Cain, 322 S.C. 551, 560–61, 473 S.E.2d 460, 466 (Ct. App. 1996).

South Carolina Code § 61-4-580(5) (Supp. 2017) prohibits a permittee from knowingly allowing “any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this state” to occur on the licensed premises. The term “licensed premises” includes not only the interior of the licensed business but also the areas immediately adjacent to the entrance and exit, as well as the parking areas. See 23 S.C. Code Ann. Regs. 7-700 (“Licensed premises shall include those areas normally used by the permittee or licensee to conduct his business and shall include but are not limited to the following: selling areas, storage areas, food preparation areas and parking areas.”). “[O]ne who holds a license to sell alcoholic beverages is responsible for supervising the conduct of his clientele, both within the licensed premises and in the immediate vicinity, in order to ensure that his operations do not create a nuisance for the surrounding community.” Dayaram Krupa, LLC v. S.C. Dept. of Revenue, 06-ALJ-17-0929-CC, 2007 WL 1219343 (S.C. Admin. Law Ct., March 19, 2007) (citing § 61-4-580(5) and A.J.C. Enters., Inc. v. Pastore, 473 A.2d 269, 275 (R.I. 1984)). A liquor licensee “assumes an obligation to supervise the conduct of its clientele so as to preclude the creation of conditions within the surrounding neighborhood which would amount to a nuisance to those who reside in the area.” A.J.C. Enters., 473 A.2d at 275. In the event that a licensed location becomes a public nuisance to the surrounding community, the Department may revoke or refuse renewal of the license for the location. See S.C. Code Ann. § 61-4-580(5) (Supp. 2017).

I conclude the location is a nuisance to the community. The record in this case replete with evidence from neighbors, the university, a criminologist, and law enforcement describing a bacchanal atmosphere in Five Points that flows into the adjacent neighborhoods. I find further that even if the Court credited all of Petitioner’s claims concerning their business operations, Rooftop would still pose a nuisance to local residents because its primary business enterprise is the sale of alcohol, particularly liquor, to students and young adults. Petitioner’s cannot control unruly patrons once they leave Rooftop, but the consequences of plying them with inexpensive alcohol is felt by the surrounding community and is a valid consideration here weighing against Petitioner.

Suitability of Location Previously Licensed

While the location has been used by other businesses with alcohol licenses, the purported suitability of the location in prior years fails to outweigh other considerations. Precedent recognizes the possibility that a location's suitability can change over time and courts can consider those new circumstances. See, e.g., *Taylor v. Lewis*, 261 S.C. 168, 171–72, 198 S.E.2d 801, 802 (1973) (“... The record is devoid of any showing that the location is any less suitable for the sale of beer now than during the prior five (5) year period.”). Thus, to the extent the propriety of the location's former permit holders and licensees carry any weight, they are overwhelmed by the facts on the ground today, which demonstrate the location is no longer suitable for reasons explained.

* * *

In sum, after weighing the evidence and applying the law, I hold the location is unsuitable for re-issuance of a beer and wine permit or liquor by the drink license.

Undisclosed Principals

Before an alcohol license or permit may be issued, this Court must determine whether the applicants meet all of the statutory requirements for licensure. In order to do that, the identity of all of an applicant's principals must be disclosed.

Licenses and permits may be issued only to the person who is the owner of the business seeking the permit or license.... If application is made for a license or permit under this title by a person other than an individual, all principals are deemed to be the applicant.... The department may not issue a license or permit to any person unless the person and all principals are of good moral character.

S.C. Code Ann. § 61-2-100 (2009). Furthermore, an applicant's failure to disclose all of its principals is a misstatement or concealment of fact and a ground for denial of an alcohol license. S.C. Code Ann. § 61-2-100(J) (2009).

I find that Daniel Wells involvement in the ownership and control of Rooftop has been undisclosed and misrepresented such that the application for the permit and license must be denied.

Restaurant

S.C. Code Ann. § 61-6-1820(1) (2009) provides that an applicant may receive a liquor by the drink license upon the finding that “[t]he applicant is a bona fide nonprofit organization or the applicant conducts a business bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging.” This requirement mirrors the language of the mandate of our state's constitution. S.C. Const., art. VIII-A § 1.

Section 61-6-1610(I)(3) of the South Carolina Code defines “primarily” to mean that “the serving of the meals by a business establishment is a regular source of business to the licensed establishment, that meals are served upon the demand of guests and patrons during the normal mealtimes that occur when the licensed business establishment is open to the public, and that an adequate supply of food is present on the licensed premises to meet the demand.” A “meal” is defined as “prepared foods available to guests...during the normal mealtimes that occur when the licensed business establishment is open to the public. Sandwiches, boiled eggs, sausages, and other snacks prepared off the licensed premises but sold there are not a meal.” S.C. Code Ann. § 61-6-1610 (I)(2) (Supp. 2012). Section 61-6-20(2) defines “bona fide engaged primarily and substantially in the preparation and serving of meals” to mean:

A business that provides facilities for seating not fewer than forty persons simultaneously at tables for the service of meals and that:

- (a) is equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals upon customer request at normal meal times;
- (b) has readily available to its guests and patrons either menus with the listings of various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and
- (c) prepares for service to customers, upon the demand of the customer, hot meals at least once each day the business establishment chooses to be open.

A. Any business establishment that applies for or holds a sale and consumption license pursuant to Section 61-6-1610 of the Code and is not engaged in the furnishing of lodging, must:

1. Be equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals; and
2. Have readily available to its guests and patrons either “menus” with the listings of the various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and
3. Prepare for service to customers hot meals at least once each day the business establishment chooses to be open.
4. If such establishment advertises, a substantial portion of its advertising must be devoted to its food services.

B. The following definitions shall be used in conjunction with Section 61-6-1610 of the Code and this Regulation:

1. “Meal” means an assortment of various prepared foods which shall be available to guests on the licensed premises during the normal “mealtimes” which occur when the licensed business establishment is open to the public. Sandwiches, boiled

eggs, sausages and other snacks prepared off the licensed premises but sold thereon, shall not constitute a meal.

2. "Kitchen" means a separate and distinct area of the business establishment that is used solely for the preparation, serving and disposal of solid foods that make up meals. Such area must be adequately equipped for the cooking and serving of solid foods, and the storage of same, and must include at least twenty-one cubic feet of refrigerated space for food and a stove.

3. "Primarily" means that the serving of meals by a business establishment constitutes a regular and substantial source of business to the licensed establishment and that meals shall be served upon the demand of guests and patrons during the normal "mealtimes" which occur when the licensed business establishment is open to the public and that an adequate supply of food is present on the licensed premises to meet such demand.

S.C. Code Ann. Regs. 7-401. South Carolina Regulation 7-401.3 provides that an establishment holding a restaurant liquor by the drink license must have menus readily available to its patrons or posted in a conspicuous place on the premises and must prepare and serve hot meals at least once each business day the establishment is open. South Carolina Code § 61-6-1610(I)(1) (Supp. 2017) defines "kitchen" as a separate and distinct area used solely "for the preparation, serving, and disposal of solid foods that make up meals." The kitchen must be adequately equipped for the cooking, serving and storage of solid foods and must include at least 21 cubic feet of refrigerated space for food, and a stove. Id. The statutes set forth above provide detailed definitions and requirements concerning what constitutes "bona fide engaged primarily and substantially in the preparation and serving of meals."

Petitioner presented testimony that since its application was submitted, it has attempted to meet the statutory requirements by offering grilled cheese sandwiches and serving brunch on Sunday. Notwithstanding these food offerings, the overwhelming emphasis of its business is the sale of liquor and beer. Petitioner argues it satisfies the primarily-and-substantially requirement by meeting the technical requirements of the statute's definitions by maintaining certain physical accouterments, like having food on hand, having an area set aside for a "kitchen," having seating for 40 people at tables, etc. I must conclude Petitioner fails to meet the requirements of the statute. The proposed location does not have a "stove" aside from a "convection oven" (i.e., microwave) and "grill." As Rounala explained, the location has the basic utilizations of a stove[,]" not an actual stove. (See Hr.'g Tr. 184:7-9.) Notwithstanding its Sunday brunch, Rooftop does not have "various meal[] offer[ings]" for guests; it has one offering: grilled cheese sandwiches. See S.C.

Code Ann. § 61-6-1610(2)(b); see also S.C. Reg. 7-401.3 (defining “meal” as “an assortment of various foods...”). The significance of the mandate to offer “various” (i.e., more than one) meals is underscored by § 61-6-1610’s requirement of a “bona fide” business engaged in preparing and serving meals, meaning a good faith, sincere, or genuine effort. See BONA FIDE, Black’s Law Dictionary (10th ed. 2014). Based on my review of the evidence, Petitioner’s kitchen is not outfitted to meet statutory requirements, nor is that kitchen being used to prepare various meal offerings to guests.

Intervenors argue Petitioner cannot be found to be a restaurant because the sale of food contributes, at most, 15 percent of revenue to the business. In Roost, this Court cited Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Comm’n, 273 S.C. 782, 260 S.E.2d 452 (1979) for the proposition that where only 10 percent of a business’ gross revenue was attributable to food sales, the business was not primarily and substantially engaged in the preparation and service of meals. See Roost, 2018 WL at *12. In Roost, this Court rejected the petitioner’s argument that the statutory definitions of primarily and substantially supplanted Brunswick’s analysis, explaining:

While it is true that the language and code section number of the definition has changed since Brunswick was decided, a specific definition of “bona fide engaged primarily and substantially in the preparation and serving of meals” was codified in statute and considered by the Brunswick court. The court held that despite a specific definition of “bona fide engaged primarily and substantially in the preparation and serving of meals” (found in Code Section 61-6-20(2) at that time) a business must not only meet the technical requirements outlined in the statute, *but must also actually be “primarily” engaged in the preparation and serving of meals.* Id.

Roost, 2018 WL at *12 (emphasis added). Put differently, Brunswick is best read to explain that the primarily-and-substantially requirement is a qualitative and quantitative one. Thus, a liquor by the drink establishment must be in primarily the business of serving meals and substantially engaged in doing so. The statutory and regulatory definitions identify indicia of businesses primarily in the business of selling meal (i.e., kitchen, stove, refrigeration, etc.), evidence that is particularly useful to assess an application from a new enterprise with no business history. That is not the case here. Moreover, meeting statutory criteria that evidences restaurant activity does not foreclose a finding that the enterprise is not, in fact, in the business of selling meals and gross revenue is a persuasive indicator of the businesses focus, as it was in Brunswick.

Considering the totality of the record, including the statutory criteria, Petitioner’s sales records, and business practices, I hold Petitioner is not primarily and substantially in the business

of preparing and selling meals. As an initial matter, Petitioner's food sales over the two months for which the Court has data, averages 12 percent, not 15 percent of gross receipts. (See Hr.'g Tr. 251:21-25.) However, even crediting Petitioner 15 percent food sales based on its single months' data, the Court still finds that the overwhelming bulk of the enterprise is dedicated to the sale of alcohol, specifically liquor by the drink, not meals. As noted, the location does not have a stove and Rounala expressed apprehension about the cost of installing a stove and hood system given the uncertainty over the status of this license. (See Hr.'g Tr. 184:16-22.) A restaurant would not likely share this apprehension if truly dedicated to the preparation and sale of meals. Instead, Petitioner's emphasis on checking certain statutory boxes, while laudable, reflects an overly formalistic approach and fundamental misunderstanding of the primarily-and-substantially requirement that ignores evidence touching on whether the applicant is *actually* preparing and selling meals and predominantly dedicated to that business with liquor by the drink sales incidental to that pursuit.

Based on the evidence before the Court, I hold that Petitioner is not a business that is bona fide engaged primarily and substantially in the preparation and serving of meals.

* * *

After carefully weighing the evidence and applying the law as discussed above, the Court finds the location unsuitable for the permit and license sought by Petitioner. Granting a permit and license for a location dense with other establishments selling alcohol to a clientele of young adults and USC students similar to Petitioner will exacerbate an underaged drinking problem for USC students, pose a nuisance to the community, and burden local law enforcement. All community stakeholders to appear before the Court oppose the permit and license requested. Further, the application should be denied because of a material misstatement and concealment of Daniel Wells as a principal of the business. Finally, Petitioner is not primarily and substantially engaged in the preparation and serving of meals and therefore does not qualify for a liquor by the drink license.

For all of these reasons, Petitioner's application for on-premises beer and wine permit and liquor by the drink license should be denied.

ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the application for a beer and wine permit, and restaurant liquor by the drink license by Rooftop Bar, LLC, d/b/a Rooftop Bar & Lounge at 638 Harden Street, Columbia, South Carolina is **DENIED**.

AND IT IS SO ORDERED.

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

_____, 2018
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Rooftop Bar, LLC, d/b/a Rooftop Bar &
Lounge,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent,

and

Thomas R. Gottshall and April C. Lucas,

Intervenors.

Docket No. 18-ALJ-17-0002-CC

FINAL ORDER

APPEARANCES:

For the Petitioner: Michael H. Montgomery, Esquire

For the Respondent: Patrick A. McCabe, Esquire

For the Intervenors: Richard A. Harpootlian, Esquire

For the Protestants: *Pro se*

This matter comes before the Administrative Law Court (ALC or Court) for a contested case hearing pursuant to *S.C. Code Ann. §§ 1-23-310 et seq.* (2005 & Supp. 2017), 61-2-260 (Supp. 2017), 61-4-525 (Supp. 2017) and 61-6-1825 (Supp. 2017). Rooftop Bar, LLC, d/b/a Rooftop Bar & Lounge (Petitioner) seeks an on-premises beer and wine permit, and restaurant liquor by the drink license for its location at 638 Harden Street, Columbia, South Carolina ("location").

Polly Felton Morrison, April C. Lucas, John J. Stucker, Karen R. Belser, Judith Holliday, Kathryn S. Smith, the University of South Carolina, James M. Daniel, III, Luther J. Auguste, IV

FILED

AUG 1 2018

Michael Drennen, Kathryn Fenner, Richard Ackerman, and Thomas R. Gottshall (Protestants) filed a protest to the application. On December 6, 2017 Respondent South Carolina Department of Revenue (Department) denied¹ the application based upon the receipt of the Protestants' valid public protests pursuant to *S.C. Code Ann.* § 61-6-1825²; On December 8, 2017, Petitioner requested a contested case hearing.

On February 1, 2018, this Court issued an Order Granting Motions to Intervene for Protestants Thomas R. Gottshall and April C. Lucas. After proper notice, the Court held a hearing on May 14 and 15, 2018, at the ALC in Columbia, South Carolina. The parties and Protestants appeared at the hearing. Evidence was introduced, and testimony was given. After carefully weighing all the evidence, I find that the Petitioner meets all legal requirements for the issuance of an on-premises beer and wine permit, and restaurant liquor by the drink license and Order that the Department of Revenue should issue both the permit and license to the Petitioner.

ISSUES

The Protestants, including the Intervenors, each filed pre-printed form protests which are virtually identical. Their primary claim is that the location at 638 Harden Street is unsuitable.

¹ Initially, there was also a question regarding the Restaurant having a Grade A Retain Establishment Food Permit prior to the issuance of a license pursuant to SC Reg. 61-6-20(2); 61-6-1820(1). This was resolved prior to the hearing and the only basis for denial at the commencement of the hearing was the public protests. The record provided by the Agency reflects that the A rating was received by DOR on December 7, 2017 (pp 49-50 Agency Information Sheet). The only basis for denial in the Department Determination is "The Department properly denied the issuance of the on-premises beer and wine permit and restaurant liquor by the drink license based upon timely filed public protests.

² On February 16, 2018, counsel for Intervenors filed with this Court a Notice of Withdrawal of Protest for Polly Felton Morrison, John J. Stucker, Luther J. Battiste, III, Michael Drennen, Matt Kisner, Karen R. Belser, Kathryn Fenner, and Richard Ackerman.

Intervenor Gottshall and several other Protestants also raised the issue that “management is unsuitable, as an operator/manager of the proposed licensee was involved with the former Pour House,” citing a news article about another location. No protests raised the issue of whether or not the business was primarily and substantially engaged in the service of meals. However, the Court allowed Intervenor to raise this issue and heard evidence thereon. Likewise, no Protest raised the question of whether or not there were undisclosed Principals, but the Court allowed the Intervenor to raise that issue during the hearing. The issues presented are summarized as follows:

- 1) Is the location a suitable one for the sale of on-premises consumption of beer and wine, and liquor by the drink?
- 2) Is the business engaged primarily and substantially in the service of meals?
- 3) Are Petitioner’s Principals of good moral character?
- 4) Did Petitioner fail to disclose all principals on its Consent and Waiver form?

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility and taking into consideration the burden of persuasion by the parties, the Court makes the following Findings of Fact by a preponderance of the evidence.

Notice of the time, date, place and subject matter of the hearing was given to all parties and Protestants.

— Rooftop Bar, LLC seeks an on-premises beer and wine permit, and restaurant liquor by the drink license for Rooftop Bar, LLC, d/b/a Rooftop Bar and Lounge, located at 638 Harden Street, Columbia, South Carolina. Rooftop Bar, LLC has entered into a sublease agreement with Night Industries 2000, Inc., as sublessor for the use of the premises. The primary lessors, 636 Harden, LLC, Elizabeth B. Glazebrook, Synovus Trust Company, N.A., Co-Trustees under the Will of Elizabeth B. Glazebrook approved the sublease and Rooftop’s use of the location. The

proposed location is in Richland County, within the municipal limits of the City of Columbia.

The location meets the requirements of the City of Columbia for zoning to be used as proposed with the requested licenses.

On January 2, 2018, the Department issued its determination denying Petitioner's application for the permit and license based on the receipt of the Protestants' valid public protests. The Department otherwise found that the Petitioner meets all of the statutory requirements to have permits to serve beer and wine and liquor by the drink on its premises. SLED and the Department of Revenue completed investigations of the location and as Tammie Young, the Department of Revenue's Supervisor of Alcohol Beverage Licensing Testified, "found everything in Order."

The principals of Petitioner are over the age of twenty-one. Each is a legal resident of the State of South Carolina, and each has maintained their principal place of abode in this state for at least thirty days before making this application.

Notice of the application was lawfully posted at the location and in a newspaper of general circulation.

The Protestants are residents who live in the neighborhoods surrounding Five Points. They have raised several concerns and objections to granting the permit and license for the location. The Court allowed them to raise what can be summarized by the following questions:

1. Whether the business and its patrons will be a nuisance to nearby businesses and residences;
2. Whether the location is suitable because they contend the Five Points district is overserved with alcohol;
3. Whether the business will attract or enable illegal activity in the form of underage drinking;
4. Whether the business will burden law enforcement resources; and
5. Whether the proposed business is a bona fide restaurant.

Permits to sell beer and wine, and licenses to sell liquor have been issued to various

businesses at the location for many years. The most recent previous business at the location was the Attic. No evidence was produced that a license had been revoked or that the location was previously cited for any violations of the alcoholic beverage laws of the State.

The Location is Suitable for the Issuance of the Requested License and Permit.

While several witnesses testified concerning the environment in the Five Points hospitality district where the proposed location is situated, none were able to provide evidence that the proposed location will have a negative impact on the area or create any negative change or cause some problem in the area because of its operations should the licenses³ be issued. The location has been open for more than six months without incident or complaint on temporary licenses. The Department of Revenue and SLED found that the location suitable. None of the witnesses who testified on behalf of the Protestants was able to adduce evidence to overcome that presumption.

Significant testimony was as follows: Olufemi Olulenu wants to “close down a bunch” of the bars in Five Points. He testified that he moved to the neighborhood to “get rid” of crack heads and drug dealers. He also testified that his area has improved in the last 50 years as it relates to crime. Mr. Olulenu admitted that there are homeless people in his neighborhood. He was unable to attribute any of the actions in his complaints to Petitioner’s establishment or its location. City of Columbia Police Chief Holbrook also testified. Counsel for the intervenors asked about the concentration of establishments in the area and did that create problems. Chief Holbrook responded that “having five bars in a row is different from one bar in a block.” He also testified that there had been no problems inside the location since it opened last September,

³ The Beer and Wine permit for on premises consumption and the License for on premises liquor by the drink sales may be collectively referred to herein as “licenses” or “the licenses”.

that the Department works with businesses to develop good practices and that he had no information that Rooftop was not complying with best practices. He further relayed that the Department had no reports or complaints relating to this location since it had reopened. Critically, Chief Holbrook asked the following question:

"Chief, are you able, as we sit here before the Court today, to present any evidence as to how the activities or the business that is located and called the Rooftop has caused any change or requirement for additional law enforcement presence in that area?"

He answered "No sir."

Chief Holbrook also testified that law enforcement resources in the Five Points area have been static or the same for at least four years.

Mr. Bill Lamb, one of the Protestants testified about his general complaints about problems in the Five Points area. Mr. Lamb's testimony reflects no knowledge about any basis to deny licensing and permits to the petitioner. In response to a direct examination question from Intervenor's counsel, he states "I know nothing about the Rooftop." Under cross-examination, he stated that he had no evidence that he could offer the Court of any impact that the Rooftop Bar has had or will have on the area. His testimony generally was that he had problems with the number of students living in and visiting the area.

Anna Edwards testified as a representative of the University of South Carolina. She is the associate vice president for student life. Ms. Edwards testified that twenty-five percent of USC students reported drinking in a high-risk way. She also testified about the efforts that the University makes to educate its entering students about alcohol and alcohol use. Ms. Edwards admitted that she has no specific knowledge about the location – as the Attic before the purchase by the Petitioners and as the Rooftop after purchase. Upon cross-examination, Ms. Edwards admitted that the vendor, who was not present to testify, had interpreted the data presented in

her direct testimony and that she did not know the criteria applied in making that interpretation. She also admitted that the primary purpose of the survey was to educate students, not to gather reportable data. She testified "The purpose is to educate, but also show the decision making that students do surrounding alcohol. It's a decision-making modules [sic]." She stated that "The purpose of the study is to provide information to students to make responsible decisions around alcohol." She also admitted that the number one problem with drinking, "pre-gaming" does not occur in business locations in Five Points. She also admitted that the survey data was not longitudinal and that survey data reporting methods had changed in a way (in year one she testified about, respondents could select multiple locations, in year two only one location could be selected) that there was no way to establish a trend. Ms. Edwards also agreed that it would be more effective for the university to be working to make sure that establishments in Five Points neither admit nor serve alcoholic beverages to underage students. She testified that she had no evidence relating to Rooftop, its location, its practices or its effect on any problem articulated in the University's protest.

Intervenors offered Leslie Wiser, Jr. as an expert witness in Criminology. Mr. Wiser is an Instructor on the faculty at the University of South Carolina in the department of criminology and criminal justice. On direct examination, Mr. Wiser opined about the theory that a higher density of alcohol-serving establishments correlates with alcohol-related harms and crime. However, upon cross-examination, he admitted that his data revealed that there were no violent or alcohol-related crimes in the 600 block of Harden Street where the Petitioner's business is located during the study period. He also admitted that there was no statistical basis for the selections that led to his interviews of volunteers for the study about which he testified. There was no control group used to validate any survey data or conclusions. The study utilizes data

collected and analyzed in 2013-2015 which is before the relevant period of the Petitioner's license application. Finally, he admitted that he had "no data that's going to suggest or prove scientifically that an outlet remaining at 638 Harden Street under a different name is going to have any impact on any issue."

April Lucas, one of the Protestants and Intervenors, testified that there are approximately 42 licensed establishments in the Five Points area. She testified about her general concerns and problems relating to a community with lots of students and general issues concerning activities in the area not attributable to the Petitioner's location. She bases her opposition to the license on her belief that the area as a whole is "an attractive nuisance." She expressed many concerns about vandalism and other problems in her neighborhood that she believes are attributable to businesses in Five Points. She did not offer any evidence that issuing licenses to Petitioner would affect her neighborhood in any way. When cross-examined about her general complaints she admitted that she had no "hard evidence" to support the idea that the genesis of the incidents she complained about came from a location in Five Points. She further admitted that her conclusions about the source of her complaints were assumptions based on her observation and beliefs.

Thomas Gottshall, protestant and intervenor also testified about his general objections. He was unable to adduce any evidence that this location has had or will have a negative impact on the area or community.

While this Court is sympathetic to the concerns of the Protestants, they have failed to present factual support that the location is unsuitable, that there is an undisclosed principal, that the location does not meet the restaurant requirements or that any principal is not of sound moral character by a preponderance of the evidence. Their complaints are general and do not

demonstrate that the Petitioner's establishment will harm, cause problems, increase any difficulties or result in an increase in requirements for law enforcement. While their opinions and conclusions may apply to other establishments in the Five Points area (which licenses are not before this Court), in this instance they have not provided evidence other than opinions, generalities, and conclusions that are unsupported by the facts. Their general opinion is that the City has allowed too many establishments in the area. The municipality has zoned the area such that this number and density of locations are allowed, and none of the Protestants have adduced evidence that this location is a nuisance, has ever been determined a nuisance, will increase law enforcement requirements in the area, has violated any laws. No evidence has been offered to provide a legal basis to conclude that Petitioner's location is unsuitable. DOR determined that the location is suitable. The testimony of Petitioner's Principals demonstrates a willingness and intent to "do everything the right way," and no evidence has shown otherwise. The Petitioner has shown by a preponderance of the evidence that the location is suitable.

The Locations is Primarily and Substantially Engaged in the Service of Meals

Petitioner meets the statutory criteria required to be determined to be engaged primarily and substantially in the service of meals. Petitioner produces a color menu with photographs of the various items served which consist of hot sandwiches and Sunday brunch items. Its daily fare includes gourmet grilled cheese sandwiches with multiple combinations of toppings. Petitioner's staff prepares all menu items in the kitchen at the location. Upon licensing, Petitioner has indicated its intent to expand its kitchen further to improve service and the ability to offer more items. The establishment has a menu board on the street during the day and posted in its establishment in the evenings and displays its menus scrolling on televisions in the

Restaurant. Rooftop's menu is on the Web with Uber Eats. Rooftop serves food in the establishment from 11:30 AM until 2:00 AM six days a week as well as Sunday Brunch. Petitioner introduced photographs of the kitchen staff preparing food and Sunday brunch. The record includes photographs of the kitchen equipment and kitchen which the principals described to the Court. Rooftop's commercial kitchen equipment includes a refrigerated prep station, at least 40 cubic feet of refrigeration including a reach in refrigerator, a stainless-steel prep table, a griddle, a convection oven, a microwave oven, a freezer, food warmer display, steamers, utensils, and significant other kitchen equipment. The business has focused on developing a new menu and image. Its CPA, Tony Perricelli, testified about its food sales, their growth and food costs. During the combined months of March and April, food sales averaged more than 12 percent of gross sales⁴. In April they exceeded 15%, and in May the establishment added Uber Eats and expect that without kitchen expansion, food sales percentage as a percentage of total revenue will reach as much as 25%. They believe that it will increase further if they can obtain their licenses and expand the kitchen area and function. The Principals testified that after the hearing in the Five Points Roost case that they have *done everything possible to "transform the business into what is being asked of us and asked of the other businesses down in Five Points. . . . And we believe we've done a pretty good job of that."* Petitioner clearly incorporates food sales as a material and substantial part of its business, its business plan and invests a substantial amount of its day-to-day operations in providing hot meals, cooked on its premises to its customers.

⁴ March includes the St. Patrick's Day Festival which is the largest day of the year for sales of liquor, beer and wine for the business as tens of thousands of people attend the festival.

Petitioner Disclosed All Principals.

Protestants suggest that Dan Wells is somehow involved in the business based upon the involvement of his mother's LLC, the Protestants have not been able to adduce any evidence to rebut the DOR's determination that all principals have been disclosed⁵. Ms. Young testified that DOR sends her the application and the principals disclosed. She testified that Mr. Ruonala and Mr. Bland were reviewed and confirmed and that Rooftop subsequently added two principals, that they were reviewed and approved as meeting all requirements. No party has demonstrated by a preponderance of the evidence that there is another individual who meets any of the statutory criteria, to wit, is a manager of any limited liability company owning an interest in the business, is a member of any limited liability company, which is not managed by managers; is a fiduciary who manages, holds, or controls title to or who is otherwise in direct or indirect control of the business, is a person who owns 25 percent or more of the value of the business nor an employee who has day-to-day operational management responsibilities for the business or entity.

All Principals are suitable licensees

SLED and the Department of Revenue found that all principals are more than twenty-one years of age, are all legal residents of South Carolina who have been residents for at least thirty days before the date of application and have maintained their principal places of abode in South Carolina for at least thirty days before the date of application, are of good repute and have not had a license relating to the sale of alcoholic liquors revoked within five years preceding the

⁵ Nor has any evidence been offered that Mr. Wells would be unsuitable according to the Code were he in any way affiliated with the business. No evidence was produced to substantiate that he is.

application filing. No facts were introduced to the contrary by any party.

CONCLUSIONS OF LAW

Jurisdiction and Legal Standards

Based upon the foregoing findings of fact, the Court concludes the following as a matter of law: Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to *South Carolina Code* §§ 61-2-260 (2009), 1-23-310 et seq. (Supp. 2017), 61-4-525 (2009), and 61-6-1825 (2009). The standard of proof in an administrative proceeding such as this is a preponderance of the evidence unless otherwise specified. *Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988); see also *S.C. Code Ann.* § 1-23-600(A)(5) (Supp. 2017). “A ‘preponderance of the evidence’ is evidence which convinces as to its truth.” *Gorecki v. Gorecki*, 387 S.C. 626, 633, 693 S.E.2d 419, 422 (Ct. App. 2010) (citation omitted). Findings may never be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 443, 458 S.E. 2d 76, 83 (S.C. App. 1995)

Once an applicant has made a *prima facie* case for the issuance of a license, the burden of production shifts to the protestant to present evidence to justify denial of the license. *Southland Corporation v. City of Westminster City Council*, 746 P. 2d 1353, 1355 (Colo. Ct. App. 1987). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See, *S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co.*, 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness's demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., *Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); *Wallace v. Milliken & Co.*, 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

Unless there is sufficient evidence of an adverse impact on the community,

the application must not be denied if the statutory criteria are satisfied. The fact that a protestant objects to the issuance of a permit is not a sufficient reason by itself to deny the application.

See. 48 C.J.S. Intoxicating Liquors, §166 (2013) Albert Beach, d/b/a The Long Branch,

Petitioner, vs. South Carolina Department of Revenue, Respondent, 2014 SC ALJ LEXIS 410.

Alcohol Licenses and Permits

S.C. Code Ann. § 61-2-260 (2009) grants the Administrative Law Court the responsibility to determine contested case matters governing alcoholic beverages, including beer, wine, and liquor. The factual determination of whether an application is granted or denied is usually the sole prerogative of the executive agency charged with rendering that decision. *Palmer v. S.C. ABC Comm'n*, 282 S.C. 246, 317 S.E.2d 476 (Ct. App. 1984). The Agency informed the Court that but for the public protests in this instance, it would have issued the license and permit because Petitioner meets all legal requirements for their issuance. As the trier of fact, an administrative law judge is authorized to determine the fitness of an applicant for alcohol permits and licenses using broad, but not unbridled, discretion. *Byers v. S.C. ABC Comm'n*, 281 S.C. 566, 316 S.E.2d 705 (Ct. App. 1984). The requirements for a beer and wine permit are set forth in *South Carolina Code* §61-4-520 (2009). The requirements for a liquor by the drink license are contained in *South Carolina Code* §61-6-1820 (2009 and Supp. 2017).

Undisclosed Principals

Before an alcohol license or permit may be issued, this Court must determine whether the applicants meet all of the statutory requirements for licensure. Licenses and permits may be issued only to the person who is the owner of the business seeking the permit or license. If application is made for a license or permit under this title by a person other than an individual, all principals are

deemed to be the applicant. The Department may not issue a license or permit to any person unless the person and all principals are of good moral character. *S.C. Code Ann.* § 61-2-100 (2009). Here, there is no evidence to support a claim of an undisclosed Principal as a matter of law.

Character of Principals

To qualify for a beer and wine permit or license to sell liquor by the drink, the principals of Petitioner must be of good moral character. *S.C. Code Ann.* §61-2-100(D) (2009). This Court as the trier of fact must conclude that the principals of Petitioner are fit persons to sell beer and wine to issue the permit. *S.C. Code Ann.* 61-4-540. "It is a generally recognized principle that a liquor license may be refused a person who has previously been convicted of a crime or crimes, particularly a violation of the liquor laws." *Wall v. South Carolina Alcoholic Beverage Control Commission*, 269 S.C. 13, 235 S.E.2d 806 (1977). However, consideration must be given not only to any crimes committed by the applicant but also to the extent the applicant has rehabilitated himself since committing the crimes. John D. Geathers & Justin R. Werner, *The Regulation of Alcoholic Beverages in South Carolina* 220 (South Carolina Bar 2007). Here there is no question raised of the character of the Principals or any prior criminal violations. The Principal's testimony and actions demonstrate a commitment to following the law and meeting requirements that they perceive the Court sets.

Moreover, an attitude of strict adherence to applicable alcohol-related laws on the part of applicants for permits and licenses is a critical consideration in finding an applicant is of good moral character and a fit person to sell beer and wine and liquor. Examination of the facts of this case and the demeanor of the principals of Petitioner during their testimony at the hearing coupled

with the performance of their business regarding incidents and citations during the period of their temporary licensing leads me to the conclusion that Rooftop and its Principals possess an attitude of strict adherence to the law. Their state of the art efforts to prevent service to underage individuals and general attitude towards the business is impressive and refreshing. I conclude that the principals of Petitioner are of a good moral character and are fit persons to sell beer and wine and liquor

Suitability of Location

For the issuance of a beer and wine permit, *S.C. Code Ann.* § 61-4-520 (2009) includes the criteria that the location is a proper and suitable one:

(5) The location of the proposed place of business of the applicant is in the opinion of the department a proper one.

(6) The department may consider, among other factors, as indications of unsuitable location, the proximity to residences, schools, playgrounds, and churches. This item does not apply to locations licensed before April 21, 1986.

“Proper location” is not statutorily defined, but broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location for the requested permit and license. *See generally Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 118 (1981). In determining whether a location is suitable, it is proper for this tribunal to consider any evidence that shows adverse circumstances of location. *Kearney v. Allen*, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985). In deciding whether a location is a proper one, the fact-finder may consider any evidence showing adverse circumstances. *Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 249, 317 S.E.2d 476, 478 (Ct. App. 1984). Thus, “[t]his determination of suitability is not solely a function of geography but involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact upon the

community." [emphasis added] *Id.* The court should weigh evidence of the location's burden on law enforcement in deciding its suitability [emphasis added]. See *Moore v. S.C. Alcoholic Beverage Control Comm'n*, 308 S.C. 160, 162, 417 S.E.2d 555, 557 (1992); *Fowler v. Lewis*, 260 S.C. 54, 57, 194 S.E.2d 191, 192 (1973).

Thus, the decision as to whether the proposed location is improper for a beer and wine permit or liquor license must be made on a case-by-case basis resting upon the peculiar facts of each application. After carefully weighing the evidence and applying the law as discussed above, the Court finds the location to be suitable. No evidence has been presented that the issuance of this permit and license will have a negative impact upon the community or that it will make any existing situation worse.

Law Enforcement Resources

In determining if a location is suitable for an alcohol license or permit, consideration must be given to the impact the issuance of the permit or license will have on law enforcement. *Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973); *Roche v. S.C. Alcoholic Beverage Control Comm'n*, 263 S.C. 451, 211 S.E.2d 243 (1975). Evidence that the granting of a permit will place a strain upon police to adequately protect the community must be weighed. *Moore v. S.C. Alcoholic Beverage Control Comm'n*, 308 S.C. 160, 162, 417 S.E.2d 555, 557 (1992). Denial is appropriate where the public areas surrounding the proposed location have been the source of constant law enforcement problems or significant problems with public intoxication. *Roche*, 263 S.C. at 451, 211 S.E.2d at 243. Another pertinent factor is whether police have been summoned to the scene on prior occasions when licensed to another party. *Schudel*, 276 S.C. at 141-42, 276 S.E.2d at 309-10. It is relevant whether the location is near other locations that have either been a constant source of law enforcement problems or are locations where young people congregate and loiter. *Palmer*,

282 S.C. at 250, 317 S.E.2d at 478.

Here, there is no preponderance of the evidence to support a claim that this location has caused problems of any kind, has required intervention by law enforcement, requires additional resources from law enforcement or that it or other nearby locations have been a source of law enforcement problems. In fact, the report introduced by Mr. Wiser reflects that no incidents have occurred in this block – even during a period where seven licensed locations were present on it. Granting this license does not change that dynamic. Further supporting this conclusion is the testimony of Police Chief Holbrook who testified that there has been no need to increase police resources in Five Points during his tenure as Chief of Police.

Nuisance

There is no evidence to convince the Court that he proposed business is unlikely to be a nuisance to the community. *S.C. Code Ann.* § 61-4-580(5) (Supp. 2017) prohibits a permittee from knowingly allowing “any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this state” to occur on the licensed premises. The term “licensed premises” includes not only the interior of the licensed business but also the areas immediately adjacent to the entrance and exit, as well as the parking areas. *See. 23 S.C. Code Ann. Regs. 7-700* (“Licensed premises shall include those areas normally used by the permittee or licensee to conduct his business and shall include but are not limited to the following: selling areas, storage areas, food preparation areas and parking areas.”). “[O]ne who holds a license to sell alcoholic beverages is responsible for supervising the conduct of his clientele, both within the licensed premises and in the immediate vicinity, in order to ensure that his operations do not create a nuisance for the surrounding community.” *Dayaram Krupa, LLC v. S.C. Dept. of Revenue*, 06-

ALJ-17-0929-CC, 2007 WL 1219343 (S.C. Admin. Law Ct., March 19, 2007) (citing § 61-4-580(5) and *A.J.C. Enters., Inc. v. Pastore*, 473 A.2d 269, 275 (R.I. 1984)). The court in *A.J.C. Enterprises* held that a liquor license “assumes an obligation to supervise the conduct of its clientele so as to preclude the creation of conditions within the surrounding neighborhood which would amount to a nuisance to those who reside in the area.” *A.J.C. Enters., Inc.*, 473 A.2d at 275. In the event that a licensed location becomes a public nuisance to the surrounding community, the Department may revoke or refuse renewal of the license for the location. See *S.C. Code Ann.* § 61-4-580(5) (Supp. 2017).

A nuisance is a substantial and unreasonable interference with another individual’s use and enjoyment of his property. Where a business is operated in an unlawful or unreasonable manner so as to produce material injury or great annoyance to others or unreasonably interferes with lawful use and enjoyment of their property, it will constitute nuisance. *O’Cain v. O’Cain*, 473 S.E.2d 460 (S.C. App. 1996).

Here no evidence has been adduced which leads me to a conclusion that the Petitioners have operated or will operate their business unlawfully or unreasonably or in a way that will constitute a nuisance. Moreover, they have provided substantial testimony and a several month long record which is free from complaint or problem. Petitioner has demonstrated its ability and validated its testimony with its actions and the total lack of evidence of any complaint or problem with its operation of the location.

Suitability of Location Previously Licensed

Petitioner points to the fact that the proposed location has been the home of previous businesses with alcohol licenses for many years. The Attic, which immediately preceded Petitioner

at 638 Harden had both liquor and beer and wine licenses. Petitioner points out that there is no evidence that the location has, is or will have a negative impact on the Community. Petitioner directs the Court to *Taylor v. Lewis* and suggests that the case applies here. In *Taylor*, the South Carolina Supreme Court held:

We agree with the lower court that the relevant testimony of those who oppose the requested permit consists entirely of opinions and conclusions which are not supported by any facts. The claimed detriment to the well being of the community or the lack of adequate police protection are without factual support.
Taylor v. Lewis, 261 S.C. 168, 171-72, 198 S.E.2d 801, 802 (1973).

This matter before the Court regarding suitability of the location is indistinguishable from *Taylor*. While the Protestants complain about a general condition, they have not shown evidence that there is a particular problem in the block where this location exists. Moreover, they can show no causal relationship between the sale of beer, wine, and liquor at this location and any of their claimed problems. Additionally, The record is devoid of any showing that the location is any less suitable for licensing now than during the prior years.

The situation before this Court differs markedly from that which led to the specific findings in *Kan Enterprises Inc. v. South Carolina Department of Revenue*, 14-ALJ-17-0571-CC, March 19, 2015, affirmed by the Court of Appeals in *Kan Enters v. S.C. Dep't of Revenue*, 420 S.C. 596, 803, S.E.2d 882 (S.C. App. 2017). In *Kan* record showed that there were 324 problems at that location in 2014 alone and that law enforcement officers were injured at the *Kan* location while making arrests. That direct evidence led the Court to distinguish *Kan* from *Taylor v. Lewis*. The evidence before this Court lacks direct evidence about the location like that in *Kan*.

Here, there is no evidence that the location had been the scene of problematic behavior under the former licensee, or that crowds that would likely be attracted to the business would strain local law enforcement resources nor is there evidence of incidents at the location. In *Taylor*, that

lack of evidence led the Supreme Court to conclude that, “a determination of unsuitability ... is wholly unsupported by any competent evidence.” *Id.* The record before this Court does not contain facts which support a conclusion that this location is unsuitable.

Restaurant

"Words in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's application." *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011). "[T]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (alteration by court) (internal quotation marks omitted).

Intervenors question whether or not Rooftop, LLC is engaged primarily as a restaurant. That is not the statutory definition. The term is engaged “bona fide engaged primarily and substantially in the preparation and serving of meals”, which the Legislature has defined in statute. None of the protests raised this ground as a reason for denial. However, the evidence demonstrates the business meets or exceeds the statutory requirements established by the General Assembly to be determined to be “bona fide engaged primarily and substantially in the preparation and serving of meals.”

Here, DOR followed the clear and unambiguous legislative directive as to the requirements for an entity to be determined to be bona fide engaged primarily and substantially in the preparation and serving of meals. Those requirements are enumerated explicitly in *S.C. Code Ann.* §61-6-20(2).(2017) The statute contains three specific conditions. DOR found that Petitioner met each of those requirements.

S.C. Code Ann. § 61-6-1820(1) (2009) provides that an applicant may receive a license

upon the finding that “[t]he applicant is a bona fide nonprofit organization or the applicant conducts a business bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging.” This requirement mirrors the language of the mandate of our state’s constitution. S.C. Const., art. VII-A § 1. *S.C. Code Ann.* §61-6-1610(I) defines “primarily” to mean that “the serving of the meals by a business establishment is a regular source of business to the licensed establishment, that meals are served upon the demand of guests and patrons during the normal mealtimes that occur when the licensed business establishment is open to the public, and that an adequate supply of food is present on the licensed premises to meet the demand.” A “meal” is defined as “prepared foods available to guests...during the normal mealtimes that occur when the licensed business establishment is open to the public. Sandwiches, boiled eggs, sausages, and other snacks prepared off the licensed premises but sold there are not a meal.” *S.C. Code Ann.* § 61-6-1610 (I)(2) (Supp. 2012).

In 2008 *S.C. Acts* 287, the General Assembly Amended *S. C. Code Ann.* §61-6-20(2) to further define that constitutional term. The Title of the Act reflected the legislative intent. Act 287 was titled:

“An Act to . . . Amend Section 61-6-20, as amended, relating to definitions for purposes of the Alcoholic Beverage Control Act, so as to revise the definition for an establishment serving meals; and to Amend Section 61-6-1610, As Amended, relating to food service establishments licensed for on-premises consumption of liquor by the drink, so as to provide additional requirements relating to food service.”⁶

⁶ The full text of the Legislative synopsis reads: [emphasis added]

AN ACT TO AMEND SECTION 12-33-245, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE FIVE PERCENT EXCISE TAX ON THE SALE OF ALCOHOLIC LIQUORS FOR ON-PREMISES CONSUMPTION AND THE DISTRIBUTION OF THE REVENUES OF THE TAX, SO AS TO PROVIDE THAT THE MINIMUM DISTRIBUTION TO STATE AGENCIES, COUNTIES, AND LOCAL ENTITIES MUST BE BASED ON REVENUES RECEIVED IN

The Act changed the definition to read as follows:

(2) *'Bona fide engaged primarily and substantially in the preparation and serving of meals' means a business that provides facilities for seating not fewer than forty persons simultaneously at tables for the service of meals and that:*

(a) is equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals upon customer request at normal meal times;

(b) has readily available to its guests and patrons either menus with the listings of various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and

(c) prepares for service to customers, upon the demand of the customer, hot meals at least once each day the business establishment chooses to be open."

That legislation also added S.C. Code Ann. §61-6-1610(I) further defining these terms That section provides

(I) For purposes of this section:

(3) "Primarily" means that the serving of the meals by a business establishment is a regular source of business to the licensed establishment, that meals are served upon the demand of guests and patrons during the normal mealtimes that occur when the licensed business establishment is open to the public, and that an adequate supply of food is present on the licensed premises to meet the demand.

The Agency has followed this licensing scheme and granted licenses according to these requirements ever since. DOR determined that Petitioner met these requirements. Petitioners have failed to overcome that presumption. Moreover, this Court notes the facts regarding the promotion of food demonstrated during the hearing and the "restaurant" focus of the Petitioners in their efforts to comply with previous questions and determinations made by this Court.

FISCAL YEAR 2004-2005, RATHER THAN REVENUES ALLOCATED AND TO IMPOSE ADDITIONAL PENALTIES FOR TAX VIOLATIONS; TO AMEND SECTION 61-6-20, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF THE ALCOHOLIC BEVERAGE CONTROL ACT, SO AS TO REVISE THE DEFINITION FOR AN ESTABLISHMENT SERVING MEALS; AND TO AMEND SECTION 61-6-1610, AS AMENDED, RELATING TO FOOD SERVICE ESTABLISHMENTS LICENSED FOR ON-PREMISES CONSUMPTION OF LIQUOR BY THE DRINK, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS RELATING TO FOOD SERVICE.

Conclusion

After carefully weighing the evidence and applying the law as discussed above, the Court finds the Protestants, and the Intervenors have failed to meet their burden or poof to present evidence to justify the denial of the license and permit. The DOR and SLED witnesses established that the Petitioner met the applicable criteria. Likewise, the Protestants failed to meet their burden of demonstrating that this location was unsuitable. While they advanced general complaints about crime and other issues, none were able to prove that the operation of the proposed business would have a negative impact upon the community. Likewise, there was no showing that the location would create a burden on law enforcement. As it relates to the principals, no evidence was offered that overcame the presumption created by the general finding of good character. The Protestants offered no evidence to support a claim that any of the Principals lacked suitable character. Likewise, while DOR indicated that it performed a search for indicia of undisclosed principals and none were identified, none of the Protestants were able to offer any evidence that leads this Court to conclude that any undisclosed principal as defined in the Act exists. Finally, this Court finds that Rooftop serves meals as a regular source of business, that meals are served upon the demand of guests and patrons during the normal mealtimes that occur when Rooftop is open to the public and that an adequate supply of food is present on the licensed premises to meet the demand. Because Rooftop meets the statutory test and the Protestants have failed to meet their burden to demonstrate otherwise, this Court finds that Rooftop is Bona Fide Primarily and Substantially engaged in the service of meals to the public and meets the statutory restaurant requirements as a matter of law. For the reasons enumerated herein, Petitioner's application for an on-premises beer and wine permit, and liquor by the drink license should be granted. The protests should be denied and Petitioner's application Granted.

ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the application for a beer and wine permit, and restaurant liquor by the drink license by Rooftop Bar, LLC, d/b/a Rooftop Bar and Lounge at 638 Harden Street, Columbia, South Carolina is GRANTED.

AND IT IS SO ORDERED.

Deborah Brooks Durden, Judge
South Carolina Administrative Law Court

August ____, 2018
Columbia, South Carolina

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rooftop Bar, LLC d/b/a
Rooftop Bar and Lounge,

Petitioner,

vs.

South Carolina Department Revenue,

Respondent,

and

Tom Gottshall and April Lucas,

Intervenors.

C/A No.: 18-AJL-17-0002-CC

**INTERVENORS' MOTION
TO ALTER OR AMEND
THE FINAL ORDER**

Intervenors Tom Gottshall and April Lucas hereby move the Court pursuant to South Carolina Administrative Law Court Rule 29 and Rule 59(e) of the South Carolina Rules of Civil Procedure for partial reconsideration of the Final Order entered on September 5, 2018 and (electronically) received by counsel the same day. While the findings of fact and conclusions of law contained in the Final Order are correct in many respects, Intervenors respectfully seek reconsideration concerning two issues raised therein.

I. Rooftop is not "primarily and substantially" in the business of preparing and serving meals as contemplated by the South Carolina Constitution.

The Court is silent as to a critical legal issue that should categorically bar Petitioner Rooftop Bar, LLC d/b/a Rooftop Bar and Lounge (Rooftop) from obtaining a liquor-by-the drink license. Based on the testimony of Rooftop's accountant, the Court found that during the months of March and April 2018, Rooftop's food sales "averaged approximately twelve percent of gross

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sales.” Final Order, 4. Based on this evidence, the Court concluded Rooftop “is bona fide engaged primarily and substantially in the preparation and serving of meals.” Final Order, 16.

The primarily-and-substantially requirement is a matter of state constitutional law, not just statutory construction. In Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Commission, 273 S.C. 782, 260 S.E.2d 452 (1979), the South Carolina Supreme Court held that a liquor license applicant was not primarily and substantially in the business of preparing and serving meals where just 10 percent of the applicant’s revenue was derived from food. As this Court correctly explained, subsequent passage of legislation defining primarily and substantially within a statutory scheme does not obviate Brunswick’s import:

In response, Petitioner notes that the South Carolina General Assembly has amended the statute defining “bona fide engaged primarily and substantially in the preparation and serving of meals” several times since the Brunswick case was decided, rendering the percentage of sales attributable to food an irrelevant test of a restaurant’s bona fides. While it is true that the language and code section number of the definition has changed since Brunswick was decided, a specific definition of “bona fide engaged primarily and substantially in the preparation and serving of meals” was codified in statute and considered by the Brunswick court. The Supreme Court held that despite a specific definition of “bona fide engaged primarily and substantially in the preparation and serving of meals” (found in Code Section 61-6-20(2) at that time) a business must not only meet the technical requirements outlined in the statute, but also must actually be “primarily” engaged in the preparation and serving of meals. Id.

Final Order, 15. The above-quoted reasoning is exactly correct; however, instead of following this reasoning and concluding that, like the bowling alley in Brunswick, 12 percent of gross revenue from food falls short of the constitutional requirement, the Court cited steps taken by Rooftop (steps taken since one owner testified food sales are actually just five (5) percent) as evidence the bar was attempting “to increase the food service component of its business” and reasoned that so long as Rooftop operates consistent with representations made by Stephen Bland and Adam

Runoala at the hearing, it “is bona fide engaged primarily and substantially in the preparation and serving of meals.” See Final Order, 15–16. Respectfully, this is error.

The Court should correct the Final Order to hold that article VIII-A § 1 of the South Carolina Constitution requires a liquor by the drink establishment to be (1) primarily in the business of preparing and serving meals and (2) substantially engaged in doing so. In adopting this rule here, the Court should reason that, while not dispositive, statutory and regulatory definitions are helpful indicia of businesses that are *primarily* in the business of preparing and serving meals (e.g., kitchen, stove, refrigeration, etc.), and that such evidence is particularly useful in assessing application by new enterprises with no sales history. However, the Court should also conclude that simply owning restaurant equipment or meeting other statutory requirements is not, itself, enough because an applicant must also demonstrate that the preparation and service of meals is a *substantial* part of the business—i.e., a quantitative analysis.

Applying this analysis here, the Court should conclude that, where food consists of just 12 percent of gross sales receipts, the applicant is indistinguishable from the bowling alley in Brunswick, food is not a substantial part of the business enterprise, and Rooftop falls short of the constitutional requirement. Additionally, the Court should revisit its findings of fact on this issue and conclude, notwithstanding recent efforts (efforts the Court correctly recognized are motivated entirely by Rooftop’s effort to obtain a liquor license), the overwhelming emphasis of Rooftop’s business is on the sale of liquor and beer, not meals. The evidentiary record supporting this modified finding is detailed at pages 9–10 and 19–20 of Intervenor’s proposed final order (attached as **Exhibit A**). These facts demonstrate Rooftop is primarily in the business of selling alcohol, not food. Intervenor respectfully request that the Court alter or amend the Final Order accordingly as to this issue.

II. Rooftop's location is not suitable.

The Court should also modify its legal conclusion concerning the suitability of the location.

Notably, the Final Order is far from silent on this issue and Intervenor's fully concur with the Court's well-supported findings that:

- Crowds of underaged USC students, "many armed with sham identification and intent upon drinking in Five Points bars," gather in Five Points while intoxicated, which puts their safety at risk and causes problems for law enforcement while disturbing the peace of nearby residents (see Final Order, 8);
- These crowds of underage college students congregate, loiter, and use falsified identification to "enter[] the bars and drink[] to excess." (id. at 5);
- There is "ample evidence" and "no doubt" that the Five Points district "presents law enforcement challenges, and requires significant law enforcement attention and resources." (see id. at 5 & 10);
- "The police chief describes Five Points as a busy area with a high concentration of young adults and students[that] attracts crowds of people requir[ing] extra attention and personnel[.]" (id. at 5-6);
- The University of South Carolina (USC) protested the permit and license because "it would like to decrease the number of bars in Five Points" based on its believe that "the high density of bars and the availability of alcohol in Five Points promotes a culture of overconsumption[.]" a view informed by significant data describing the frequency of high-risk drinking behaviors by students (id. at 6);
- Residents are likewise concerned that the number of bars in Five Points is an "attractive nuisance" that gives rise to public intoxication, public urination, property damage and late-night disturbances (see id. at 6); and
- There is "abundant" and "ample evidence of nuisance behavior by patrons of Five Points establishments generally," (id. at 5 & 11).

Intervenor's concur with these factual findings as the record is, indeed, overwhelming on the issue of suitability. Nevertheless, the Final Order discounts these facts and concludes the location is suitable because "there is no evidence that *this particular* location has been the source of illegal or problematic behavior" and because "no evidence was presented indicating that the issuance of a

license at the proposed location will create any negative change or require increased law enforcement presence.” See id. at 5 (emphasis added). This reasoning incorrectly requires evidence of a causal connection between Rooftop and otherwise well-documented harms that are themselves sufficient grounds to deny Rooftop’s applications.

The Court’s suitability analysis looks to the proper authority but applies that precedent incorrectly by requiring Intervenor to show harms rendering the location unsuitable *specifically* flow from the proposed permit/license location. This approach renders suitability considerations irrelevant where, as is the case here, a first-time applicant has a limited or no track record that would allow location-specific harms to be directly tied to the new enterprise. This approach is also inconsistent with the statutory permitting scheme and licensing precedent, which always turn on *existing* alcohol-related harms (or potential harms) that render a location unsuitable and serves as grounds to deny an application without weighing whether the applicant’s conduct will exacerbate those existing harms.

For example, Intervenor agree that South Carolina Code § 61-4-520(5)–(6), concerning issuance of a beer and wine permit, allows consideration of an applicant’s location, including its proximity to residences, schools, playgrounds, and churches. Cf. Final Order, 7. Those considerations are always valid grounds to deny a permit, notwithstanding the purported good behavior of the applicant. Looking elsewhere to inform this consideration has been held to be error. In SGM-Moonglo, Inc. v. S.C. Department of Revenue, 378 S.C. 293, 662 S.E.2d 487 (Ct. App. 2008), the Court of Appeals reversed an administrative law court’s determination that a location was unsuitable because of a restrictive covenant, explaining the covenant was “not a legitimate concern of the ALC in determining whether the location is suitable.” Id. at 295, 662 S.E.2d at 488 (applying § 61-4-520). To hold otherwise frustrates the statutory scheme by grafting an additional,

unspoken evidentiary requirement onto § 61-4-520 while rendering another section of Title 61, Chapter 4 duplicative. Specifically, authority to revoke or suspend a permit based on the permit holder's conduct (or acquiescence to certain prohibited conduct) falls under South Carolina Code § 61-4-580, which authorizes suspension for enumerated violations. The location-based analysis required under subparts (5) and (6) of § 61-4-520 does not contemplate or require violations by the permit applicant, as the Court did here; it simply asks whether proximity to residences, schools, playgrounds, and churches renders the proposed location unacceptable. Because this analysis turns on the interests of neighbors, the Court was mistaken to consider Rooftop's purported best-practices and the absence of violations or to require Intervenor to show harm flowed from the proposed location when weighing suitability under § 61-4-520(5)–(6). Simply put, such evidence is irrelevant.

Likewise, Intervenor also agree with the Court that precedent allows a liquor license to be denied if the location is unsuitable and that the Court is vested with broad discretion to make suitability determinations based on any evidence showing adverse circumstances of location. *Cf.* Final Order, 7–8 (citing Schudel v. S.C. Alcoholic Beverage Control Comm'n, 276 S.C. 138, 276 S.E.2d 308 (1981); Fast Stops, Inc. v. Ingram, 276 S.C. 593, 281 S.E.2d 118 (1981); Kearney v. Allen, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985)). Intervenor agree further still that a permit or license should be denied (1) when it will strain police resources, (2) when “*the public areas surrounding the proposed location* have been the source of constant law enforcement problems or significant problems with public intoxication[.]” or (3) when “the location is *near other locations* that have either been a constant source of law enforcement problems or are locations where young people congregate and loiter.” *Cf.* Final Order, 9 (emphasis added) (citing Moore v. S.C. Alcoholic Beverage Control Comm'n, 308 S.C. 160, 162, 417 S.E.2d 555, 557 (1992); Palmer v. S.C. ABC

Comm'n, 282 S.C. 246, 250, 317 S.E.2d 476, 478 (Ct. App. 1984); Roche v. S.C. Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975)). Properly read, the precedent that the Final Order (correctly) relies upon stands for the proposition that, while harms flowing from the proposed location are certainly probative, they are not necessary to establish unsuitability.

This conclusion is supported by three additional points. First, if an applicant's opponents were required to present evidence that the applicant's conduct alone rendered the location unsuitable, suitability would never be a valid consideration when a new license is sought. There is no authority for such a proposition. Second, requiring Intervenors to produce evidence that alcohol-related harms flowed directly from Rooftop is contrary to the well-established standard requiring a reviewing court to consider "any evidence" showing adverse circumstances of location. Third, suitability, as a licensure consideration, requires a court to weigh the public's interest against that of the applicant. See, e.g., Moore, 308 S.C. at 161–63, 417 S.E.2d at 556–57 ("... and that the public interest would be best served..."); 48 C.J.S. Intoxicating Liquors § 196 (Sept. 2016 update) (a license may be refused when "location of the establishment would adversely affect the public interest, ..."). Inherent in this balancing exercise is the possibility or, rather, the requirement that an otherwise meritorious applicant should be denied a license because conditions surrounding the proposed location render licensure contrary to the public interest.

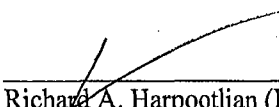
The Court should modify the Final Order to bring its suitability analysis in line with its factual findings. Intervenors agree the Five Points entertainment district is saturated with alcohol establishments that attract large crowds of underage students engaged in illegal and unhealthy overconsumption and that the Columbia Police Department and neighbors are burdened and harmed by the scale and ubiquity of the late-night revelry, particularly that which flows from the 800 Harden block where Rooftop is located. Suitability turns on these considerations, not evidence

tying these public harms directly to Rooftop. The Court should modify the Final Order accordingly and hold that the proposed location in this case is unsuitable.

* * *

For the foregoing reasons, this motion should be granted, the Final Order should be modified as explained above, and Rooftop's permit and license applications should be denied.

Respectfully submitted,


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September 17, 2018
Columbia, South Carolina.

EXHIBIT A

(Intervenors' Proposed Order)

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Rooftop Bar, LLC, d/b/a
Rooftop Bar & Lounge,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent,

and

Thomas R. Gottshall and
April C. Lucas,

Intervenors.

Docket No. 18-ALJ-17-0002-CC

[Intervenors' Proposed]
FINAL ORDER

APPEARANCES: For the Petitioner: Michael H. Montgomery, Esquire
For the Respondent: Patrick A. McCabe, Esquire
For the Intervenors: Richard A. Harpootlian, Esquire
For the Protestants: *Pro se*

This matter comes before the Administrative Law Court (ALC or Court) for a contested case hearing pursuant to S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2017), 61-2-260 (Supp. 2017), 61-4-525 (Supp. 2017) and 61-6-1825 (Supp. 2017). Rooftop Bar, LLC d/b/a Rooftop Bar & Lounge (Petitioner/Rooftop) seeks an on-premises beer and wine permit, and restaurant liquor by the drink license renewal for its location at 638 Harden Street, Columbia, South Carolina (location). Thomas R. Gottshall and April C. Lucas (Intervenors) filed a protest to the application, along with Richard Ackerman; Luther J. Battiste, III; Karen R. Belser; Jim Daniel; Michael Drennan; Katheryn Fenner; Judith Holliday; Polly F. Morrison; Kathryn S. Smith; John J. Stucker and the University of South Carolina (USC) (Protestants).¹ On January 2, 2018, Respondent South Carolina Department of Revenue (Department) denied Petitioner's reapplication under S.C. Code Ann. § 61-4-525 (2009), citing public protests challenging the suitability of the location. Petitioner requested a hearing. On January 25, 2018, the Court issued an Order granting Intervenors leave to intervene.

¹ On February 16, 2018, counsel for Intervenors filed a Notice of Withdrawal of Protest for Ackerman, Battiste, Belser, Drennan, Fenner, Holliday, Morrison, Smith, and Stucker.

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After proper notice, a hearing was held on May 14 and 15, 2018, at the ALC in Columbia South Carolina. The parties and Protestants appeared at the hearing. Evidence was introduced and testimony was given. After carefully weighing all the evidence, I find that Petitioner's request for an on-premises beer and wine permit, and restaurant liquor by the drink license should be denied.

ISSUES

1. Is the location a suitable one for the sale of on-premises consumption of beer and wine, and liquor by the drink?
2. Is the business engaged primarily and substantially in the preparation and service of meals?
3. Are Petitioner's principals of good moral character?
4. Did Petitioner fail to disclose all principals on its application?

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility, and taking into consideration the burden of persuasion by the parties, the Court makes the following Findings of Fact by the preponderance of the evidence.

Notice of time, date, place, and subject matter of the hearing was given to all parties and Protestants.

Petitioner Rooftop Bar, LLC d/b/a Rooftop Bar & Lounge (Rooftop) seeks an on-premises beer and wine permit, and restaurant liquor by the drink license for its location at 638 Harden Street, Columbia, South Carolina. Petitioner has entered into a lease for use of the location. (Resp. Ex. 1 at 37-48.) The location is in Richland County, and is within the municipality of the City of Columbia, specifically in a region of the City known as "Five Points."

The Department denied Petitioner's application for the permit and license based on receipt of valid public protests challenging the suitability of the location. Intervenors and Protestants are residents who live in the neighborhoods surrounding Five Points whose concerns include:

1. The suitability of the location based on bar density in the Five Points district and proximity to residential neighbors;
2. Whether Petitioner and its patrons will be a nuisance to nearby businesses and residences;
3. Whether the business will attract or enable illegal activity in the form of underage drinking and other crimes arising from or attracted to crowds of underaged patrons;

4. The strain the business is expected to place upon law enforcement resources; and
5. Whether the proposed business is a *bona fide* restaurant.

Five Points and Underage Students

Rooftop's 638 Harden Street location is on a block where bars have achieved high density. The bars begin on the northeast end of the 600 block (near Devine Street) with Lucky's, followed by Pinch, Latitude 22, Rooftop (located above Latitude 22), Cotton Gin, and Bar None. (See Hr.'g Tr., 256:14–18, 542:7–15; Int.'s Ex. 6 (map of Five Points bars).) Rooftop sells a large number of liquor drinks to Five Points patrons. The establishment's capacity is just 150 patrons at any one time. (See Hr.'g Tr. 218:8.) However, in just March and April 2018—the most recent, complete sales data available to the Court (see Hr.'g Tr. 118:17–23 & 128:22–129:2 & Pet. Ex. 2.)—the Rooftop had total liquor by the drink sales of \$54,000 in March and \$41,668 in April. (Pet.'s Ex 3) Part-owner Adam Ruonala attributed the \$14,000 increase in March profits to the St. Patrick's Day sales. (Hr.'g Tr. 257:15– 258:6.) At a cost of \$3 per drink for house liquor (see Hr.'g Tr. 298:23–299:5), Petitioner would have served approximately 32,000 drinks during these two months. Students line the street Thursday through Saturday nights with more than 150 waiting at times to enter Rooftop. (Hr.'g Tr. 255:5–7, 375:8–9 & 510:14–24; see also Hr.'g Tr. 289:8–13 (Rooftop's line spans north to Pinch; Pinch's line runs north to Lucky's on Harden Street).) Near midnight, an “incredible” number of pedestrians travel up and down the 600 block. (Hr.'g Tr. 542:17–19; see also Hr.'g Tr. 380:12–14.) Holidays, football games, and other special occasions make the noise and confusion “unbearable” to some living in the area. (See Hr.'g Tr. 376:10–20.) This unruliness disturbs the peace and enjoyment of local businesses and residences adjacent to the Five Points district.

Resident witnesses all reported incidents of public intoxication, public urination, harm to property, and more stemming from Five Points nightlife. As an initial matter, the Court notes several witnesses in this action offered similar or substantially the same testimony in Five Points Roost, LLC v. South Carolina Department of Revenue, 18-ALJ-17-0005-CC, 2018 WL 1724696 (S.C. Admin. Law. Ct. Apr. 3, 2018) (hereafter, “Roost”). These neighbors' testimony highlight the collateral consequences of nightlife in the Five Points' district spilling out of what neighborhood association president and 42-year University Hill resident Tom Gottshall described as an “attractive nuisance” for college students. (Hr.'g Tr. 538:3–4; 539:1–3; 518:3–5.) The Court

takes note of the recent testimony in Roost as probative of neighborhood concerns here and considered it while also carefully considering the record in this action.

William Lamb, a 37-year resident of the Five Points area, described minor inconveniences of living near Five Points, including noise and littering, (Hr.'g Tr. 372:22-25), and more serious problems such as late-night screaming, throwing things, and dumping of trashcans (Hr.'g Tr. 373:8-10.) Lamb stated a brick was thrown through his next-door neighbor's window and residents have had vehicles sideswiped by cars driving through the neighborhood from Five Points. (Hr.'g Tr. 373:10-12; 378:11-12.) In describing the "problems that go along with the high concentration of bars and high concentration of students in one area", Lamb noted that as he walks through his neighborhood he carries a trash bag because he sees "beer cans, beer cans, and more beer cans" littering the ground. (Hr.'g Tr. 374:13-21.)

April Lucas, who lives within walking distance of the Five Points area in University Hill, shared that she fears driving through Five Points because she worries about students stepping out in front of her car. (Hr.'g Tr. 493:7-14.) In the 30 years since Lucas moved to this area, she has noticed the issues related to drunk and disorderly conduct have permeated throughout the neighborhood. (Hr.'g Tr. 498:3-7.) Lucas stated that she has "personally witnessed everything from public urination to vandalism" (Hr.'g Tr. 504:1-12.), but noted that the "real disturbing kind of noise" is waking up to a girl's scream. (Hr.'g Tr. 504:20-23.) Describing her personal experience with the crime, Lucas testified about being awoken in the middle of the night by an intoxicated young man banging on her door thinking her house is someone else's (Hr.'g Tr. 505:21-506:4), having her car sideswiped five times, as well as keyed, and witnessing neighbors' cars being jumped on by drunk students and their property vandalized. (Hr.'g Tr. 507:8-508:5.)

North of the 600 block, a longtime Martin Luther King neighborhood resident, Olufemi Olulenu, described a similar experience. (See Hr.'g Tr. 330:18-331:16.) Living just two blocks from Five Points, Olulenu observes intoxicated people in the neighborhood "very -- regularly." (Hr.'g Tr. 332:6-333:1.) Echoing Lucas, Olulenu explained, "After 10:00, 11:00, 12:00, step outside and see how many of these young people drunk out of their heads coming to knock on doors not knowing where they're going." (Hr.'g Tr. 333:5-21.) Olulenu also cited public urination and public nudity as acts he's witnessed in and near his neighborhood. (Hr.'g Tr. 333:25-334:20 & 335:19-336:5.) He described the perpetrators of this disorderly conduct as "Mostly -- 99 percent of them are students." (Hr.'g Tr. 334:22-24.)

In Roost, the Court found Leslie Wiser, a University of South Carolina (USC) criminology professor, former FBI special agent in charge, and former CPD deputy chief, qualified to offer expert testimony as a criminologist with knowledge and experience based on a distinguished career assessing crime and crime statistics. (Hr.'g Tr., 460:7–14.) The Court again finds Professor Wiser qualified in that capacity. As a law enforcement officer, Professor Wiser was responsible for deploying police resources to meet community needs. (Hr.'g Tr. 451:12–16.) As an active member of the Carolina Community Coalition, Prof. Wiser has researched the relationship between crime and alcohol density in the Five Points area. (Hr.'g Tr. 453:16–18.) As a professor, he has continued to examine the relationship between alcohol and crime. In his research paper, Time for a Change, Prof. Wiser sought to “make a determination about the effect of alcohol density in Five Points” and to compare Five Points with other areas, such as the Vista. (Hr.'g Tr. 454:11–14.) Based on his research, Wiser concludes there is a positive correlation between the density of alcohol outlets and alcohol-related harms and crimes (e.g., hospitalization from over consumption, sexual assaults). (See Hr.'g Tr. 463:5–11; 477:10–12.) To support this conclusion, Prof. Wiser offered examples from his work, like survey data collected from a university shuttle. After an undergraduate was shot in Five Points while waiting for a cab, the university began shuttling students to and from Five Points. (See Hr.'g Tr. 553:1–5.) Of 160 shuttle riders who agreed to be interviewed, 77 percent reported traveling to Five Points to drink alcohol and 69 percent admitted to being under 21. (Hr.'g Tr. 466:4–8 & 467:12–18.) Other scholars have reached similar conclusions, “that alcohol outlet density is associated with increased alcohol consumption and related harms, including medical harms, injuries, crime and violence; this convergent evidence comes both from studies that directly evaluated outlet density, or changes in outlet density...” (Hr.'g Tr. 452:19–24; see also, Campbell, C., Hahn, R., Elder, R., Brewer, R., Chattopadhyay, S., Fielding, J., Naimi, T., Toomey, T., Lawrence, B., & Middleton, J., “The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms,” *American Journal of Preventive Medicine*, 37 (6), pp. 556–69 (2009)).

The University of South Carolina (USC), with freshman residences just a few blocks from 600 Harden Street, opposes the permit and license on the grounds (among others) that bar density in Five Points is too high. Associate Vice President for Student Life Anna Edwards testified the university sought to reduce the number bars because it would benefit students and diminish “high risk” behavior in Five Points. (Hr.'g Tr. 388:1–13.) The university’s position in this matter is

supported by evidence collected by its Substance Abuse Prevention and Education Office. (Hr.'g Tr. 388:19–25.) USC requires students 23 years of age and younger to complete an online alcohol education program call AlcoholEDU, which has a 98 percent response rate. (Hr.'g Tr. 389:7–9.) First year students are surveyed before they come to campus and again 45 days after living at USC. (Hr.'g Tr. 398:6–24.) USC's Carolina Community Coalition receives a summary of the data as an annual Impact Report that provides USC-specific findings with comparisons to national data. (Hr.'g Tr. 389:2–25; 397:5–7.) Edwards is involved in collecting USC student data regarding high risk behavior. (Hr.'g Tr. 387:2–4; 388:18–23.) She explained USC uses the data to improve “strategic planning for better education and prevention of high risk behaviors and unintended consequences.” (Hr.'g Tr. 391:9–11.)

The USC 2016–2017 Impact Statement includes data based on responses from 5,433 USC students who completed all three AlcoholEDU for College surveys, with the answers to particular questions summarized. (See Int.'s Ex. 3 at 12.) This student population consists “primarily” of underage students. (Hr.'g Tr. 410:25–411:1.) In 2016–17, 25 percent of students assessed “reported drinking in a high-risk way,” most commonly pregaming and doing shots. (Int.'s Ex. 3, at 12, 19.) The two most frequently reported drinking-related consequences were a hangover and blacking out. (Int.'s Ex. 3 at 20.) Thirty-nine percent of students reported their most common drinking location to be bars or nightclubs. (Int.'s Ex. 3 at 17.) USC students engage in high risk drinking behaviors—including, pregaming, shots, high-alcohol content drinks, and chugging—at a higher rate than the national average. (Int.'s Ex. 3 at 19.) More USC freshman reported performing poorly on an assignment as a result of drinking than the national average. (Int.'s Ex. 3 at 20.) Of those students who drank in the prior two weeks, 13 percent reported being taken advantage of sexually; five percent said they took advantage of someone else. (Int.'s Ex. 3 at 21.) Summarizing the 2017–18 Impact Statement's findings at USC, Edwards explained the number of freshmen who reported drinking at a bar or nightclub in the prior two weeks had increased three percent to 42 percent. (Hr.'g Tr. 406:20–24.)

The university's opposition is consistent with testimony it provided in Roost where, although it did not file an official protest, it testified in opposition to the permit and license. Edwards published the university's protest its rationale in this case:

... Continuing to expand the number of establishments contributing to the [drinking] problem is counterproductive to these efforts [to find solutions to late night drinking]. USC invests significant financial and human resources in creating

education and counseling programs directed at curbing drinking among students. ... Excessive drinking poses a risk, not only to the students' physical and mental health, but also significantly impedes academic performance. While these issues are not unique to USC, our students are exposed to a higher density of bars surrounding campus than other colleges and universities across the country. ... Research from the National Institutes of Health tells us that, while our education efforts are important, one of the most effective ways to curb alcohol overconsumption is to limit its availability. Too often, bars in Five Points turn a blind eye to high-risk behaviors and have helped create an environment where drinking beyond one's limit is celebrated rather than discouraged. ...

(Hr.'g Tr. 409:14–410:22; see also Hr.'g Tr. 411:8–9 (university's concern is "availability" and "density").) Other indicators bolster USC's cause for concern for students who drink. The percentage of USC students who say they have blacked out has risen from 42 to 47 percent (Hr.'g Tr. 406:24–407:3.) and the number who have passed out has risen from 23 to 28 percent. (Hr.'g Tr. 407:4–8.) Of particular note is the fact that the national average for students drinking at bars or nightclubs is only 11 percent—30 points lower than USC's poll. (See Int. Ex. 3 at 17, 34.)

Considering the totality of the evidence presented, I find that re-issuance of a permit and license would contribute to the problem of underage drinking in Five Points. Moreover, I find that the density of alcohol-related establishments in Five Points (see Int. Ex. 6.), particularly in the 600 block of Harden Street, interferes with the peace and enjoyment of surrounding neighborhoods. The evidence supporting these conclusions is overwhelming and includes firsthand observations from longtime residents of neighborhoods surrounding Five Points and empirical data collected by USC and a criminology professor. The Court remains cognizant of testimony by Rooftop's managers claiming certain practices have been implemented to detect and exclude underage patrons (see Rooftop, 2018 WL at *5); however, the Court remains skeptical that faithful adherence to these policies can exclude false identification cards or other methods used by underaged patrons to evade detection by staff and police. Indeed, while Rooftop's owners sought to minimize the number of incidents during its temporary licensure, they identified at least two incidents at the location: an underaged patron ticketed by law enforcement and an assault on one of its bouncers. (Hr.'g Tr. 221:25–223:9; 302:10–303:3.) Moreover, their testimony is far outweighed by the witnesses and data demonstrating an ongoing and escalating problem with underage drinking and overconsumption in Five Points. For these reasons, I find re-issuance would contribute to the problem of underage drinking and interfere with the peace and enjoyment of local residents.

Law Enforcement Resources

Chief Skip Holbrook of Columbia Police Department (CPD) is responsible for allocating police resources for the City. (Hr.'g Tr. 351:17-21.) In preparation for this testimony, Chief Holbrook reviewed police statistics for the area and brought a police log. (Hr.'g Tr. 355:15-20.) The police chief was familiar with and testified about the 600 block of Harden Street generally and the Rooftop's location specifically, and the impact on City police forces. He testified about his familiarity with the location and the former bar there, the Attic. (See Hr.'g Tr. 354:9-12.) He categorized the Five Points bar clientele as predominately young adults and students. (Hr.'g Tr. 352:7-11.) Holbrook expressed concern about his force in Five Points, explaining: "Any time, whether it be Five Points or, you know, any area in the city, that has a high concentration of people at any given time requires extra attention and often times extra personnel to ensure public safety." (Hr.'g Tr. 352:18-25.) For CPD, Five Points is one of those areas. (Hr.'g Tr. 353:1-3.) Chief Holbrook described the row of bars in the 600 block as causing "more problems" than having a single bar (Hr.'g Tr. 359:4-7.) and agreed Rooftop's location is near others that have posed a consistent source for law enforcement problems stemming from large numbers of young people congregating, with a significant number in a state of public intoxication. (Hr.'g Tr. 359:8-18.) Chief Holbrook summarized:

We have seen, since I've been here and I think historically have seen, when we have areas of high concentrations of alcohol establishments, especially with young adults that are part of that clientele, that at times, and depending on the day of the week and the events going on, that it causes us to put significant resources and attention to that specific area or wherever it may be.

(Hr.'g Tr. 361:7-15.)

Holbrook took issue with the fact he was not consulted for completion of the SLED questionnaire during the Rooftop licensing review that sought information concerning problems at the location. (See Hr.'g Tr. 365:8-20.) The form questions asked whether law enforcement previously had problems with public intoxication at or near the proposed location (Hr.'g Tr. 356:6-11.), to which CPD would have answered affirmatively had Holbrook been made aware of the questionnaire because his department had indeed had problems with public intoxication at or near the proposed location. (Hr.'g Tr. 356:6-12.) The second question in the SLED form asked whether police have been summoned to the location on prior occasions; Holbrook's answer was "yes." (Hr.'g Tr. 356:13-16.) A third question asked if the location is near other locations that are a

constant source of law enforcement problems or a location where young people congregate and loiter; again, the police chief testified Rooftop is such a location. (Hr.'g Tr. 356: 17–21.) Had he been presented with these questions, Chief Holbrook would have answered affirmatively in response to each one. (Hr.'g Tr. 357:22– 358:2.)

I find that the proposed location is a matter of law enforcement concern on account of the crowds it attracts to Five Points and specifically the 600 block, the underaged and young adult clientele the location serves, and its contribution to overconsumption, crime, and disorderly conduct. I find further that this places law enforcement at greater risk and taxes limited City resources in maintaining order at and near the location. Notably, the Court finds that but-for a paperwork oversight, CPD would have returned responses to the SLED questionnaire confirming a history of intoxicated patrons and prior police presence at a location where young people congregate and loiter. This testimony weighs heavily against granting the permit and license.

Restaurant

Ruonala acknowledged efforts in recent months to boost food sales by creating an “image” around the sale of grilled cheese sandwiches and brunch. (See Hr.'g Tr. 176:22–177:18.) These “grillies” are displayed in what used to be Rooftop’s pizza warmer. (Hr.'g Tr. 178:14–17; 179:9.) Co-owner Stephen Bland conceded Rooftop’s food sales were “under ten percent,” but claims the enterprise’s delivery business, via Uber Eats, is now generating \$80 to \$100 in delivery sales per day. (Hr.'g Tr. 284:3–13; 286:6–8.) Rooftop advertises its food offerings with a sandwich board on the street. (Hr.'g Tr. 186:12–21.) These offerings have replaced Rooftop’s prior offerings of reheated pizza from Village Idiot, which was sold as recently as April. (Hr.'g Tr. 246:1–7; 248:7–13.) On Sunday, Rooftop opens for brunch from 11:30 am to 2:00 pm with some additional food offerings. (Hr.'g Tr. 181:22–182:13; 250:10–13.) Exactly when Rooftop began serving brunch is a matter of some dispute as Bland testified Brunch began in March, contrary to an affidavit he signed on April 27 indicating brunch service would start “Sunday this week.” (Hr.'g Tr. 306:15–307:13 (“It might have been the wrong date written. I’m not sure.”).) After relaunching its food offerings and opening for brunch, Bland claimed food sales are now 15 percent of Rooftop’s gross receipts. (Hr.'g Tr. 321:22–323:1; 324:9–18.) This testimony, purporting to establish Rooftop’s upward emphasis on food sales, is the latest iteration seeking to modify Bland’s deposition testimony claiming Rooftop’s food sales were just five (5) percent of gross receipts. (Int. Ex. 1 at

118; see also Hr.'g Tr. 321:24–322:4; but see Int. Ex. 2 (purporting to change deposition testimony on the errata sheet).)

In Roost, the Court found neither Bland nor Ruonala to be credible witnesses and found their testimony concerning their ownership and control of the business “unreliable.” Roost, 2018 WL at *3. The Court reaches the same conclusion here. Credibility notwithstanding, the upper bound of Rooftop’s food sales is just 15 percent, while the predominant emphasis of the business is the sale of alcohol, and first and foremost, liquor.

Ownership and Control of Rooftop

Rooftop’s primary investor, Brenda Wells, is the mother of Daniel Wells, the former owner of the Pour House, which operated in the 800 block of Harden Street before surrendering its license in response to a CPD nuisance action. See also Roost, 2018 WL at *2–4. In Roost, the Court found neither Bland nor Rounala to offer a credible explanation concerning the organization and financing of the business and found the “[t]he only plausible explanation is that Daniel Wells is still controlling the business and has simply reorganized it and transferred his majority ownership interest into an LLC controlled by his mother.” Id. at 5. Although the percentages have changed slightly, many of the operative facts supporting that conclusion in Roost are also present here.

Rooftop’s owners are 4TBs, LLC (owned by Bland), Mongo, LLC (owned by Rounala), and Schatze Capital (owned by Brenda Wells). (Hr.'g Tr. 225:20; 226:20–227:5.) Similar to the ownership arrangement in Roost, Brenda Wells owns the majority interest in Rooftop (60 percent equity based on a \$54,500 investment), while Bland and Rounala hold minority interests (based on \$10,000 and \$7,000 investments, respectively). (Hr.'g Tr. 239:15–20; 241:8–14.) According to Rounala, the business approach for Rooftop is “the same approach” previously taken with Roost. (See Hr.'g Tr. 242:2–13.) Unlike Roost, however, Rooftop was not purchased from Daniel Wells, but from an individual named Rob Mara for \$85,000 in a seller-financed purchase. (Hr.'g Tr. 279:19–22 & 311:5–312:9.) While Rounala disclaimed any connection between the money Daniel Wells owed his mother from the Pour House enterprise and her majority interest in Rooftop, Ruonala nevertheless offered explanations suggesting the opposite, stating that he told Brenda Wells “we would be able to pay her quicker if we had two revenue streams.” (See Hr.'g Tr. 239:21–241:1.) Likewise, Bland attempted to retract his deposition testimony describing Brenda Wells involvement in the Roost and Rooftop purchases as structured to recoup Well’s investment in Daniel Well’s establishment, Pour House. (See Hr.'g Tr. 313:7–316:17 (“... Well, your question

says that, but when I was responding, I was referring to The Roost. The Rooftop was completely owner-financed and separate. ..."); 318:5–319:7 (same).) According to Bland's deposition, Brenda Wells received equity in Roost and Rooftop through a deal negotiated by her son to satisfy his debt of \$300,000. (Hr.'g Tr. 317:5–318:10; 319:14–321:23.) Bland's contrary explanation during the hearing was not credible.

As was the case in Roost, the evidence indicates Daniel Wells is an undisclosed principal in Rooftop. Cf. Roost, 2018 WL at *3–4. Prior to the Roost and Rooftop enterprises, Bland and Ruonala had no prior relationship except through Wells. While Bland offered conflicting explanations of his interaction and negotiation with Brenda Wells, he conceded her interest in Rooftop flows from the same debt her son incurred in conjunction with the Pour House enterprise. Thus, with respect to the ownership arrangement, I find the Roost and Rooftop to be part of the same, still murky agreement between Daniel Wells, Bland and Rounala. Bland's explanation that Rooftop's second stream of revenue would help Brenda Wells recoup her investment bolsters this conclusion. Indeed, there is still no credible explanation for Brenda Wells involvement in this enterprise other than as an effort to conceal Daniel Wells involvement by transferring his ownership interest in Pour House to his mother and including her in Rooftop so he (Wells) could more quickly recoup his interest.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court makes the following conclusions as a matter of law:

Jurisdiction and Legal Standards

Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to South Carolina Code §§ 61-2-260 (2009), 1-23-310 et seq. (Supp. 2017), 61-4-525 (2009), and 61-6-1825 (2009). The standard of proof in an administrative proceeding such as this is a preponderance of the evidence, unless otherwise specified. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988); see also S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2017). "A 'preponderance of the evidence' is evidence which convinces as to its truth." Gorecki v. Gorecki, 387 S.C. 626, 633, 693 S.E.2d 419, 422 (Ct. App. 2010) (citation omitted). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the

best position to judge the witness's demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

Alcohol Licenses and Permits

South Carolina Code § 61-2-260 (2009) grants the Administrative Law Court the responsibility to determine contested case matters governing alcoholic beverages, including beer, wine and liquor. The factual determination of whether an application is granted or denied is usually the sole prerogative of the executive agency charged with rendering that decision. Palmer v. S.C. ABC Comm'n, 282 S.C. 246, 317 S.E.2d 476 (Ct. App. 1984). As the trier of fact, an administrative law judge is authorized to determine the fitness of an applicant for alcohol permits and licenses using broad, but not unbridled, discretion. Byers v. S.C. ABC Comm'n, 281 S.C. 566, 316 S.E.2d 705 (Ct. App. 1984). The requirements for a beer and wine permit are set forth in South Carolina Code § 61-4-520 (2009). The requirements for a liquor by the drink license are contained in South Carolina Code § 61-6-1820 (2009 and Supp. 2017).

Suitability of Location

For the issuance of a beer and wine permit, Section 61-4-520 includes the criteria that the location be a proper and suitable one:

- (5) The location of the proposed place of business of the applicant is in the opinion of the department a proper one.
- (6) The department may consider, among other factors, as indications of unsuitable location, the proximity to residences, schools, playgrounds, and churches. This item does not apply to locations licensed before April 21, 1986.

S.C. Code Ann. § 61-4-520(5)–(6) (2009). Case law provides that a liquor license may be denied if the location is not suitable. See generally Schudel v. S.C. Alcoholic Beverage Control Comm'n, 276 S.C. 138, 276 S.E.2d 308 (1981). “Proper location” is not statutorily defined, but broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location for the requested permit and license. See generally Fast Stops, Inc. v. Ingram, 276 S.C. 593, 281 S.E.2d 118 (1981). In determining whether a location is suitable, it is proper to consider any evidence that shows adverse circumstances of location. Kearney v. Allen, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985); see also Zodiac Private Club v. S.C. Dep’t Rev., 08-ALJ-17-0054-CC, 2008 WL 2300384, at *3 (S.C. Admin. Law Ct. 2008) (“it is proper for this tribunal to consider any evidence that shows adverse circumstances of location.” (collecting cases)). This

determination “involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact on the community wherein it is to be situated.” Kearney, 287 S.C. at 326, 338 S.E.2d at 33. A liquor license or permit may be refused on the grounds that the “location of the establishment would adversely affect the public interest, that the nature of the neighborhood and . . . premises is such that the establishment would be detrimental to the welfare . . . of the inhabitants, or . . . the manner of conducting the establishment would not be conducive to the general welfare of the community.” 48 C.J.S. Intoxicating Liquors § 196 (Sept. 2016 update). Factors courts have considered in this analysis include geography, traffic risks, nature of the business vis-à-vis the neighborhood, community impact, existing alcohol establishments, and the strain on law enforcement. See, e.g., Moore v. S.C. ABC Comm’n, 308 S.C. 160, 162, 417 S.E.2d 555, 557 (1992); Kearney, 287 S.C. at 326, 338 S.E.2d at 337; Schudel, 276 S.C. at 141–42, 276 S.E.2d at 309–10; Fast Stops, 276 S.C. at 596, 281 S.E.2d at 120; Palmer, 282 S.C. at 249, 317 S.E.2d at 478; Barfly Enter., LLC v. S.C. Dep’t Rev., 13-ALJ-17-0452-CC, 2013 WL 6620406 at *5 (S.C. Admin. Law Ct. 2013); Zodiac, 2008 WL at *3–4. Thus, the decision as to whether the proposed location is improper for a permit or license must be made on a case-by-case basis resting upon the peculiar facts of each application.

After carefully weighing the evidence and applying the law as discussed above, the Court finds the location unsuitable for the business Petitioner intends to operate for reasons that follow.

Underage Students

Large crowds of underage USC students drinking in Five Points bars weighs heavily against the proposed location for re-permitting and licensure. See Roost, 2018 WL at *8. This is of particular concern where Petitioner’s business model entails attracting these crowds of students and young people, many of which line the public sidewalk waiting to enter the establishment. Thus, this business contributes to an already overcrowded area in Five Points with a high concentration of alcohol establishments in the immediate vicinity that also attract crowds of students and lines of people waiting to enter. Proximity to a place where young people congregate and loiter has been and continues to be a valid consideration demonstrating a particular location is unsuitable for alcohol sales. Id. (citing Palmer, 282 S.C. at 250, 317 S.E.2d at 478). Here, the evidence demonstrates that individuals in these crowds routinely become intoxicated and engage in disorderly and illegal conduct, which requires law enforcement to respond.

These concerns are heightened further still by USC's position in this litigation. The university opposes re-issuance of the permit or license out of concern for the health and safety of its students. These are not abstract concerns, but ones supported by empirical data collected broadly among underaged students. The Court finds there is an underaged drinking problem at USC traceable in large part to the Five Points entertainment district. Given the weight of this evidence presented, re-issuing a permit or license to Rooftop at this location will exacerbate an ongoing problem.

Law Enforcement Resources

In determining if a location is suitable for an alcohol license or permit, consideration must be given to the impact the issuance of the permit or license will have on law enforcement. Fowler v. Lewis, 260 S.C. 54, 194 S.E.2d 191 (1973); Roche v. S.C. Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975). Evidence that the granting of a permit will place a strain upon police to adequately protect the community must be weighed. Moore, 308 S.C. at 162, 417 S.E.2d at 557. Denial is appropriate where the public areas surrounding the proposed location have been the source of constant law enforcement problems or significant problems with public intoxication. Roche, 263 S.C. at 451, 211 S.E.2d at 243. Another pertinent factor is whether police have been summoned to the scene on prior occasions when licensed to another party. Schudel, 276 S.C. at 141-42, 276 S.E.2d at 309-10. It is relevant whether the location is near other locations that have either been a constant source of law enforcement problems or are locations where young people congregate and loiter. Palmer, 282 S.C. at 250, 317 S.E.2d at 478; see also Barfly, 2013 WL at *5 (citing Schudel, and Palmer, *supra*).

The density of bars in the 600 block of Harden is particularly relevant. The evidence is overwhelming that Rooftop's operation at this location will contribute to the strain placed on law enforcement by attracting crowds of young people disposed to overconsume, engage in disorderly conduct, and fall victim to criminals looking to prey on intoxicated patrons. The location continues to pose a concern for City police and the Court credits Chief Holbrook's testimony that the location is one that poses concerns to him and his force. This factor also weighs heavily against granting a permit or license.

Nuisance

A nuisance is a substantial and unreasonable interference with another individual's use and enjoyment of his property. Where a business is operated in an unlawful or unreasonable manner

so as to produce material injury or great annoyance to others or unreasonably interferes with lawful use and enjoyment of their property, it will constitute nuisance. O'Cain v. O'Cain, 322 S.C. 551, 560–61, 473 S.E.2d 460, 466 (Ct. App. 1996).

South Carolina Code § 61-4-580(5) (Supp. 2017) prohibits a permittee from knowingly allowing “any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this state” to occur on the licensed premises. The term “licensed premises” includes not only the interior of the licensed business but also the areas immediately adjacent to the entrance and exit, as well as the parking areas. See 23 S.C. Code Ann. Regs. 7-700 (“Licensed premises shall include those areas normally used by the permittee or licensee to conduct his business and shall include but are not limited to the following: selling areas, storage areas, food preparation areas and parking areas.”). “[O]ne who holds a license to sell alcoholic beverages is responsible for supervising the conduct of his clientele, both within the licensed premises and in the immediate vicinity, in order to ensure that his operations do not create a nuisance for the surrounding community.” Dayaram Krupa, LLC v. S.C. Dept. of Revenue, 06-ALJ-17-0929-CC, 2007 WL 1219343 (S.C. Admin. Law Ct., March 19, 2007) (citing § 61-4-580(5) and A.J.C. Enters., Inc. v. Pastore, 473 A.2d 269, 275 (R.I. 1984)). A liquor licensee “assumes an obligation to supervise the conduct of its clientele so as to preclude the creation of conditions within the surrounding neighborhood which would amount to a nuisance to those who reside in the area.” A.J.C. Enters., 473 A.2d at 275. In the event that a licensed location becomes a public nuisance to the surrounding community, the Department may revoke or refuse renewal of the license for the location. See S.C. Code Ann. § 61-4-580(5) (Supp. 2017).

I conclude the location is a nuisance to the community. The record in this case replete with evidence from neighbors, the university, a criminologist, and law enforcement describing a bacchanal atmosphere in Five Points that flows into the adjacent neighborhoods. I find further that even if the Court credited all of Petitioner’s claims concerning their business operations, Rooftop would still pose a nuisance to local residents because its primary business enterprise is the sale of alcohol, particularly liquor, to students and young adults. Petitioner’s cannot control unruly patrons once they leave Rooftop, but the consequences of plying them with inexpensive alcohol is felt by the surrounding community and is a valid consideration here weighing against Petitioner.

Suitability of Location Previously Licensed

While the location has been used by other businesses with alcohol licenses, the purported suitability of the location in prior years fails to outweigh other considerations. Precedent recognizes the possibility that a location's suitability can change over time and courts can consider those new circumstances. See, e.g., *Taylor v. Lewis*, 261 S.C. 168, 171-72, 198 S.E.2d 801, 802 (1973) ("... The record is devoid of any showing that the location is any less suitable for the sale of beer now than during the prior five (5) year period."). Thus, to the extent the propriety of the location's former permit holders and licensees carry any weight, they are overwhelmed by the facts on the ground today, which demonstrate the location is no longer suitable for reasons explained.

* * *

In sum, after weighing the evidence and applying the law, I hold the location is unsuitable for re-issuance of a beer and wine permit or liquor by the drink license.

Undisclosed Principals

Before an alcohol license or permit may be issued, this Court must determine whether the applicants meet all of the statutory requirements for licensure. In order to do that, the identity of all of an applicant's principals must be disclosed.

Licenses and permits may be issued only to the person who is the owner of the business seeking the permit or license.... If application is made for a license or permit under this title by a person other than an individual, all principals are deemed to be the applicant.... The department may not issue a license or permit to any person unless the person and all principals are of good moral character.

S.C. Code Ann. § 61-2-100 (2009). Furthermore, an applicant's failure to disclose all of its principals is a misstatement or concealment of fact and a ground for denial of an alcohol license. S.C. Code Ann. § 61-2-100(J) (2009).

I find that Daniel Wells involvement in the ownership and control of Rooftop has been undisclosed and misrepresented such that the application for the permit and license must be denied.

Restaurant

S.C. Code Ann. § 61-6-1820(1) (2009) provides that an applicant may receive a liquor by the drink license upon the finding that "[t]he applicant is a bona fide nonprofit organization or the applicant conducts a business bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging." This requirement mirrors the language of the mandate of our state's constitution. S.C. Const., art. VIII-A § 1.

Section 61-6-1610(I)(3) of the South Carolina Code defines “primarily” to mean that “the serving of the meals by a business establishment is a regular source of business to the licensed establishment, that meals are served upon the demand of guests and patrons during the normal mealtimes that occur when the licensed business establishment is open to the public, and that an adequate supply of food is present on the licensed premises to meet the demand.” A “meal” is defined as “prepared foods available to guests...during the normal mealtimes that occur when the licensed business establishment is open to the public. Sandwiches, boiled eggs, sausages, and other snacks prepared off the licensed premises but sold there are not a meal.” S.C. Code Ann. § 61-6-1610 (I)(2) (Supp. 2012). Section 61-6-20(2) defines “bona fide engaged primarily and substantially in the preparation and serving of meals” to mean:

A business that provides facilities for seating not fewer than forty persons simultaneously at tables for the service of meals and that:

- (a) is equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals upon customer request at normal meal times;
- (b) has readily available to its guests and patrons either menus with the listings of various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and
- (c) prepares for service to customers, upon the demand of the customer, hot meals at least once each day the business establishment chooses to be open.

A. Any business establishment that applies for or holds a sale and consumption license pursuant to Section 61-6-1610 of the Code and is not engaged in the furnishing of lodging, must:

1. Be equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals; and
2. Have readily available to its guests and patrons either “menus” with the listings of the various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and
3. Prepare for service to customers hot meals at least once each day the business establishment chooses to be open.
4. If such establishment advertises, a substantial portion of its advertising must be devoted to its food services.

B. The following definitions shall be used in conjunction with Section 61-6-1610 of the Code and this Regulation:

1. “Meal” means an assortment of various prepared foods which shall be available to guests on the licensed premises during the normal “mealtimes” which occur when the licensed business establishment is open to the public. Sandwiches, boiled

eggs, sausages and other snacks prepared off the licensed premises but sold thereon, shall not constitute a meal.

2. "Kitchen" means a separate and distinct area of the business establishment that is used solely for the preparation, serving and disposal of solid foods that make up meals. Such area must be adequately equipped for the cooking and serving of solid foods, and the storage of same, and must include at least twenty-one cubic feet of refrigerated space for food and a stove.

3. "Primarily" means that the serving of meals by a business establishment constitutes a regular and substantial source of business to the licensed establishment and that meals shall be served upon the demand of guests and patrons during the normal "mealtimes" which occur when the licensed business establishment is open to the public and that an adequate supply of food is present on the licensed premises to meet such demand.

S.C. Code Ann. Regs. 7-401. South Carolina Regulation 7-401.3 provides that an establishment holding a restaurant liquor by the drink license must have menus readily available to its patrons or posted in a conspicuous place on the premises and must prepare and serve hot meals at least once each business day the establishment is open. South Carolina Code § 61-6-1610(I)(1) (Supp. 2017) defines "kitchen" as a separate and distinct area used solely "for the preparation, serving, and disposal of solid foods that make up meals." The kitchen must be adequately equipped for the cooking, serving and storage of solid foods and must include at least 21 cubic feet of refrigerated space for food, and a stove. Id. The statutes set forth above provide detailed definitions and requirements concerning what constitutes "bona fide engaged primarily and substantially in the preparation and serving of meals."

Petitioner presented testimony that since its application was submitted, it has attempted to meet the statutory requirements by offering grilled cheese sandwiches and serving brunch on Sunday. Notwithstanding these food offerings, the overwhelming emphasis of its business is the sale of liquor and beer. Petitioner argues it satisfies the primarily-and-substantially requirement by meeting the technical requirements of the statute's definitions by maintaining certain physical accouterments, like having food on hand, having an area set aside for a "kitchen," having seating for 40 people at tables, etc. I must conclude Petitioner fails to meet the requirements of the statute. The proposed location does not have a "stove" aside from a "convection oven" (i.e., microwave) and "grill." As Rounala explained, the location has the basic utilizations of a stove[,] not an actual stove. (See Hr.'g Tr. 184:7-9.) Notwithstanding its Sunday brunch, Rooftop does not have "various meal[] offer[ings]" for guests; it has one offering: grilled cheese sandwiches. See S.C.

Code Ann. § 61-6-1610(2)(b); see also S.C. Reg. 7-401.3 (defining “meal” as “an assortment of various foods...”). The significance of the mandate to offer “various” (i.e., more than one) meals is underscored by § 61-6-1610’s requirement of a “bona fide” business engaged in preparing and serving meals, meaning a good faith, sincere, or genuine effort. See BONA FIDE, Black’s Law Dictionary (10th ed. 2014). Based on my review of the evidence, Petitioner’s kitchen is not outfitted to meet statutory requirements, nor is that kitchen being used to prepare various meal offerings to guests.

Intervenors argue Petitioner cannot be found to be a restaurant because the sale of food contributes, at most, 15 percent of revenue to the business. In Roost, this Court cited Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Comm’n, 273 S.C. 782, 260 S.E.2d 452 (1979) for the proposition that where only 10 percent of a business’ gross revenue was attributable to food sales, the business was not primarily and substantially engaged in the preparation and service of meals. See Roost, 2018 WL at *12. In Roost, this Court rejected the petitioner’s argument that the statutory definitions of primarily and substantially supplanted Brunswick’s analysis, explaining:

While it is true that the language and code section number of the definition has changed since Brunswick was decided, a specific definition of “bona fide engaged primarily and substantially in the preparation and serving of meals” was codified in statute and considered by the Brunswick court. The court held that despite a specific definition of “bona fide engaged primarily and substantially in the preparation and serving of meals” (found in Code Section 61-6-20(2) at that time) a business must not only meet the technical requirements outlined in the statute, *but must also actually be “primarily” engaged in the preparation and serving of meals.*

Id.

Roost, 2018 WL at *12 (emphasis added). Put differently, Brunswick is best read to explain that the primarily-and-substantially requirement is a qualitative and quantitative one. Thus, a liquor by the drink establishment must be in primarily the business of serving meals and substantially engaged in doing so. The statutory and regulatory definitions identify indicia of businesses primarily in the business of selling meal (i.e., kitchen, stove, refrigeration, etc.), evidence that is particularly useful to assess an application from a new enterprise with no business history. That is not the case here. Moreover, meeting statutory criteria that evidences restaurant activity does not foreclose a finding that the enterprise is not, in fact, in the business of selling meals and gross revenue is a persuasive indicator of the businesses focus, as it was in Brunswick.

Considering the totality of the record, including the statutory criteria, Petitioner’s sales records, and business practices, I hold Petitioner is not primarily and substantially in the business

of preparing and selling meals. As an initial matter, Petitioner's food sales over the two months for which the Court has data, averages 12 percent, not 15 percent of gross receipts. (See Hr.'g Tr. 251:21-25.) However, even crediting Petitioner 15 percent food sales based on its single months' data, the Court still finds that the overwhelming bulk of the enterprise is dedicated to the sale of alcohol, specifically liquor by the drink, not meals. As noted, the location does not have a stove and Rounala expressed apprehension about the cost of installing a stove and hood system given the uncertainty over the status of this license. (See Hr.'g Tr. 184:16-22.) A restaurant would not likely share this apprehension if truly dedicated to the preparation and sale of meals. Instead, Petitioner's emphasis on checking certain statutory boxes, while laudable, reflects an overly formalistic approach and fundamental misunderstanding of the primarily-and-substantially requirement that ignores evidence touching on whether the applicant is *actually* preparing and selling meals and predominantly dedicated to that business with liquor by the drink sales incidental to that pursuit.

Based on the evidence before the Court, I hold that Petitioner is not a business that is bona fide engaged primarily and substantially in the preparation and serving of meals.

* * *

After carefully weighing the evidence and applying the law as discussed above, the Court finds the location unsuitable for the permit and license sought by Petitioner. Granting a permit and license for a location dense with other establishments selling alcohol to a clientele of young adults and USC students similar to Petitioner will exacerbate an underaged drinking problem for USC students, pose a nuisance to the community, and burden local law enforcement. All community stakeholders to appear before the Court oppose the permit and license requested. Further, the application should be denied because of a material misstatement and concealment of Daniel Wells as a principal of the business. Finally, Petitioner is not primarily and substantially engaged in the preparation and serving of meals and therefore does not qualify for a liquor by the drink license.

For all of these reasons, Petitioner's application for on-premises beer and wine permit and liquor by the drink license should be denied.

ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the application for a beer and wine permit, and restaurant liquor by the drink license by Rooftop Bar, LLC, d/b/a Rooftop Bar & Lounge at 638 Harden Street, Columbia, South Carolina is **DENIED**.

AND IT IS SO ORDERED.

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

_____, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rooftop Bar, LLC, d/b/a Rooftop Bar and
Lounge,

C/A No.: 18-AJL-17-0002-CC

Petitioner,

vs.

South Carolina Department Revenue,

CERTIFICATE OF SERVICE

Respondent,

and

Thomas R. Gottshall and April C. Lucas,

Intervenors.

I, Holli Miller, paralegal to the attorney for Richard A. Harpootlian representing Intervenors Tom Gottshall and April Lucas, with offices at 1410 Laurel Street, Post Office Box 1090, Columbia, South Carolina 29202, certify that on September 17, 2018, served by having the same placed in the U.S. Mail, first class postage affixed thereto, the following document to the below mentioned persons:

Document: Intervenors' Motion to Alter or Amend the Final Order

Served: Michael H. Montgomery, Esquire
Montgomery Willard, LLC
Post Office Box 11886
Columbia, South Carolina 29211-1186

Elisabeth Shields, Esquire
Patrick A. McCabe, Esquire
S.C. Department of Revenue
300 A Outlet Pointe Boulevard
Columbia, South Carolina 29201


Holli Miller
FILED
SEP 17 2018
SC ADMIN LAW COURT

Rooftop Bar, LLC, d/b/a
Rooftop Bar & Lounge,

Petitioners,

v.

SC DOR & Thomas R Gottshall &
April C. Lucas,

Respondents.

* * * * *

Monday, May 14, 2018
10:17 a.m. - 6:39 p.m.
AND
Tuesday, May 15, 2018
9:31 a.m. - 3:22 p.m.

The hearing before the Honorable Deborah Brooks Durden was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 14th and 15th day of May, 2018 before Nadine A. Garrett, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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Attorney for Intervenors
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April C. Lucas

Also Present:

Marcus D. Antley, III, Esquire
Thomas R. Gottshall, Esquire
Stephen Bland
Adam Ruonala
Christy Bradley
Benjamin Jenkins
Hannah Bradham
April Lucas
Anthony Perricelli
Beacham Brooker
Holly Haden
Betsey Goodale
Felicia Finney
Michael Drennan
Tammy Young
Robert Gergel
Jeff Wilkerson
Ida Dixon
Olufemi Olulenu
William Holbrook
William Lamb
Anna Edwards
Leslie Wiser, Jr.



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EXHIBITS

(Respondent's Exhibit Number 1 was marked prior to the hearing and admitted as follows:)

Petitioner's Exhibit Number 1	93
(ASAP - SLED Investigation Report for ABL Application)	
Petitioner's Exhibit Number 2	118
(General Ledger - January-April 2018)	
Petitioner's Exhibit Number 3	126
(Rooftop Bar, LLC - Food Sales Percentage)	
Petitioner's Exhibit Number 4	132
(Food Cost Listing for March and April 2018)	



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Petitioner's Exhibit Number 5	177,210
(Photographs Describing Establishment)	
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Intervenors' Exhibit Number 1	310
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(USC - Time For Change - An Evidence-Based Approach to Crime Prevention and Environmental Change)	
Intervenors' Exhibit Number 6	489
(Map Labeled 42 On Premises ABL Outlets in Five Points: 23 Bars/18 All Night)	
Intervenors' Exhibit Number 7	499
(Map Labeled Urban & Historic Preservation Districts)	

(All Exhibits were retained by The Court.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.



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1 (Respondent's Exhibit Number 1 was marked prior to
2 the hearing.)

3 CALL TO ORDER:

4 **THE COURT:** All right. We're here this morning for
5 a hearing in the matter of Rooftop Bar, LLC,
6 doing business as Rooftop Bar & Lounge,
7 Petitioner, versus the South Carolina
8 Department of Revenue, Respondent, and Thomas
9 R. Gottshall and April C. Lucas, Intervenors.
10 It's Docket Number 18-ALJ-17-0002.

11 PRELIMINARY MATTERS:

12 **THE COURT:** We have, I know, some preliminary
13 matters to take up before we begin. We've got
14 Mr. Montgomery. How are you?

15 **MR. MONTGOMERY:** Good, Your Honor. How are you this
16 morning?

17 **THE COURT:** Mr. McCabe.

18 **MR. MCCABE:** Good morning, Your Honor.

19 **THE COURT:** Mr. Harpootlian.

20 **MR. HARPOOTLIAN:** Good morning, Your Honor.

21 **THE COURT:** Do we have Walter Param (phonetic),
22 Protestant?

23 **MR. HARPOOTLIAN:** Your Honor, Anna Edwards will
24 appear.

25 **THE COURT:** Okay. I don't have Anna Edwards. I



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1 have Walter Param and James McDaniel, III. I'm
2 sorry, James N. Daniel.

3 **MR. HARPOOTLIAN:** Mr. Daniel is here.

4 **THE COURT:** Mr. Daniel is here, Mr. Param is not?
5 Okay.

6 **MR. GOTTSHALL:** Your Honor, I might say, we have
7 pared down those people who are neighbors and
8 members of the community to consolidate. The
9 advice from The Court suggests that, so.

10 **THE COURT:** Yeah. I usually do ask that the
11 protestants speak -- you know, select a
12 speaker. But once somebody is a protestant,
13 they have signed something saying that they're
14 going to appear for the hearing. So, it would
15 be best to hear from them.

16 **MR. GOTTSHALL:** Anna Edwards will speak on behalf of
17 the University of South Carolina.

18 **THE COURT:** Okay.

19 **MR. HARPOOTLIAN:** She's with USC.

20 **MR. GOTTSHALL:** She's with USC. And ---

21 **MR. HARPOOTLIAN:** That's the University of South
22 Carolina, Your Honor.

23 **THE COURT:** Okay.

24 **MR. HARPOOTLIAN:** And Anna Edwards will speak for
25 the University of South Carolina.



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1 **MR. GOTTSBALL:** Wes Hicklin was the person who
2 signed the protest for the University. Anna
3 Edwards is the spokesperson for that.

4 **THE COURT:** All right.

5 **MR. HARPOOTLIAN:** Thank you, Your Honor.

6 **THE COURT:** Anybody else in the courtroom that needs
7 -- everybody's witnesses and anybody else I
8 need to know who's here? I've got -- I think
9 I have a 403, Holly Hudden.

10 **MS. HADEN:** Haden. Yes, ma'am.

11 **THE COURT:** Haden. I'm sorry. Nice to have you
12 here. All right. So, we have some motions to
13 quash subpoenas. All three attorneys had a
14 chance to review Mr. Montgomery's motions? Mr.
15 Harpootlian, did you want to speak to those?

16 **MR. HARPOOTLIAN:** Yes, Your Honor. I've reviewed
17 them.

18 **THE COURT:** Go ahead.

19 **MR. HARPOOTLIAN:** Well, I mean, I think we may have
20 resolved one of them anyway, which was Mr. ---

21 **MR. MONTGOMERY:** Perricelli.

22 **MR. HARPOOTLIAN:** --- Perricelli. He is obtaining
23 some additional documents. And ---

24 **THE COURT:** Now, who is Mr. Perricelli. Is he the
25 accountant?



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1 MR. HARPOOTLIAN: He's the accountant for -- yes,
2 ma'am.

3 MR. MONTGOMERY: Yes, ma'am.

4 THE COURT: Okay.

5 MR. HARPOOTLIAN: So, Mr. Montgomery, do you need
6 guidance from The Court on that or ...

7 MR. MONTGOMERY: Your Honor, I -- as we indicated,
8 we have no problem providing the materials for
9 Rooftop requested under that subpoena. Our
10 motion to quash was primarily based on two
11 factors. One, our view is that anything
12 related to The Roost is irrelevant. Secondly,
13 it's an improper subpoena because, if the
14 extent is or the argument is that the members
15 of the parties related, then the proper way to
16 obtain that information is through a request of
17 production. And so, the subpoena is not
18 appropriate. Additionally, those are not Mr.
19 Perricelli's documents. They are, in fact, my
20 client's documents. So, our other grounds,
21 although, as we've indicated to Mr.
22 Harpootlian, we have no problem producing the
23 Rooftop documents, are that, again, the proper
24 means of obtaining those documents would have
25 been through a request to produce under Rule



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1 34, as opposed to a subpoena under Rule 45,
2 which is designed specifically to obtain
3 documents or information from a non-party, not
4 from a party.

5 So, our position is pretty simple. To the
6 extent that they are relevant and they relate
7 to the Rooftop, we're willing to provide them,
8 because we think they're valuable to our case.
9 And we were going to present information from
10 Mr. Perricelli anyway. To the extent they're
11 from The Roost, it's an improper subpoena,
12 because they're not a party. But more
13 importantly, it's not relevant. And as we said
14 in our memorandum, it's just a fishing
15 expedition, in our view, not designed to
16 produce information that is otherwise
17 admissible or improperly -- or would be
18 properly admissible through discovery under
19 Rule 34, but particularly not appropriate under
20 Rule 45.

21 **THE COURT:** All right. So, you are producing the
22 documents related to The Roost, but ---

23 **MR. MONTGOMERY:** The Rooftop.

24 **THE COURT:** I mean, to the Rooftop, but not to The
25 Roost.



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1 **MR. HARPOOTLIAN:** At this time, Your Honor, that's
2 fine with us.

3 **THE COURT:** And you're okay with that. Okay. So --
4 -

5 **MR. MONTGOMERY:** Sounds like that one's resolved,
6 Your Honor.

7 **THE COURT:** Good.

8 **MR. HARPOOTLIAN:** And, Your Honor, with the caveat
9 that -- I can't pronounce his last name. We
10 call him Tony between us. He's gone back to
11 his office to get additional documents he did
12 not bring with him today. He'll be back here
13 in about 20 minutes.

14 **THE COURT:** Okay.

15 **MR. HARPOOTLIAN:** So, given that he produces the
16 appropriate documents that show -- that counts
17 and those sorts of things, we have no objection
18 going this way.

19 **THE COURT:** All right. So ---

20 **MR. MCCABE:** Your Honor, if I may? There were two
21 subpoenas that the Department would like to
22 address. First, there were subpoenas issued
23 for a agent of the Department of Revenue and
24 also for a SLED agent. We would just object
25 that the service was not conducted properly.



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1 Do not believe that Mr. Montgomery has served
2 the South Carolina Attorney General as required
3 by the statute.

4 **THE COURT:** On the motion to quash wasn't served
5 properly?

6 **MR. MCCABE:** No. The motion itself that was just
7 served.

8 **MR. MONTGOMERY:** You got subpoenas, I believe.

9 **MR. MCCABE:** The subpoenas.

10 **THE COURT:** The subpoenas were not served?

11 **MR. MCCABE:** Correctly. That withstanding ---

12 **THE COURT:** Okay.

13 **MR. MCCABE:** --- we have those individuals are
14 prepared to testify.

15 **THE COURT:** Okay. So, the bottom line is that you
16 are providing the information requested in the
17 -- information requested in the subpoenas and
18 the witnesses are being provided? Is that
19 where we are then?

20 **MR. MCCABE:** Well, there's one other issue, Your
21 Honor.

22 **MR. MONTGOMERY:** Your Honor, on that one, I would
23 just say that we issued the subpoenas to ensure
24 the -- the intent is the folks they indicated
25 were going to come anyway, so ---



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1 **THE COURT:** Okay. So, we're talking about different
2 subpoenas now ---

3 **MR. MONTGOMERY:** Those subpoenas are fine. We don't
4 have any problem. Mr. McCabe, I think, is just
5 trying to protect the record as far as his
6 position as to the proper way those subpoenas
7 should be served.

8 **THE COURT:** Okay. I am so confused, because I
9 thought we were talking about your motions to
10 quash Mr. Harpootlian's subpoenas. Are we now
11 talking about subpoenas that you issued?

12 **MR. MCCABE:** That is correct, Your Honor.

13 **THE COURT:** Okay.

14 **MR. MCCABE:** That is correct. I'm sorry. I thought
15 we had finished that first one.

16 **THE COURT:** Let's -- okay.

17 **MR. MCCABE:** We can come back to it. That's fine.

18 **THE COURT:** Okay. So, no -- let's -- while we're
19 here, let's ---

20 **MR. MCCABE:** All right.

21 **THE COURT:** So, the subpoenas ---

22 **MR. MCCABE:** Under Rule 4(d), when you -- when you
23 service upon an officer or agent of the state,
24 the Attorney General is also to be served.
25 That did not occur. But both the individuals



1 that were subpoenaed are going to testify.

2 **THE COURT:** Okay. So, you're just objecting because
3 the Attorney General wasn't served?

4 **MR. MCCABE:** Correct.

5 **THE COURT:** Okay. All right. So, let's go back to
6 Mr. Montgomery's motions to quash. Because I
7 think there were basically three ---

8 **MR. MONTGOMERY:** There were three. Your Honor, my
9 understanding is we made a motion to quash the
10 subpoena to the City of Columbia. My
11 understanding is the City of Columbia already
12 complied with that subpoena.

13 **MR. HARPOOTLIAN:** That's correct, Your Honor.

14 **MR. MONTGOMERY:** So, I don't know that The Court's
15 quashing it will do any good at this point.

16 **THE COURT:** All right.

17 **MR. MONTGOMERY:** And the third motion to quash, I
18 think is the one Mr. McCabe wanted to also be
19 involved with. And that is a request for tax
20 records from the Department of Revenue as it
21 related to both Rooftop Bar, LLC and The Roost.
22 And our bases there were a number. Primarily,
23 again, the Department of Revenue is a party.
24 And so, the proper way to get documents from
25 the Department of Revenue is through a request



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1 for production under Rule 34. Again, Rule 45
2 is not the appropriate way to get documents
3 from a party. Secondly, Your Honor, there are
4 some statutory protections for some of those
5 documents that need to be addressed. And so --
6 and finally, again, we believe anything as it
7 relates to Five Points Roost is irrelevant and
8 not appropriately before The Court in this
9 matter. So, I'll make that as succinct as I
10 can, Your Honor.

11 **THE COURT:** All right. So, who wants to speak first
12 about the Department of Revenue subpoenas?

13 **MR. MCCABE:** I can, Your Honor. Kind of echoing
14 from what Mr. Montgomery has said, we don't
15 believe that the subpoenas were proper. Rule
16 45 is not the proper way to obtain documents
17 from a party in a case. It would have been
18 under Rule 34. However, we believe that did
19 not occur because the Intervenors are outside
20 the scope of Rule 21, which requires all
21 discovery to be completed within 90 days of the
22 Notice of Assignment. So, we think we're
23 trying to -- they're trying to subvert that
24 rule.

25 Also, South Carolina Rule 12-54-240



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1 prohibits the Department from disclosing any
2 information except by judicial order. We have
3 proposed a -- or we have a proposed protective
4 order that we would offer to Your Honor to
5 review. That would allow the Department to
6 give the tax records that were requested.
7 However, we would still object to the tax
8 records as to Five Points Roost, as they are
9 not a party to this case and their tax records
10 should have no affect on what's going on here
11 today. So, we would object to the relevancy of
12 the tax records of Five Points Roost. And we
13 feel it would set a dangerous precedent if
14 someone was able to come in and just request
15 tax records for someone who's not a party to a
16 case. That's what the Department's concerns
17 were as regards to the subpoena for the tax
18 records.

19 **THE COURT:** All right. Mr. Harpootlian?

20 **MR. HARPOOTLIAN:** Please The Court, Your Honor. I -
21 - my reading of the rules is we can subpoena
22 anything we want to a trial, and that's what
23 we've done. This is -- I mean, discovery would
24 allow us to look at it before it got here.
25 Obviously, we're going to get it this morning



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1 and determine whether or not it's relevant to
2 any issues that come up. Now, I will note
3 this, that they've prepared a confidentiality
4 order to be entered by The Court. We have no
5 objection to that. We can deal with it in that
6 context. However, we do know this, that the --
7 we've asked for sales tax records. Not income
8 tax, sales tax. And that would show --
9 apparently there's a different sales tax form
10 for liquor by the drink than there is for
11 everything else. That was represented to us by
12 Hartley Powell, Chairman of the DOR now. I
13 assume I'm correct on that. Sir?

14 **MR. MCCABE:** Well, Your Honor, actually I just point
15 out that they requested all sales tax filings.
16 They did not request any liquor by the drink
17 tax filings. So, that is not being disclosed
18 because that was not requested.

19 **MR. HARPOOTLIAN:** Your Honor, I'd hoped DOR was
20 going to be helpful in this process. They have
21 been obstructionist. This is another -- and by
22 the way, I get a letter from them at 2:30 on
23 Friday afternoon objecting to this. They've
24 had the subpoena for 11 days, and they wait
25 until the eve -- actually nothing I can do. I



1 called for Mr. McCabe. They said he'd left at
2 2:30. I called for his supervisor, Mr. Luther.
3 He'd left for the afternoon. And of course I'd
4 called for Mr. Powell, and he had left. No one
5 that I could talk to on the afternoon before
6 the trial was there because they'd all gone
7 home early. Now, if I am -- if in fact they're
8 construing the liquor by the drink -- and by
9 the way, when I talked to Mr. Powell, he called
10 them sales tax records. I used his
11 denomination of it. Liquor by the drink was a
12 -- that they paid a different sales tax rate on
13 that, and that's why it was broken up
14 differently. If I'm in error on that, I'd ask
15 The Court to allow me to amend the subpoena and
16 have them produce those.

17 And this is why it's important for you.
18 Why it's important is, there's several cases
19 that deal with -- where courts have ordered
20 petitioners to produce records of what their
21 food sales are, what their liquor by the drink
22 sales are, what their -- and that's what this
23 tells us. Not from their accountant, but what
24 they filed with the Department of Revenue. So,
25 I believe these are necessary records for you



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1 to have. We've subpoenaed them to trial.

2 And, Your Honor, again, I'm flummoxed by
3 the Department of Revenue's obstructionist
4 attitude about enforcing the law. And today
5 again, they're not looking to help us find the
6 truth, they're looking for a way to stand in
7 the way. So, I'd ask Your Honor to order them
8 to produce the liquor by the drink sales tax
9 records, which they can produce -- I'm sure we
10 won't need them this morning. They can be
11 produced in a few moments as I understand it.

12 And, again, we served this subpoena -- on
13 Friday, it would have been 11 days. They wait
14 until Friday afternoon to interpose an
15 objection. Not the objection he just said, but
16 that it wasn't properly served. And the case
17 I'm citing on the need for The Court to
18 understand what their revenue is, is JOK, Inc,
19 d/b/a Tavern on the Greene versus South
20 Carolina Department of Revenue. Judge
21 Kittrell, Chief Judge, ordered at the end of
22 the hearing for the respondent for the
23 petitioner to produce financial records.
24 Wasn't put in the record, ordered them to
25 produce them to The Court before The Court



1 could make a decision. That's 9-ALJ-17-0010-
2 CC. So, Your Honor, these are relevant. We
3 met with the Department of Revenue with Mr.
4 Powell himself two weeks ago and indicated we
5 were going to ask for these records. And now
6 they show up on the morning -- and not in the
7 letter they sent me on Friday, not a call for
8 10 days, but standing in the way of truth, so
9 Your Honor, understands what the facts are.

10 **MR. MCCABE:** Your Honor, let me respond. We can
11 only supply what was asked for. It clearly
12 says tax records. It does not say liquor by
13 the drink records. We're supplying what was
14 asked. You know, he brings up a letter. The
15 letter was mailed on May 9th. We had discussed
16 the improper subpoena before in a prior case.
17 So, Mr. Harpootlian was aware that this was not
18 the proper way and chose to ignore that and go
19 this route again. Also he believes that we can
20 get these in a couple minutes. No. These tax
21 records take time. They have to be taken, they
22 have to be collected, they have to be redacted,
23 they have to be stamped confidential. It's not
24 something that happens within a few minutes,
25 regardless of what he may say. You know, I --



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1 what he meant, that's impossible for us to be
2 able to determine. But I can go strictly on
3 what is on subpoena. And we have tax records
4 as he requested here ready to turn over with a
5 court order.

6 **THE COURT:** Well, Mr. Harpootlian is describing some
7 oral conversations that he held with the
8 Department that sounds to me like you
9 understood what he wanted ---

10 **MR. MCCABE:** Your Honor, I was not subject to those
11 conversations. A conversation he had with the
12 director, I was never made aware of.

13 **MR. HARPOOTLIAN:** Your Honor, if I could -- I met
14 with the director, Mr. Jason Luther, who I
15 think is his direct supervisor, and a gentleman
16 -- do you remember the other guys name? Who
17 was actually in charge of all the alcohol
18 beverage enforcement for DOR. And made it
19 clear that, if we had the two things, that is
20 liquor by the drink sales tax records and the
21 rest, we could then figure out, perhaps,
22 whether liquor by the drink was 65 percent of
23 their sales or whether it was 50 percent or
24 whether it was 75 percent. And that would
25 dovetail nicely with the subpoena we've served



1 on the accountant for to give The Court all the
2 facts. Now, if I misunderstood Director Powell
3 and everybody in that room, Mr. Gottshall was
4 here with me, then I apologize to The Court.
5 Perhaps you should inquire how long it would
6 take him to get those records. And perhaps
7 once I receive them, even after this hearing
8 closes, I may, as happened in the case I just
9 cited to you from Judge Kittrell, we could
10 supplement the record with those if it takes
11 him that long.

12 **THE COURT:** Mr. Montgomery?

13 **MR. MONTGOMERY:** Your Honor, just for purposes of
14 clarity, I want to make sure we're dealing with
15 apples and apples here. And I've called The
16 Courts attention to the JOK case at -- there
17 are two JOK cases actually in the record from
18 2009. But this is the second one, which was
19 actually the May 29th, 2009 order that was
20 substituted or -- I'm sorry, this is the first
21 one, I believe. But the -- what happened is --
22 and if you look at -- it's 2009, South Carolina
23 ALJ Lexus 291, under number 22 of Judge
24 Kittrell's order it says, at the conclusion of
25 the hearing, The Court requested Petitioner,



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1 not the DOR, provide documentation to
2 substantiate any food purchases it made for use
3 in food preparation. On March 13, 2009,
4 Petitioner sent to The Court an affidavit
5 signed by Christopher Harrell, manager at the
6 location, which had attached the last two menus
7 for the location, as well as receipts for food
8 purchased since December 2008. What I can
9 represent to The Court is, as a part of our
10 presentation today, we're going to be showing
11 The Court the last two months individual bank
12 records showing what food has been purchased
13 for preparation and sale. So, to the extent
14 that that's where Mr. Harpootlian is going, I
15 think that information is going to be available
16 in the record. As it relates to, for example,
17 April -- if he's looking at the sales tax
18 returns for April, they aren't due yet, haven't
19 been filed. So, the most recent information
20 and the best information is going to be the
21 actual bank records that we're going to be able
22 to produce to The Court showing exactly what
23 was spent on food.

24 **MR. MCCABE:** Your Honor, I would object to him being
25 able to testify what was said in a closed-door



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1 meeting between the director and my supervisor.
2 Obviously no one here in this courtroom is here
3 and ...

4 **THE COURT:** Well, this isn't testimony. This is
5 legal argument.

6 **MR. MCCABE:** Correct. But I'm saying -- right. But
7 I can't say to anything that was said. All I
8 can go off of is what I was served with. What
9 I'm served with as for all sales tax filings
10 with South Carolina Department of Revenue.
11 Moreover, the proper party to get these from
12 without having to deal with the protection
13 would be from the Applicant. There's no
14 statutory protection from the Applicant. But
15 when it comes to the Department and requests
16 these records, there are statutory protections
17 in place to make sure that the citizens' tax
18 records are protected. And that's where we
19 stand on this.

20 **MR. HARPOOTLIAN:** Your Honor, let me propose a
21 compromise. If Your Honor will sign a
22 confidentiality order and allow us to examine
23 these records, we may not need the other
24 records. I may just -- it may provide the gap
25 that -- once we've gotten the total sales



1 records from their account.

2 **THE COURT:** Is that -- does anybody have an
3 objection to proceeding in that fashion?

4 **MR. MCCABE:** Once the order is signed, we're happy
5 to turn over everything that we have.

6 **THE COURT:** Okay.

7 **MR. MCCABE:** Including -- Your Honor, just for
8 clarification, would that also include Four
9 (sic) Points Roost?

10 **MR. HARPOOTLIAN:** Your Honor, we're not sure whether
11 Your Honor understands and remembers from The
12 Roost. There seems to be some employees of The
13 Roost working at the Rooftop, some
14 intermingling of accounts. That's ---

15 **THE COURT:** I do recall some testimony that sounded
16 like there were some overlap in management of
17 the -- of the two entities from the previous
18 hearing. It sounded almost, from the testimony
19 in a previous case, like the two entities were
20 being managed collectively. Mr. Montgomery, do
21 you want to speak to that?

22 **MR. MONTGOMERY:** Your Honor, the -- whether there are
23 employees who are paid from both entities for
24 the time they work at those entities is not
25 relevant to the issue that's being addressed



1 here, which is, as I understand it, what monies
2 are expended on food and what monies are
3 expended on liquor and what sales are made on
4 food and what sales are made on liquor. The
5 businesses maintain separate and distinct bank
6 accounts, separate and distinct point of sale
7 systems, and separate and distinct accounting.
8 And, you know, the other thing is is that, you
9 know, as we look at April's records, for
10 example, there was no Five Points Roost. So,
11 other than expenses that -- like rent and
12 things that these guys had to pay for a lease
13 they had that they couldn't operate in. So,
14 you know, as it relates to that, you know, our
15 position is pretty clear. You know, we heard
16 what The Court asked for last time. I think
17 we're here to provide it. We may not agree
18 with ---

19 **THE COURT:** I expect no less of you, Mr. Montgomery.

20 **MR., MONTGOMERY:** We may not agree with the legal
21 analysis that put us there, but we're here to
22 provide that. And I think that this really
23 becomes both duplicitous and, again, as it
24 relates to Five Points Roost, I think it's not
25 relevant.



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1 **THE COURT:** Okay. I would agree that nothing
2 related to Five Points Roost is relevant.
3 Let's -- let me sign the confidentiality order,
4 and y'all can produce the records that Mr.
5 Harpootlian has requested as they relate to
6 Rooftop Bar & Lounge.

7 **MR. MCCABE:** May I approach, Your Honor?

8 **MR. HARPOOTLIAN:** Thank you, Your Honor.

9 **MR. MCCABE:** This is a copy of this subpoena itself,
10 and then this is the actual protective order
11 underneath.

12 **THE COURT:** All right. Give me just a second to
13 look at this.

14 **MR. MCCABE:** That's fine. That's fine. And both
15 individuals were provided a copy of this
16 through a letter that was sent out on May 9th.

17 **THE COURT:** Okay. So, everybody is familiar with
18 this order? Does any -- do you need to look at
19 it, Mr. Montgomery or Mr. Harpootlian?

20 **MR. HARPOOTLIAN:** I've already seen it, Your Honor.

21 **MR. MONTGOMERY:** Your Honor, I received that, I
22 think, last Thursday. So ---

23 **THE COURT:** So everybody is comfortable with it. I
24 just need to get there. Let me read it real
25 quick. All right. And so, there are -- this



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1 is a consent order. The consent lines are not
2 signed on this order, if y'all would like to --
3 -

4 **MR. HARPOOTLIAN:** You want me to sign those, Your
5 Honor?

6 **THE COURT:** --- sign those. That would be good.

7 **MR. HARPOOTLIAN:** Your Honor.

8 **THE COURT:** Thank you.

9 **MR. MCCABE:** Your Honor, if I may approach. I have
10 a copy for you as well.

11 **THE COURT:** Thank you.

12 **MR. MCCABE:** And I do have -- if requested, we do
13 have the un-redacted copy, but we would ask for
14 an in-camera review if The Court feels it's
15 necessary to review these un-redacted.

16 **THE COURT:** Okay. All right. Anything else with
17 regard to subpoenas and the quashing of
18 subpoenas? Are there other preliminary matters
19 that we need to take up?

20 **MR. MCCABE:** Your Honor, at this time the Department
21 would like to offer, I believe we have the
22 consent of all parties, a copy of the
23 Department's file.

24 **THE COURT:** Okay.

25 **MR. MCCABE:** Respondent's Exhibit 1.



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1 **THE COURT:** Respondent's 1.

2 **MR. MONTGOMERY:** And that is without objection of
3 the Petitioner, Your Honor.

4 **MR. HARPOOTLIAN:** No objection.

5 **THE COURT:** Respondent's 1 is admitted.

6 **(Respondent's Exhibit Number 1 was admitted into the**
7 **record at this time.)**

8 **MR. MCCABE:** And of course, Your Honor, a copy for
9 you.

10 **THE COURT:** Thank you. Any other preliminary
11 matters? Mr. Harpootlian?

12 **MR. HARPOOTLIAN:** Your Honor, I'd like to move that
13 the transcript from the previous hearing on The
14 Roost be incorporated as part of this record
15 the extent that it's relevant. That is much of
16 it is not relevant. But rather than repeating
17 some of the testimony we've had in the past, I
18 thought it might be -- save us a lot of time if
19 we could incorporate that as part of the
20 record.

21 **MR. MONTGOMERY:** Your Honor, I might be willing to
22 stipulate to some of the relevant testimony.
23 But I think entering the entire transcript is
24 cumbersome, burdens the record, and contains a
25 lot of irrelevant material, and a lot of.



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1 material that could be prejudicial in this
2 case, and that the probative value of entering
3 the entire record would be -- would not have a
4 benefit equal to the potential prejudicial
5 value of that.

6 **MR. HARPOOTLIAN:** Your Honor, just trying to save
7 time, I'll withdraw the motion. I'm just
8 trying to save time.

9 **MR. MONTGOMERY:** And I'm happy to save time too,
10 Your Honor, but I think we can do it with a
11 stipulation if Mr. Harpootlian wants to provide
12 one as far as the testimony of the individual
13 witness.

14 **THE COURT:** Well, I think it's a little late for
15 that at this point. I mean, wouldn't y'all
16 need time to go through it and -- what do y'all
17 think? Would y'all like to take an hour and go
18 through and stipulate to ---

19 **MR. HARPOOTLIAN:** Your Honor, the chances of us
20 working out a stipulation, let alone DOR, it
21 ain't going to happen. I just thought to the
22 extent that Your Honor felt it was relevant.
23 I mean, it's really not our determination what
24 is relevant and not relevant. It's your
25 determination in reviewing the record. So, I



1 just thought it'd be easy-peasy, but apparently
2 I'm wrong.

3 **THE COURT:** Okay.

4 **MR. HARPOOTLIAN:** I'll withdraw. That's all I have.

5 **THE COURT:** All right. Opening statements, do we
6 want to do brief opening statements?

7 **MR. MCCABE:** Yes, Your Honor. Please.

8 **THE COURT:** Okay.

9 **OPENING STATEMENT BY MR. MCCABE:**

10 **MR. MCCABE:** Your Honor, may it please The Court.
11 We are here today where the Applicant had
12 requested a beer and wine permit, on premises
13 beer and wine permit and restaurant liquor by
14 the drink. The initial Department
15 determination from the DOR stated that the
16 Applicants met all of the statutory
17 requirements. Subsequently, there was a
18 deposition that took place. And during that
19 deposition, there were two individuals that
20 came to the Department's attention that may be
21 considered to be principals. After the
22 deposition occurred, the Applicant had
23 submitted additional documentation in regards
24 to those two individuals. And those two
25 individuals had been reviewed by ABL to make



1 sure that they meet the requirements such as no
2 back taxes, no criminal records, things of that
3 sort. So, at this time, the Department still
4 finds that they meet all the statutory
5 requirements and thus we are here strictly on
6 a public protest. And then we would ask The
7 Court's guidance on the issue of licensure at
8 this point.

9 **THE COURT:** All right. Mr. Montgomery?

10 **OPENING STATEMENT BY MR. MONTGOMERY:**

11 **MR. MONTGOMERY:** Your Honor, may it please The
12 Court. Your Honor, Stephen Bland and Adam
13 Ruonala operate the Rooftop. It's a business,
14 which as you just heard from The Department of
15 Revenue, meets all the statutory requirements
16 imbued in South Carolina law to have permits to
17 serve beer and wine and liquor by the drink on
18 these premises. You're going to hear today
19 many things about that business and how it
20 operates. What we can tell you and what we can
21 represent is that you will hear how this
22 business uses first-class, state of the art
23 safeguards in a best-practices effort to
24 minimize and even eliminate the problems by
25 which the Protestants and Intervenors complain.



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1 You look at these protests, Your Honor, each
2 one is essentially a form letter and all
3 complaints about Five Points in general, not
4 about this specific location. And I doubt that
5 you will hear any testimony from anyone about
6 an issue as it relates to this location during
7 the hearing. And I also suggest to The Court
8 that one of the unique things that The Court
9 has is, because this operation has been running
10 for a while, we have records that can show what
11 they've done and how they've done it and their
12 performance.

13 Your Honor, this hearing is also -- let's
14 talk about what it's not about. This hearing
15 is not about wealth or privilege dictating what
16 businesses should be located in Five Points.
17 It isn't about catering to a group of people
18 who want to benefit from the proximity to a
19 major university, only without students. This
20 hearing isn't about what the law ought to be.
21 It isn't a critique of the statutes, the
22 ordinances, and the regulations that govern the
23 issuance of these permits. And, as The Court
24 knows, this court as an administrative court
25 can't find those statutes unconstitutional or



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1 meaningless as the General Assembly put them
2 into law. This Court is obligated by those
3 statutes and regulations to abide by them, just
4 as they're put in the books by the General
5 Assembly. Likewise, the General Assembly has
6 charged the Department of Revenue as
7 administrative agency responsible for
8 implementing the licensing scheme. The Court
9 ought to give deference to the agency's
10 findings. And there's a wide body of law, as
11 The Court is aware, that affords deference to
12 an agency's findings. This case, Your Honor,
13 also isn't about university students
14 misbehaving. Unless the Intervenor can show
15 there is a causal, proximate relationship
16 between that misbehavior and the activities
17 that happen at my client's establishment.
18 Moreover, Your Honor, this hearing isn't about
19 drama or showboating or politics. It is about
20 the facts in the law. And as we talk about
21 those, I want to talk about what the evidence
22 is going to show and what these men have done
23 to develop and operate a business that ought to
24 be a model for what they're doing as opposed to
25 being some scorned establishment.

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1 You're going to see a lot of things
2 through here. But I know you're going to hear
3 some arguments, so let's just dispense with it
4 from the beginning, about the restaurant --
5 what I'll call the restaurant issue. Section
6 61-6-20 of the Code says, bona fide engaged
7 primarily and substantially in the preparation
8 and serving of meals, which The Court is aware
9 comes from Article VIII-A of the State
10 Constitution, means of business that provides
11 built facilities for seating not fewer than 40
12 persons simultaneously at tables for the
13 service of meals. My clients have that. The
14 Department of Revenue has so found in the SLED
15 investigation. It's in the record that's
16 already been put to The Court as Respondent's
17 Exhibit Number 1. Is equipped with a kitchen
18 that is utilized for the cooking, preparation,
19 and serving of meals upon customer request at
20 normal meal times. The Court's going to hear
21 some about that too. They're going to hear,
22 among other things that the food service at the
23 location, particularly the Sunday brunch, has
24 had lines such that they want to expand the
25 kitchen. Something that they can't do without



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1 a license. So, that's on hold right now until
2 something happens here. Prepares for service
3 to customers, upon the demand of the customer,
4 hot meals at least once each day the
5 establishment is open. What you'll hear and
6 what you'll see, and I don't think you'll hear
7 any evidence to the contrary, is that every day
8 of the week they're open for lunch, they serve
9 lunch. You're also going to hear that they're
10 on Uber Eats, that they have menus and regular
11 service, and that it -- that a substantial part
12 of their business at this point is serving
13 food. That if you look at and you look at any
14 advertising they've done, any marketing the
15 establishment's done, it's been for the sale of
16 food. You won't find an ad for Rooftop Bar
17 mentioning drinks or drink specials. It just
18 doesn't exist. And there's some more
19 definitions that the General Assembly put into
20 the law in Section 61-6-1610 in 2008. I think
21 some more definitions that define kitchen, a
22 separate and distinct area of the business
23 establishment that is used solely for the
24 preparation, serving, and disposal of solid
25 foods that make up meals. The area must be



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1 adequately equipped for cooking, serving, and
2 storage of solid foods. It must include at
3 least 21 cubic feet of refrigerated space for
4 food and a stove. They have that and most
5 importantly, Your Honor, the service. One of
6 the things you'll hear is that Uber Eats came
7 to Columbia at the end of March. And there's
8 a process to get qualified to be on Uber Eats
9 and be served. And my clients went through
10 that. They started the very first of May on
11 Uber Eats. And during the last few days of
12 April, the first days of May, they were
13 averaging over \$100 a day in revenue coming
14 from that. And that statute under Section I(3)
15 also defines primarily, and this is an
16 important definition, primarily means the
17 serving of the meals by a business
18 establishment is a regular source of business
19 to the licensed establishment, that meals are
20 served upon the demand of guests and patrons
21 during the normal mealtimes that occur when the
22 licensed business establishment is open to the
23 public, and that an adequate supply of food is
24 present on the licensed premises to meet the
25 demand. Now that's verified in a couple of



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1 ways. One, again, you know, when you're on
2 Uber and you're obligated to serve those meals
3 when they're called for, you have to have that
4 food. And two, you know, there's a case law --
5 there's a 2007 case I read, where in fact in
6 that case DOR had indicated they were going to
7 stop a license, because a SLED agent went into
8 a restaurant, ordered a meal, and they said we
9 can't serve you a meal, we don't have one.
10 There's a lot of language in there, but they
11 put the burden in that case, and I'll provided
12 for The Court later, not only on the Applicant
13 or the petitioner, in this case the licensee
14 because it was a revocation, they put it on the
15 Department to show that they couldn't serve the
16 meals. And while the -- in that case, while
17 the -- there was evidence about the food
18 offered, The Court said, you know, you got to
19 show that they can and they're not complying.
20 And that wasn't the case. And interestingly
21 enough, that was even before the definition of
22 primarily was modified in 2008.

23 But what you're going to hear, and I think
24 what's clear, that this is a regular source of
25 business that, in the month of April, over 15



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1 percent of the sales of the business, dollar
2 volume, including beer, liquor, and alcohol,
3 were in the sale of food and meals. And what
4 you'll also hear from our clients is that's an
5 increasing number. Over March and April, even
6 considering that, during that period they have
7 the St. Patrick's Day opening, in March -- over
8 March and April, their total sales were over 12
9 percent. And that, Your Honor, is looking at
10 a business model where the cheapest drink is
11 three dollars, be it beer or wine or liquor,
12 and where they are working in an environment
13 where, as Mr. Harpootlian alleged in a lawsuit
14 he filed on Friday, there are drinks offered
15 considerably lower prices. So, they're not
16 catering to a low price pour drinks. But if
17 they did, Your Honor -- and this is why the
18 percentage argument becomes somewhat of a
19 fallacy. If it did, we can show you from the
20 evidence that their April sales, if they were
21 selling their drinks at \$1 instead of 3, and
22 sold the same amount of units, their food sales
23 would have exceed 35 percent of their total
24 revenue.

25 Your Honor, every other criteria is dealt



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1 with. And I want to call The Court's attention
2 to the exhibit that's already before you.
3 Because one of the things that comes up also is
4 not only are we talking about the food
5 requirement, we're talking about the
6 suitability of the location. And if The Court
7 would look -- it's page 59 of the record, I
8 believe, Your Honor, 59 of the Department's.

9 **THE COURT:** Of the Department's file?

10 **MR. MONTGOMERY:** Of the Department's file. I'm
11 sorry. Yes, it's page 59 under A-8. It says,
12 I have checked with the appropriate police
13 agency to determine: One, if law enforcement
14 officers had problem with public intoxication
15 at or near the proposed location; or if the
16 police had been summoned to the location on
17 prior occasions; or if the location is near
18 other sources that have been either a constant
19 source of law enforcement problems or if
20 there's a location where young people
21 congregate and loiter; the corporation or
22 association has a reputation for peace and good
23 order in its community. Response: Yes.
24 Indicates that that was checked was made with
25 the Columbia Police Department. So, we're not



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1 talking about the location being just out there
2 and not dealt with from a standpoint of SLED
3 investigating it. We're talking about an
4 actual part of the record where SLED has
5 investigated this and where SLED has found that
6 location to meet those criteria. And the
7 Columbia Police Department, interestingly
8 enough, is the body that they contacted and
9 received that report from.

10 So, Your Honor, we talk about suitability
11 of the location. What I think you're going to
12 hear is you're going to hear people complain
13 about Five Points. And you're going to hear
14 talk about the University and talk about the
15 students. And one of the things we're going to
16 show you is some photographs that were taken
17 this weekend from the line in our establishment
18 so The Court can see that the description that
19 you're getting is not accurate as it relates to
20 Rooftop Bar, that regular people come in and
21 that people that are not college students come
22 in because, let's face it, they don't let
23 anyone in under their methods that doesn't have
24 an ID that seems to be valid and meets a scan
25 and is not 21. So, while they're not perfect,



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1 and I think they've had two incidents where
2 people have been caught with fake ID's since
3 last August, they certainly have done an
4 outstanding job in preventing that. And in
5 both of those cases, they will -- I believe the
6 reports reflect they were valid licenses that
7 were altered in some way. So, scanning them is
8 not a way to detect that necessarily, and they
9 don't have all the resources that SLED has to
10 determine that, even though they do have black
11 lights and scanning.

12 But one other thing I think that The Court
13 will hear is the way the line works. And I
14 think that there's been some misunderstanding
15 about the way the line works. But because the
16 fire marshal controls capacity in these
17 establishments, there's a line -- it's not like
18 a long line of people that you have to get in
19 quickly. The traffic builds organically and
20 when the restaurant is full and there's a line,
21 then one person goes out and one person comes
22 in, so you're not dealt with a huge volume of
23 people to check at the same time. And from
24 some of the photographs we have, you'll see
25 those as well, Your Honor.



1 And then we talk about the people. And
2 again, there's nothing to indicate that either
3 of these individuals is not an appropriate
4 person to be licensed. And truly, if one reads
5 the protest, that's not been referenced. And
6 so, I'd like us to make sure that we consider
7 what the protests say, who they're from, how
8 they were created. And the fact is, with the
9 exception of two, all the protests that were
10 filed in this case are forms that were copied
11 and apparently circulated for people to file.
12 And it's going to be interesting to hear about
13 their own knowledge as it relates to Rooftop.

14 So, Your Honor, I think what you're going
15 to hear today, and tomorrow if we have to go
16 there, is you have a business that has done
17 everything it can from the get-go to do the
18 right thing. And that means everything from
19 interpreting; trying to work with the
20 community; contacting the community to try to
21 find out what their concerns were; meeting with
22 the University; implementing procedures to try
23 to cut back and minimize or eliminate, if
24 possible, underage drinking; working to
25 eliminate over-service by not having specials,



1 by not having discounts, by only serving
2 beverages, alcoholic beverages, at full prices
3 seven days a week, whenever they're open,
4 during their entire business hours; by focusing
5 on serving food, increasing their food service;
6 and making sure that they try to do everything
7 right to not only be a good citizen but a model
8 business, and to set a high standard in the
9 community. Tarring them with the brush that
10 they're not -- that they're not a part of is
11 patently unfair. Trying to say we're going to
12 get rid of everything is unfair. This is a
13 legal business. They purchased an operating
14 going concern from another operator that had a
15 license. There's been no reports of a bad
16 history with that location or with that prior
17 operator. But what we do have and what we will
18 see is two owners and two principals doing
19 their best. Are they perfect? Do things
20 happen? Sure. Sometimes things happen. You
21 know, if we were all perfect, then we'd have a
22 lot less problems in the world. But that's not
23 the case. But for people doing business with
24 the public, we hear that they're doing a very
25 good job, that they meet the criteria, and The



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1 Court should, after hearing the evidence and
2 the arguments and analyzing the law, order the
3 issuance of a license. I look forward to
4 working with you, Judge. Thank you.

5 **THE COURT:** Thank you.

6 **OPENING STATEMENT BY MR. HARPOOTLIAN:**

7 **MR. HARPOOTLIAN:** May it please The Court, Your
8 Honor.

9 **THE COURT:** Mr. Harpootlian.

10 **MR. HARPOOTLIAN:** Your Honor, I read your order in
11 The Roost, April 3rd, 2018 and noticed that you
12 had cited the South Carolina Supreme Court
13 case, Brunswick. And I would note that you at
14 that point distinguished the requirements per
15 statute as per the Constitution as Judge Ness
16 did in Brunswick. And I guess it makes sense,
17 you've got to have certain requirements to open
18 one of these. That is, you need to have a
19 kitchen, you need to have a stove, you need to
20 have a distinct -- you need to give the
21 impression that you're going to be a
22 restaurant. Because if we look at the history
23 of this in the late 1960s and early 1970, there
24 was no liquor by the drink or mini bottle in
25 South Carolina allowed. Those of us old enough



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1 remember the brown bagged. We had to go buy a
2 bottle of liquor before we went to a
3 restaurant, put it in a bag, take it in, and
4 literally have the -- somebody hold it in the
5 back. And if you ordered a drink, they'd pour.
6 And what -- if you look historically, what the
7 difficulty was was with the tourism industry.
8 Most of our friends from Ohio, Massachusetts,
9 New York that were coming to Myrtle Beach or
10 Charleston did not understand this idea of
11 buying your own bottle of liquor and taking it
12 to a restaurant. And it was hurting the state,
13 no question about it. So, the state -- a
14 number of folks that didn't want any liquor by
15 the drink -- I know that's hard for us to
16 believe today, that there were people that did
17 not drink, but I lived through that era, I can
18 remember a number of them. Especially in the
19 Upstate that were opposed for religious or
20 moral reasons to any alcohol being served. And
21 so, a compromise worked out. And the
22 compromise was that liquor by the drink in an
23 issue with mini bottles would be allowed only
24 two places, restaurants and hotels. And that
25 was -- that was what was -- that was the



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1 compromise. And so two-thirds of the House,
2 two-thirds of the Senate, and a majority of the
3 people voted on it and then it was enacted by
4 the Legislature giving initially a very simple
5 definition on what a restaurant ought to look
6 like. It ought to have a DHEC issued Class A
7 license and be able to seat, I think it was 40
8 people back then. And that's what Brunswick
9 Lanes did. They had a -- they were a bowling
10 alley that sold food and could seat 40 people.
11 And Justice Ness for a unanimous Supreme Court
12 said meeting those two requirements wasn't
13 enough. Your food sales have to be primarily
14 and substantially the source of business. Now
15 primarily means -- and by the way, there were
16 five percent there, there were something less
17 than 10 percent in The Roost. And there are a
18 number of other cases that Your Honor cited in
19 your own order that dealt with those
20 definitions of those terms.

21 But if you go to Miriam Webster, it says
22 for the most part, chiefly, in the first place"
23 Oxford Dictionary, mainly. So, that doesn't
24 mean more than 50 percent, but it means, if
25 you're selling food, beer and wine, and liquor,



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1 that liquor has -- I mean, that food has to be
2 the biggest part of that. That's what it
3 means. And so, there -- it's for restaurants
4 where food is their primary business, not the
5 service of alcohol, not the service of liquor
6 by the drink. And there is a difference
7 between the requirements for somebody that
8 serves beer and wine and somebody that serves
9 liquor by the drink. There's no requirement of
10 food at a place that serves beer and wine at
11 all. So, I don't think any number that their
12 accountant, and we're trying to figure out
13 DOR's numbers we just got, will convince this
14 Court that food is for the most part, chiefly,
15 in the first place, or mainly the business of
16 the Rooftop. Their business is primarily
17 alcohol, liquor by the drink, or beer and wine.
18 It's not food.

19 So, Your Honor, I think -- and I
20 understand that kids in Five Points want
21 alcohol when they go down there at 10:00 at
22 night. We're going to delve a little bit into
23 where they make their money and how they make
24 their money. They're not going to midnight
25 brunch in Five Points when they're heading down

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1 on a Thursday or Friday, Saturday night. But
2 beyond just the issue of the food -- and we
3 think that's enough on its own to deny this
4 license, liquor by the drink license. Beyond
5 that, if the argument is that they should --
6 even if they don't get a liquor license, they
7 should get a beer and wine license, we think
8 that -- and Your Honor Justice, in your order
9 also, the density of bars in this very
10 susceptible area is adverse to the public
11 welfare, that the number -- and we'll have some
12 testimony hopefully from the police chief about
13 the number of crimes. And I want to -- I don't
14 want to tell you it's as bad as The Roost, but
15 it's still bad on that block.

16 And so, I think it's important for Your
17 Honor to understand there's two pieces to this.
18 One, even on the numbers we've seen today
19 through eight months, they're not even close to
20 mainly, for the most part, chiefly, in the
21 first place on food. And secondly, we don't
22 need another bar in Five Points. And I'm
23 offended by Mr. Montgomery's, this well-heeled,
24 silk stocking crowd as opposed to kids having
25 a good time. No. No. You're going to hear



1 testimony, 264 kids, I think, last year went to
2 the hospital. You'll have specific numbers.
3 I believe that number is right. With alcohol
4 poisoning. The vast number of those had their
5 drinks at Five Points doing shots. So, it's
6 for the welfare of the kids, it's for the
7 welfare of the neighborhood. And more broadly,
8 it's for the welfare of our city that we not
9 allow these establishments to continue to
10 proliferate. This isn't about -- I mean, if
11 they were the first one there, maybe there
12 wouldn't be some argument about concentration.
13 But they're not. They're the 19th one there.
14 And is that enough? And we say absolutely.
15 Enough retail liquor -- I mean, liquor by the
16 drink outlets there.

17 Your Honor, the last thing I'd say is
18 this. I'm not trying to denigrate Mr. Ruonala
19 or Mr. Bland. They're business people. They
20 have chosen an area which is highly regulated.
21 More people will die this year in this state
22 from alcohol-related diseases than heroine,
23 opioids, any other -- all the other drugs put
24 together. It is a dangerous, dangerous,
25 dangerous drug. Many people get addicted to



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1 it. Many people start their addiction in
2 college. All I'm saying is this, this is not
3 serving soda pop. This is serving something
4 that gets people impaired, intoxicated, can
5 hurt themselves, can hurt other people. And
6 that's why it's so carefully regulated.

7 The DOR apparently doesn't take that
8 attitude. They apparently didn't read your
9 order. Because if they had, they would have
10 already audited this bar to see what percentage
11 of their food -- of their sales is food. But
12 the DOR can't be bothered with that. I can
13 tell you, I'm frustrated having met with Mr.
14 Powell. I'm frustrating having talked to Mr.
15 Taylor. And I'm frustrated with the inability
16 of the DOR to get their arms around what their
17 job is. And the job is not to protect the bars
18 in Five Points. Their job is to enforce the
19 law. The law as announced by the South
20 Carolina Supreme Court, and the law reiterated
21 by you and other judges primarily. And they
22 have told -- this form they have filled out, as
23 Your Honor pointed out, allowed a microwave to
24 be synonymous with an oven or with a stove.
25 So, they have abrogated their responsibility.



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1 They have abrogated their responsibility to not
2 only enforce the law, but the people of our
3 community. And Your Honor, thank God this
4 court is here to ensure that justice is had.

5 And again, we're not trying to hurt these
6 people. We're not trying to put them out of
7 business. We're not trying -- we don't allege
8 they're evil. We do allege they want a license
9 to deal in a very, very dangerous substance.
10 And, you know, whether they -- kids have great
11 IDs or not, that's not really the issue. The
12 issue is that it's difficult to enforce, Your
13 Honor's talked about that already, the law,
14 because of these great fake IDs. So, that
15 should make this Court even more cautious about
16 allowing another outlet for alcohol, liquor,
17 liquor in Five Points. Thank you, Your Honor.

18 **THE COURT:** I do want to take an opportunity before
19 we begin with the evidence to clarify something
20 about, maybe, my previous order that, based on
21 the news reports of it at least, may have been
22 misinterpreted as my outlook. I reviewed Mr.
23 Montgomery's motion for reconsideration
24 carefully and reviewed my order carefully and
25 didn't feel like it needed -- that the language



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1 of my order really needed to be adjusted in
2 order to be understood. But as Mr. Montgomery
3 was arguing in his opening, you know, there's
4 nothing that I have previously said that has
5 set forth any kind of demarcation as to the
6 revenue. I did cite the Brunswick case, you
7 know, as obviously there is a place at which
8 clearly the revenue demonstrates that were not
9 primarily. But, as Mr. Montgomery argued, you
10 know, sometimes the -- I also recognize that
11 the revenue streamed from the alcohol can be
12 more lucrative even in a restaurant. And so,
13 I'm not sure where -- I don't know that 50
14 percent is the mark. I did say that I didn't
15 think five percent was the mark. But, you
16 know, I haven't given, you know, any indication
17 of where I think that mark would be. I think
18 it's something that you have to look at the
19 totality of the circumstances. And that's what
20 I'm here to hear about in this hearing, is the
21 totality of the circumstances about this
22 particular bar. Okay?

23 **MR. HARPOOTLIAN:** You mean, restaurant, Your Honor?

24 **THE COURT:** This particular business. All right.

25 Okay. So, we want to begin then with some



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1 testimony? Is it -- are we ready for that?

2 **MR. HARPOOTLIAN:** Your Honor, can we take about a
3 two-minute recess?

4 **THE COURT:** Yes. Let's take a five-minute break and
5 give everybody a chance to stretch their legs
6 a little bit.

7 (Off the Record)

8 **THE COURT:** All right. Mr. Montgomery?

9 **MR. MONTGOMERY:** Your Honor, may it please The
10 Court? At this time, Petitioner would call Ms.
11 Tammy Young.

12 **THE COURT:** Before you sit down, let the court
13 reporter swear you in.

14 **TAMMY YOUNG,** having been duly sworn, testifies as
15 follows:

16 **MS. YOUNG - DIRECT EXAMINATION BY MR. MONTGOMERY:**

17 Q: Ms. Young, if you would just state your name
18 and address for the record, please, ma'am.

19 A: My name and address?

20 Q: Yes, ma'am.

21 A: Tammy Young. [REDACTED] West
22 Columbia.

23 Q: Okay. Ms. Young, where are you currently
24 employed?

25 A: South Carolina Department of Revenue.



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1 Q: And what's your title at the South Carolina
2 Department ---
3 A: Supervisor of Alcohol Beverage Licensing.
4 Q: And if you would, tell The Court just a little
5 bit about what your job duties and
6 responsibilities are.
7 A: My department receives applications. We send
8 them out to SLED for SLED to do the inspection.
9 And based on the questions that we give them,
10 they do the inspections, get the information
11 back to us, and we determine whether the
12 location would be approved or denied. We
13 request additional information, do map
14 requests, true ownership investigations, and
15 final inspections.
16 Q: Okay. What's a true ---
17 **THE COURT:** Excuse me a second. Ms. Young, can you
18 scoot your chair just a little bit this way, so
19 that I can see you?
20 **THE WITNESS:** I know. I'm a little short.
21 **THE COURT:** Well, it's that monitor is poorly
22 placed. Thank you very much.
23 **THE WITNESS:** Is that better?
24 **THE COURT:** Yes.
25 Q: Ms. Young, when you talk about things like true



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1 ownership investigation, what's a true
2 ownership investigation?

3 A: If we question -- we may have an undisclosed
4 principal or we're not licensing the true
5 owners, we'll have SLED look a little deeper
6 into documents for us.

7 Q: What type of criteria do you look at when you
8 do that?

9 A: We look at information like lease agreements,
10 bank statements, could be phone calls, people
11 we talk to.

12 Q: Okay. And I'm going to ask you -- I'm going to
13 hand you --

14 **MR. MONTGOMERY:** If I may approach.

15 Q: -- a document that's been marked as
16 Respondent's Exhibit 1 and ask you if you could
17 just look through that, please, and tell me if
18 you're familiar with that document.

19 A: Yes, I am.

20 Q: And what is that document?

21 A: It's the application for the license.

22 Q: Okay. And just from a -- how long have you
23 been at the Department now?

24 A: I've been at the Department for 31 years.

25 Q: Okay. And how long have you been in your



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- 1 current position?
- 2 A: Eleven.
- 3 Q: And prior to the 11 years as supervisor, were
- 4 you in the alcoholic beverage licensing
- 5 division?
- 6 A: I wasn't in the division. I did alcohol
- 7 licensing starting in 2000 as the walk-in
- 8 service up front.
- 9 Q: Okay.
- 10 A: As a tax payer assistance officer.
- 11 Q: Okay. And so, in doing that you had to work
- 12 with people coming in to apply; is that
- 13 correct?
- 14 A: Yes. Correct.
- 15 Q: And have you had to become familiar with the
- 16 statutes and regulations as they result -- as
- 17 they're applied to the licensing process?
- 18 A: Yes.
- 19 Q: Okay. And just as an aside, we heard a lot of
- 20 discussion of the term primarily and how that's
- 21 interpreted in the license. Are you familiar
- 22 with the Section 61-6-1610 of the Code of Laws?
- 23 A: Yes.
- 24 Q: And are -- does that establish a definition of
- 25 primarily for purposes of whether someone is



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1 engaged substantially or primarily in the
2 preparation of meals?

3 A: Yes, it does.

4 Q: And if I can show you this, is this a copy of
5 that statute?

6 A: Yes.

7 Q: And I believe (I) (3) defines primarily, if I'm
8 not mistaken; is that correct?

9 A: Correct.

10 Q: If you could just publish that definition for
11 The Court, I'd appreciate it.

12 A: Primarily means that the serving of the meals
13 by a business establishment is a regular source
14 of business to the licensed establishment, that
15 meals are served upon the demand of guests and
16 patrons during the normal mealtimes that occur
17 when the licensed business establishment is
18 open to the public, and that an adequate supply
19 of food is present on the licensed premises to
20 meet the demand.

21 Q: Thank you, ma'am. Now, Ms. Young, if you
22 would, just describe the process of the license
23 coming in and what you're -- what happens in
24 your office when a license comes in.

25 A: When an application comes in, we send it out to



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1 SLED right away so they can start doing their
2 posting. In the meantime, we're reviewing all
3 the other documents, the lease, the ad
4 receipts, the criminal background checks, and
5 doing compliance checks on the principals of
6 the application; checking violation history,
7 criminal records, determine moral character.

8 Q: Okay. And when you look at those violations,
9 criminal records for the Department's analysis
10 of moral character, what are you looking for?
11 What do you analyze?

12 A: For moral character?

13 Q: Yes, ma'am.

14 A: The violation history of the location and of
15 the principals, the criminal record of the
16 principals.

17 Q: Okay. And have you, in looking at the Rooftop,
18 are you familiar with the Rooftop's application
19 itself?

20 A: Yes.

21 Q: And did you find any negative indicators in
22 either of those categories when -- as part of
23 the Department's examination?

24 A: No.

25 Q: Okay. And so, if we look at the exhibit, and



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1 I just want to walk through, I guess the first
2 five pages are actually the forms that y'all
3 look at when you start processing the
4 application; is that correct?

5 A: Yes, it is.

6 Q: And then, I guess, on page six, you would have
7 the actual proof that there was publication or
8 ad required in statute?

9 A: Correct.

10 Q: And so, the idea of the ad is for what? What's
11 the purpose of advertising and it showing three
12 weeks?

13 A: To let the public know so they have a chance to
14 protest the location.

15 Q: Okay. And then beyond that, you have documents
16 that you collected from the Applicant, I guess
17 up to page 51, which is their certification of
18 liability insurance?

19 A: Yes.

20 Q: Okay. And about how many of these applications
21 does your office process on any given month or
22 year?

23 A: We do anywhere between 100 and 150 a month.

24 Q: Okay. So, ma'am, would that be new
25 applications or renewals?



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- 1 A: New applications.
- 2 Q: And when you do renewals, those are done in
3 bulk; is that correct?
- 4 A: They're done quarterly.
- 5 Q: Okay. So, each quarter you would have a
6 renewal period?
- 7 A: It takes us two years to get to the State, so
8 yes.
- 9 Q: Okay. All right. And then on page 52, it
10 looks like it's a diagram. Is that something
11 that SLED prepared or is that something the
12 Department prepared?
- 13 A: That would have been prepared by SLED.
- 14 Q: Okay. And then, I guess, as we look through
15 the next few pages, there are photographs and
16 maps. And then there's a questionnaire. It
17 looks like it goes through page 64. Are those
18 documents also that SLED would have prepared?
- 19 A: Yes.
- 20 Q: Okay. Now, this investigation checklist, Is
21 that something that the Department created or
22 did SLED create or do you know?
- 23 A: The Department creates it.
- 24 Q: Okay. And what does the Department create that
25 based upon?



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- 1 A: Statutory requirements.
- 2 Q: Okay. And the Department is the entity that's
- 3 charged with interpreting and applying the
- 4 statutes in this circumstance; is that correct?
- 5 A: Correct.
- 6 Q: And so, when you look at this page 58, you have
- 7 information on the entity, you have information
- 8 on the contact, and you had -- I guess, Justin
- 9 Swearingen, who was the ABL specialists, and
- 10 Ida Dixon, who was a SLED agent who was
- 11 responsible for this?
- 12 A: Correct.
- 13 Q: And I believe, Mr. Swearingen -- is Mr.
- 14 Swearingen no longer with the Department; is
- 15 that ...
- 16 A: No, sir.
- 17 Q: Okay. And so, then you have your -- the dates
- 18 that the agent at the bottom of the page
- 19 fulfills various statutory obligations, right?
- 20 A: Correct.
- 21 Q: And so, they've got contact the owner, they've
- 22 got to post the sign, and then they go back and
- 23 they verify the posting of that sign on the
- 24 17th and take that sign down, correct?
- 25 A: Correct.



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- 1 Q: And then they show when they complete their
2 investigation and when they remove it.
- 3 A: Correct.
- 4 Q: Okay. And then the checklist goes through and
5 some of these are applicable and some are not
6 applicable. But this is the information that
7 SLED provides the Department in allowing you to
8 work through and make your determination as to
9 whether there are problems with the Applicant
10 or the application; is that correct?
- 11 A: Correct.
- 12 Q: And obviously one of those is dealing with its
13 application, it starts in Section B with
14 whether it's a restaurant, it meets the
15 criteria for restaurant; is that correct?
- 16 A: Correct.
- 17 Q: And where does the Department get the criteria
18 for the restaurant as it goes forward?
- 19 A: Title 61.
- 20 Q: Okay. And it has certain requirements that the
21 Legislature has said have to be in a place for
22 it to be a restaurant under the Code; is that
23 correct?
- 24 A: Correct.
- 25 Q: And as you went through this and reviewed what



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1 SLED determined, did Rooftop meet all those
2 criteria?

3 A: Yes, it did.

4 Q: Okay. And it also has an investigation about
5 the location with regard to zoning and with
6 regard to the suitability of the location,
7 doesn't it, in the application?

8 A: Correct.

9 Q: And in this case, the record reflects that the
10 SLED agent made inquiry on that too; does it
11 not?

12 A: It does.

13 Q: And what did the SLED agent find there?

14 A: That everything was in order.

15 Q: Okay. And so, but for the public protest, the
16 Department would have issued this license
17 sometime in the past, I guess is a good way to
18 say it?

19 A: Yes.

20 Q: Okay. And have there been any additions or
21 supplements to this file that added principals
22 and some other things at the Department's
23 request after the initial application?

24 A: Yes. Two principals were added.

25 Q: Okay. And those principals were checked out by



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1 SLED and by ABL?

2 A: They were checked out by ABL.

3 Q: Okay. All right. Ms. Young, I don't have any
4 further questions. If you'd answer any
5 questions that Mr. McCabe or Mr. Harpootlian
6 has, I'd appreciate it. Thank you.

7 **MR. MCCABE:** Your Honor, just one brief question.

8 **MS. YOUNG - CROSS-EXAMINATION BY MR. MCCABE:**

9 Q: Ms. Young, is there any percentage requirement
10 in the restaurant liquor by the drink
11 requirements?

12 A: No, there's not.

13 Q: Percentage of food sales?

14 A: No, there is not.

15 **MR. MCCABE:** No further questions, Your Honor.

16 **MR. HARPOOTLIAN:** Just a few questions, Your Honor.

17 **MS. YOUNG - CROSS-EXAMINATION BY MR. HARPOOTLIAN:**

18 Q: So, tell me your name again, ma'am.

19 A: Tammy Young.

20 Q: So, Ms. Young, did you ever work for the
21 Alcohol Beverage Commission, ABC?

22 A: The ABC Commission? No, I did not.

23 Q: And they were the predecessor folks that
24 handles alcohol?

25 A: Correct.



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- 1 Q: Now, during your tenure with DOR, have you,
2 that is DOR, ever challenged a license based on
3 how much food was being served?
- 4 A: I believe we have.
- 5 Q: And what was the basis of that? I mean, was
6 there a specific amount? What ...
- 7 A: I'm not sure all the cases prior. I know some
8 of the outcomes of the ones. I don't know all
9 the details of the prior ones. I know
10 percentages were a question in the past. But
11 from the latest court hearing that we have, the
12 percentages were inconsequential after the
13 change of the word primarily.
- 14 Q: Okay. So, are you aware of the decision in The
15 Roost case?
- 16 A: I am.
- 17 Q: And did The Court find that less than 10
18 percent was not enough food?
- 19 A: I believe that's what it said.
- 20 Q: So, is the DOR -- well, prior to that, did the
21 DOR take the position that the percentage of
22 food mattered?
- 23 A: Prior as in?
- 24 Q: Prior to The Roost case.
- 25 A: Have we ever considered it?



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- 1 Q: Yeah.
- 2 A: When I've been supervisor, no.
- 3 Q: So, prior to The Roost case at DOR as far as
- 4 you know, the percentage of food as it relates
- 5 to the rest of the sales have not been a
- 6 consideration?
- 7 A: To my knowledge, that's correct.
- 8 Q: As a matter of fact, on The Roost -- are you
- 9 familiar with The Roost case?
- 10 A: I mean, I wasn't part of it. I read it in the
- 11 office.
- 12 Q: Okay. But there was no -- DOR doesn't ask for
- 13 audit books to determine what percentage of
- 14 sales are food, correct?
- 15 A: Correct.
- 16 Q: On renewals too, correct?
- 17 A: Correct.
- 18 Q: Now, you've indicated that you -- you were
- 19 shown a statute. Let me show you South
- 20 Carolina Code of Regulations R7-401. Are you
- 21 familiar with this?
- 22 A: I am.
- 23 **MR. HARPOOTLIAN:** May I show it? Any objections?
- 24 **MR. MONTGOMERY:** Certainly. No objection.
- 25 Q: Is this also what you used to enforce the law?



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- 1 A: Yes, it is.
- 2 Q: Okay. So, I'm looking for -- in your form, is
- 3 there a place -- well, first of all, is there
- 4 a place that indicates if they have a menu in
- 5 the form? I'm talking about the form in the
- 6 big exhibit.
- 7 A: On our investigation, is there a place?
- 8 Q: Yes.
- 9 A: Yes, there is.
- 10 Q: Where is that, please? Tell me what question
- 11 that is.
- 12 A: It's Section B5.
- 13 Q: Okay. Which reads, does the business have a
- 14 menu or sign listing the meals offered for
- 15 service and available to customers, right?
- 16 A: Correct.
- 17 Q: How about read 7-401.3A4. What does that say?
- 18 A: If such establishment advertises, a substantial
- 19 portion of the advertising must be devoted to
- 20 its food services.
- 21 Q: Okay. Is that question dealt with in the form
- 22 -- the DOR form?
- 23 A: No, it is not.
- 24 Q: So, there's no analysis done by DOR about how
- 25 much is spent on advertising and how much of



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1 that goes to food as opposed to alcohol?

2 A: No, there's not.

3 Q: Okay. So when -- and no one's ever asked SLED

4 -- I mean, you didn't draft this form, did you?

5 A: No, I did not.

6 Q: Okay. So, you would agree with me that it's

7 inadequate to answer that question in -- or

8 answer the regulation 401.3A4, correct?

9 A: Yeah, I don't know if that would be available

10 for a business open, so I don't know.

11 Q: Well, do you -- I mean, this business had been

12 open on a temporary license for -- since

13 September. October, November, December,

14 January, February, March, April, we're in May.

15 And they updated their form, correct, their

16 application.

17 A: Updated their application as far as?

18 Q: Principals involved?

19 A: Yes, they have.

20 Q: Okay. When they do that, you now know they've

21 been open for eight months, do you go back and

22 look and see what their alcohol sales are, what

23 their food sales are, what their advertising

24 budget is?

25 A: No, sir.



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- 1 Q: Why not?
- 2 A: We're not statutorily required to look for
3 percentages of food.
- 4 Q: What about -- no, no. What about advertising?
- 5 A: It just hasn't been addressed since I've
6 started, so.
- 7 Q: And how long ago was that?
- 8 A: Eleven years.
- 9 Q: So, as bars come up for renewals, there's no --
10 not even looking for their advertising budgets,
11 correct?
- 12 A: No, sir.
- 13 Q: I mean, you agree with me? You said no, sir as
14 if you were disagreeing with me.
- 15 A: Oh, I'm sorry. Repeat your question. I'm
16 sorry.
- 17 Q: So, even as bars come up for renewals or
18 periodic examinations -- which DOR has a right
19 to go into any bar and examine all the records
20 and all the books any time, correct?
- 21 A: Some of our agents do, yes.
- 22 Q: But you have the right to do that?
- 23 A: Yes, sir.
- 24 Q: Nobody's looking at advertising budgets,
25 correct?



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1 A: Not to my knowledge.

2 Q: Okay. So, this regulation by DOR is being
3 ignored by DOR, correct?

4 A: I don't know if SLED's looking into it. SLED
5 does our enforcement for us.

6 Q: But ---

7 A: We partner with them.

8 Q: But you say partner. They actually do what you
9 tell them to do. This form was ---

10 A: In the investigation, but enforcement they do
11 their own. They do surprise inspections to
12 make sure that they stay in compliance.

13 Q: Compliance would be meeting the requirements of
14 this form, correct?

15 A: Meeting all the liquor requirements.

16 Q: Okay. But you're not aware and we're not,
17 apparently until I brought it to your
18 attention, about the advertising; is that
19 correct?

20 A: Correct.

21 Q: Now, what's a hot meal?

22 A: There's not a statutory definition for a hot
23 meal. So, up for consideration, it depends.

24 Q: Well how do you interpret it? You're in charge
25 of ...



1 A: A variety of hot food prepared on the premise.
2 Q: Like what?
3 A: Spaghetti, steak, shrimp.
4 Q: Pot roast?
5 A: Hot sandwiches, pot roast.
6 Q: Meatloaf?
7 A: Meatloaf.
8 Q: Okay. Now, when you say hot sandwiches, can I
9 -- there's a -- there's a vending machine
10 downstairs, I looked at it this morning, that
11 will give you a turkey sandwich that you push
12 a button. Is that a meal?
13 A: Prepackaged foods prepared off the premise or
14 prepackaged foods or boiled eggs, they are not
15 considered a hot meal.
16 Q: What if I put it in a microwave? Is it then a
17 hot meal?
18 A: Not if it was prepackaged.
19 Q: What if I grill it?
20 A: I would assume that was a hot meal.
21 Q: Take it out of the package and grill it?
22 A: Well, no, I would have to -- assemble it
23 yourself on the location and then grill it.
24 Q: Okay. So, nothing prepacked, nothing
25 preassembled?



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- 1 A: Pretty much, yes.
- 2 Q: So, if you buy pizza from a store that's away
3 from -- let's take Five Points. There's a
4 place down there called the Village Idiot that
5 sells pizza. If you had that delivered,
6 preheated, pre-made -- I mean, you got to make
7 the pizza, right?
- 8 A: Correct.
- 9 Q: I mean, a pizza joint can go in and they make
10 the dough and then they put the tomato sauce
11 and the -- whatever you want on it, right?
- 12 A: Uh-huh (affirmative response).
- 13 Q: And it's prepared there and then brought to a
14 bar and kept hot or heated. Is that a meal?
- 15 A: That does not constitute a meal.
- 16 Q: Okay. Now -- so, there's no percentage that
17 you look at when enforcing this law?
- 18 A: We don't look at percentages.
- 19 Q: Okay. So, there's two ranges on percentages,
20 right? Zero and 100 percent. So, from your
21 perspective, is 100 percent required, 100
22 percent food?
- 23 A: In my perspective?
- 24 Q: Yeah.
- 25 A: No.



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1 Q: Zero percent, no food?
2 A: No.
3 Q: Okay. So, those are two nos. So let's start
4 off. Is 10 percent enough?
5 A: I'm not one to make that decision.
6 Q: Who is?
7 A: The courts have already made the decision.
8 Q: And is 10 percent enough?
9 A: I know in one case 20 percent was overruled and
10 their license was granted.
11 Q: Okay. Is 10 percent enough?
12 A: I don't know.
13 Q: Now, you're in charge of enforcement and you
14 don't know?
15 A: And I don't have to look at percentages. So,
16 I never looked at the percentages. It's not
17 required of me.
18 Q: Okay. So, DOR doesn't care what percentage the
19 food is?
20 **MR. MCCABE:** Your Honor, I would object. This has
21 been asked and answered. She's explained that
22 the Department of Revenue does not look at
23 percentages and Mr. Harpootlian is just
24 repeatedly asking this question. He's got an
25 answer.



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1 **THE COURT:** The objection's overruled. He's just
2 trying to understand exactly where -- what her
3 view of it is ---

4 **MR. MONTGOMERY:** Your Honor, I would impose an
5 additional objection. The characterization is
6 not an appropriate one. She -- he said DOR
7 doesn't care. One, DOR as an agency. It
8 doesn't have feelings.

9 **MR. HARPOOTLIAN:** And that may be the problem.

10 **THE COURT:** All right. Let's keep those kind of
11 comments to a minimum, Mr. Harpootlian.

12 **MR. HARPOOTLIAN:** He started it. Your Honor, He
13 started it.

14 **THE COURT:** Let's ---

15 **MR. HARPOOTLIAN:** Okay. I'll move on.

16 **THE COURT:** Thank you.

17 Q: So, it's not whether you care or not about
18 percentages, is it a consideration of yours in
19 -- or recommending it be licensed or not
20 licensed?

21 A: The Constitution does not require us to take a
22 percentage into consideration.

23 Q: What does primarily mean?

24 A: Regular source.

25 Q: Okay. What does substantial mean?



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- 1 A: That's not defined in Title 61, so I'd have to
2 review the Webster's dictionary. And I'm not
3 familiar with it.
- 4 Q: Mainly?
- 5 A: I'm not a dictionary. I can't say. I would
6 think, yes. I mean ---
- 7 Q: Okay. Well let me ---
- 8 A: --- a source.
- 9 Q: Okay. Is a microwave a stove?
- 10 A: According to Webster's dictionary, it is.
- 11 Q: Okay.
- 12 A: We did get that from Merriam-Webster's
13 dictionary.
- 14 Q: And when you go to primarily you go to Merriam-
15 Webster's Dictionary?
- 16 A: No, because it's defined in Title 61, so we
17 have to use that definition.
- 18 Q: So, if somebody has a stove, a real stove, a --
19 now, is there -- 21 cubic feet capacity for
20 food storage, is that a refrigerator?
- 21 A: Cold storage, yes.
- 22 Q: Okay. Has a menu and a sign listing the meals
23 offered for service and available to customers.
24 Everything in Section B, seat 40 people,
25 adequate food to serve 40 people, all of that,



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1 and they operate until they come up for
2 renewal, is there any inquiry as to how much
3 food they're selling as opposed to alcohol?

4 A: No.

5 Q: Okay. And your position is that the primary
6 and substantial is defined by the Legislature?

7 A: Primary is.

8 Q: Substantial is not?

9 A: Not to my knowledge.

10 Q: Okay. So, where do you get your definition for
11 that?

12 A: A regular dictionary.

13 Q: And big? What -- I mean, substantial.

14 A: I don't have the dictionary in front of me, so
15 I -- I mean, I really can't say.

16 Q: But you enforce this law every day. What do
17 you -- what do you use for substantial?

18 A: I just see that it's adequate. A lot of times,
19 I don't have the details. SLED, you know, just
20 tells me yes.

21 Q: Would you want more detail?

22 A: When I get the details, I look to see, you
23 know, what's on the menu, can it be prepared,
24 can it be served on the equipment that they
25 have.



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- 1 Q: What about substantial?
- 2 A: Most of the time, I don't know. The business
- 3 has just opened. And a lot of them don't have
- 4 temps. Or if they do have temporaries, they're
- 5 still under construction and they don't have
- 6 ...
- 7 Q: What about renewals?
- 8 A: Renewals, we're not required to other than make
- 9 sure they retain their grade A.
- 10 Q: Their grade A license?
- 11 A: Grade A.
- 12 Q: From DHEC?
- 13 A: Yes, sir.
- 14 Q: But you don't apply the word substantial to any
- 15 of those?
- 16 A: At renewal, no.
- 17 Q: Okay. So -- and you don't have SLED detail,
- 18 for instance, that they -- they have the
- 19 ability to serve hot meals at least once a day
- 20 the business establishment chooses to be open,
- 21 right? I mean, does it -- all it says is yes.
- 22 A: Correct.
- 23 Q: And matter of fact, it also says, does it have
- 24 adequate food to serve 40 people a variety of
- 25 hot meals, right? That's what your form says.



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- 1 A: It says plan to have, I believe.
- 2 Q: Plan to have during normal meal times adequate
3 food to serve 40 people a variety of hot meals,
4 which occurs in the plan to be open to the
5 public, right?
- 6 A: Correct.
- 7 Q: How does SLED ascertain that? How much is
8 enough to serve 40 people?
- 9 A: You'd have to ask SLED.
- 10 Q: Okay. But, no, SLED brings this report to you
11 and then you sign off on them, right?
- 12 A: What each agent does to ascertain their answer,
13 I cannot answer for them.
- 14 Q: So, it's not uniform? One place may --
15 somebody may dig deep, another place, another
16 SLED agent would just look at ---
- 17 A: I'm not a SLED agent.
- 18 Q: I understand, ma'am. But what's your role?
19 Aren't you the person that reviews these and
20 approves or disapproves?
- 21 A: Yes. And if they have questions, they'll give
22 me more details for us to make a determination.
- 23 Q: No, ma'am. You misunderstand me. Do you have
24 questions?
- 25 A: Sometimes I have questions, sometimes I do not.



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1 Q: Apparently you have no questions on this one
2 or, I will tell you, The Roost we saw no
3 questions by DOR.

4 A: Correct.

5 Q: So, are you aware now that The Roost, for
6 instance, was selling less than 10 percent of
7 it's income was coming from food?

8 A: I heard that, yes, I read that.

9 Q: If that were true and you knew that at the time
10 the license came across your desk, would you
11 have granted their license?

12 A: I wouldn't be looking at percentages.

13 Q: You never look at percentages?

14 A: Never look at percentages.

15 **MR. HARPOOTLIAN:** Beg The Court's indulgence.

16 Q: Yes, ma'am. On question A-8 it says, I have
17 checked with the appropriate police agency to
18 determine: If law enforcement officers have
19 had problems with public intoxication at or
20 near the proposed location; or if the police
21 have been summoned to the location on prior
22 occasions; or if the location is near other
23 locations that have been either a constant
24 source of law enforcement problems or if this
25 is a location where young people congregate and



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1 loiter. And it says, yes. So, is that yes,
2 the location is near other locations that have
3 been either a constant source of law
4 enforcement problems or if this is a location
5 where young people congregate and loiter; or if
6 police have been summoned to the location on
7 prior occasions; determined that the
8 appropriate police agency determined if law
9 enforcement officers have had problems with
10 public intoxication or near the proposed
11 location? Yes, what does that mean?

12 **MR. HARPOOTLIAN:** Objection, Your Honor. Let her
13 answer the question, please.

14 **MR. MCCABE:** Excuse me. I believe objections are
15 supposed to be issued before an answer, sir.

16 **MR. HARPOOTLIAN:** As long as it's not a speaking
17 objection.

18 **MR. MCCABE:** No, Your Honor. I would object to the
19 -- he's asking for a speculative answer. She
20 did not fill out this form, so it's
21 speculative. She did not fill out this form,
22 so she is not able to answer it.

23 **THE COURT:** Objection's overruled. She's the one
24 who receives the form ---

25 **MR. MCCABE:** Correct.



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1 **THE COURT:** --- and she should understand what --
2 she should be able to testify as to what her
3 understanding of the answer is or how she
4 interprets the answers since the answer was
5 directed to her.

6 **MR. HARPOOTLIAN:** Thank you, Your Honor.

7 **Q:** So, what does yes mean?

8 **A:** It means she checked with them. She notified
9 them and talked to them.

10 **Q:** And the response she got was?

11 **A:** If it was -- that gives them a chance to now
12 protest if they wish to protest. That lets
13 them know, and they have protest forms that are
14 left with them, that they can file a protest if
15 they feel -- or if there's something negative,
16 she wouldn't -- I would -- if they told her
17 something negative, she would put it in the
18 report.

19 **Q:** So, she got the -- as far as you know, she got
20 no negative response from the police
21 department. Now, let's say the police
22 department -- it says, have the police been
23 summoned to the location on prior occasions.
24 That's the specific question. Not whether the
25 police want to protest, but whether the police



1 have been summoned to that location previously.

2 A: This is saying she checked on these -- all
3 these items.

4 Q: And it was negative? Is that the way you
5 interpret it?

6 A: Yes, I do.

7 Q: That police had not been summoned to that
8 location previously?

9 A: From what she was told, she answered all these
10 as yes.

11 Q: Well, ma'am, again, you're the ones that
12 interprets these answers and decides whether or
13 not that DOR is going to -- and as I understand
14 it, DOR does not object to them getting a
15 liquor license; isn't that correct?

16 A: Correct.

17 Q: So -- and you're the one that makes that
18 initial determination?

19 A: Yes, I do.

20 Q: So -- or if the location is near other
21 locations that have been either a constant
22 source of law enforcement problems or if this
23 is a location where young people congregate and
24 loiter.

25 MR. MONTGOMERY: Your Honor, I'm going to object.



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1 The question is answered -- asked and answered
2 and it's argumentative.

3 **MR. HARPOOTLIAN:** I'm sorry, Your Honor. I didn't -
4 - I didn't think I got the answer. I'm trying
5 to determine if, in fact, the SLED agent told
6 her this did not occur. That is that young
7 people did not -- been a constant source of law
8 enforcement problems.

9 **THE COURT:** I think it's a fair question. I mean,
10 to me the form is a little bit confusing, so
11 I'm interested in hearing what she has to say
12 about how she interprets the answers.

13 **MR. HARPOOTLIAN:** Thank you, Your Honor.

14 **Q:** So, is the answer to the question that you
15 received that the location is not near other
16 locations that have either been a constant
17 source of law enforcement problems or not a
18 location where young people congregate and
19 loiter? Is that the way you interpret the
20 answer?

21 **A:** I interpret the answer is that she went out
22 there and she asked these things, and she's
23 telling me yes, as there's no issues.

24 **Q:** I'm sorry. Maybe I'm confusing you or you're
25 confusing me. If there was a problem with the



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1 public intoxication at or near the proposed
2 location, if there was a problem with other
3 locations near that -- this location, a
4 constant source of law enforcement problems, or
5 if the location where young people congregate
6 and loiter, her answer indicates to you none of
7 those are problems; is that correct?

8 A: Correct.

9 Q: Okay. And she talked to somebody at Columbia
10 Police Department slash Justin; is that right?
11 Somebody named Justin?

12 A: Yes.

13 Q: They -- do they not put last names down?

14 A: Most times they don't even put names at all.
15 They just let me know who they're left with,
16 what agency.

17 Q: And how many of these do you get a month?

18 A: We get about 150 applications a month with
19 various license types.

20 Q: What about on premises alcohol consumption?

21 A: I would be guessing. We probably receive
22 three, four, five a day.

23 Q: Okay. And do all those go through you?

24 A: Me personally? No. My department and my
25 employees, yes.



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1 Q: But ultimately, who signs off on them?

2 A: My employees.

3 Q: Okay. So, you don't review all of them
4 yourself?

5 A: No, I do not. Only if they're -- have issues.

6 Q: Did this have issues?

7 A: It did not.

8 Q: Okay. Did you review this?

9 A: I did not. Not before I was called to testify
10 here.

11 Q: Okay. But you are indicating that your
12 Department's position is what you've said here
13 in terms of percentages, in terms of how you
14 interpret these answers; is that correct?

15 A: Correct.

16 MR. HARPOOTLIAN: Beg The Court's indulgence. Thank
17 you.

18 THE COURT: All right.

19 MR. MONTGOMERY: Just briefly on Re-Direct, Your
20 Honor.

21 MS. YOUNG - REDIRECT EXAMINATION BY MR. MONTGOMERY:

22 Q: Ms. Young, Mr. Harpootlian made a -- asked you
23 a number of questions about the definition of
24 substantially. And I want to ask you if you
25 just -- are you familiar with Section 61-6-20?



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1 A: Yes. I mean, I don't have it all memorized,
2 but ---

3 Q: Well, I'm just going to show you a part, which
4 is Section 61-6-20(2). And it defines Bona
5 fide engaged primarily and substantially in the
6 preparation and serving of meals. See if that
7 would refresh your recollection.

8 A: Which one, 61-6-20(2)?

9 Q: Yes, ma'am.

10 A: Bona fide engaged primarily and substantially
11 in the preparation and serving of meals means
12 a business that provides facilities for seating
13 not fewer than forty persons simultaneously at
14 tables for the service of meals. You want me
15 to read it all?

16 Q: You can publish it all if you'd like. Yes,
17 ma'am.

18 A: Okay. And that is equipped with a kitchen that
19 is utilized for the cooking, preparation, and
20 serving of meals upon customer request at
21 normal meal times; has readily available to its
22 guests and patrons either menus with the
23 listings of various meals offered for service
24 or a listing of available meals and foods,
25 posted in a conspicuous place readily



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1 discernible by the guest or patrons; and
2 prepares for service to customers, upon the
3 demand of the customer, hot meals at least once
4 each day.

5 Q: So, it'd be fair to say the General Assembly
6 has told you what primarily and substantially
7 means and then define primarily again, haven't
8 they?

9 Q: Yes.

10 A: Okay. And --

11 **MR. MONTGOMERY:** That's all I have. Thank you.

12 **MR. HARPOOTLIAN:** Nothing further, Your Honor.

13 **THE COURT:** All right.

14 **MR. MONTGOMERY:** And, Your Honor, I would ask if Ms.
15 Young could be excused if she'd like to leave
16 the courtroom.

17 **MR. HARPOOTLIAN:** No objection.

18 **THE COURT:** All right. You're excused. All right.
19 It is noon. Would you guys like to take a
20 lunch break now or would you like to do one
21 more witness before we break for lunch? How
22 long is your next -- do you think your next
23 witness will be?

24 **MR. MONTGOMERY:** Probably an hour or so, Your Honor.

25 **THE COURT:** Okay. Well, why don't ---



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1 MR. MONTGOMERY: Depending on Cross.

2 THE COURT: And there seems to generally be a lively
3 Cross in this case.

4 MR. MONTGOMERY: Yes, ma'am.

5 THE COURT: So, why don't we go ahead and take a
6 lunch break. How long do y'all need? Is an
7 hour enough or do we need an hour and a half?

8 MR. HARPOOTLIAN: Hour and 15, Your Honor.

9 THE COURT: Okay. Why don't we be back then at
10 about 1:20.

11 MR. MONTGOMERY: Thank you, Your Honor.

12 MR. HARPOOTLIAN: Thank you, Your Honor.

13 (Break For Lunch)

14 THE COURT: All right. We got another witness?

15 MR. MONTGOMERY: Yes, Your Honor. May it please The
16 Court. At this time, we call Ms. Ida Dixon.

17 THE COURT: Okay.

18 COURT REPORTER: Ma'am, please state and spell your
19 full name.

20 MS. DIXON: Ida Dixon, I-D-A D-I-X-O-N.

21 IDA DIXON, having been duly sworn, testifies as
22 follows:

23 MS. DIXON - DIRECT EXAMINATION BY MR. MONTGOMERY:

24 Q: Ms. Dixon, I believe you were subpoenaed to
25 appear here today. Is that correct?



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1 A: That's correct.

2 Q: And if you would, if you would just tell The
3 Court -- again, you've given your name to the
4 court reporter. If you could give a little --
5 tell us a little bit about yourself, your job
6 title, and a little bit about your background.

7 A: Wow. I'm a 1980 graduate from Morris College
8 in Sumter, South Carolina with a bachelor of
9 arts degree. In 1980, I was employed with the
10 South Carolina Department of Corrections,
11 Central Correctional Institution, better known
12 as CCI. There, I was a correctional officer,
13 then a shift supervisor, then a training
14 supervisor. In 1986, I became employed as an
15 agent with the South Carolina Alcoholic
16 Beverage and Control Commission. There I
17 conducted alcohol enforcement in the Upstate of
18 South Carolina, being as Spartanburg,
19 Greenville, Oconee, Pickens, Anderson, you name
20 it. In 1988, from the ABC Commission, I was
21 actually assigned or on loan to the South
22 Carolina Law Enforcement Division for the RAID
23 Team. RAID Team was the Retaliation Against
24 Illegal Drugs in the state of South Carolina.
25 And this was implemented by the former Carol



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1 Campbell -- Governor Carroll Campbell. And it
2 was basically to combine forces of agencies in
3 the state of South Carolina. And that was with
4 the ABC Commission, the South Carolina Law
5 Enforcement Commission, and the Highway Patrol,
6 and the Natural Resources. And actually 12
7 agents from those agencies came over to SLED at
8 that time to actually become narcotic agents.
9 In 1992, 1993, I became an instructor through
10 SLED as an NCIC instructor at the Academy. I
11 taught there. I taught law enforcement. I
12 taught 911 operators, as in the National Crime
13 Information Center, those procedures. In 1994,
14 I was actually brought back into SLED as
15 investigative services with the Midlands.
16 Basically worked major crimes and child
17 fatalities in the state of South Carolina. In
18 2003, I became a senior special agent with the
19 alcohol licensing -- licensing area. And
20 that's until present.

21 Q: So, for the last years, you've been involved in
22 alcohol licensing?

23 A: Fifteen or more.

24 Q: And then prior to that when you worked for the
25 Alcoholic Beverage Control Commission, you were



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1 involved in alcohol licensing as well?

2 A: That's correct.

3 Q: And would it be fair to say that during your
4 law enforcement career, you've had to deal with
5 alcohol licensing or violations as well as
6 other issues?

7 A: That's correct.

8 Q: Okay. Now, were you the individual who was
9 assigned to investigate the application for
10 Rooftop Bar?

11 A: That's correct.

12 Q: Okay.

13 A: Yes, I was.

14 Q: Now before you is, I believe, Exhibit 1, which
15 is the big stack of paper.

16 A: Okay.

17 Q: Which is the Department of Revenue's file.

18 A: Okay.

19 Q: I'm going to show you a document and ask if you
20 can identify it, which is a part of that file,
21 but I think it might be a little easier if we
22 just deal with a part of it as opposed to the
23 whole file for purposes of your examination.

24 **MR. MONTGOMERY:** Madam Court Reporter, if you could
25 just mark this. I'd appreciate it.



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1 (Petitioner's Exhibit Number 1 was marked for
2 identification purposes.)

3 Q: Ms. Dixon, if you could tell me what that
4 document is?

5 A: This is the -- my investigation report of the
6 results of the investigation with Rooftop Bar
7 & Lounge.

8 Q: Okay. And just from a general standpoint, if
9 you'd tell The Court a little bit about what
10 you do when you get this investigation
11 assignment and how you go about conducting your
12 investigation.

13 A: Okay. The investigations start with the
14 Applicant itself. The Applicant actually go
15 through the Department of Revenue. The
16 Department of Revenue initiates the actual
17 investigation to us. It is done to us by what
18 we call our ASAP System and on the dashboard.
19 From an ABL specialist, once she review or he
20 reviews the application, it's sent to SLED to
21 our SLED manager. Our SLED manager at this
22 time is Lieutenant Joe West. It's sent to him
23 and he would actually review what counties that
24 he need to send to what agents. Okay? And
25 that's when it's actually done. Once we get --



1 or look at our dashboards, we actually contact
2 the Applicant and let the Applicant know that
3 we're in the process of either posting the
4 location or we'll be posting it in the next
5 coming days. Once we make that contact, make
6 that posting, after the posting, we look in the
7 area to see whether there's a church, school,
8 or playground in the immediate vicinity. If
9 there is a church, school, or playground in the
10 vicinity, we notify that church with a notice,
11 a public notice, and also have on that public
12 notice a date of when the actual protest or the
13 paperwork should be placed in. From then, we
14 then basically go to the law enforcement center
15 that's in that particular jurisdiction. If
16 it's Richland County or Forest Acres, that's
17 particularly -- this particular one was
18 actually in Richland -- in Columbia. So, we
19 actually went to -- I actually went to Columbia
20 Police Department. Okay. This was actually
21 dropped off to Columbia Police Department.
22 Columbia Police Department have until whatever
23 date I post on it. And I actually post 10/17.
24 It was actually posted on 10/2/17 and they had
25 until 10/17 before 5:00 to actually make the

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1 protest. From there, nearing the -- it's
2 according to what's going on, whether I will
3 interview the Applicant at that time or
4 interview him or her at a later date. But the
5 Applicant is interviewed. First the Applicant
6 is identified. He or she is identified by a
7 South Carolina driver's license or driver's
8 license or passport, something that I must see
9 to identify. You know, and have the person
10 identify himself or herself. Then I -- there's
11 a listing. I have a checklist, this checklist,
12 that I go down with the actual Applicant, and
13 I have requested documents in my conversations
14 with the Applicant prior to meeting with him or
15 her. And those documents that I need to see.
16 After receiving those documents and upon
17 leaving the location, I remove the sign if the
18 sign is due. I remove the sign and I also give
19 an inspection of the location. And those
20 inspection is based on the checklist that was
21 implemented by the Department of Revenue.

22 Q: So, part of your role, it's fair to say then
23 from what you're describing, is you're the
24 person or someone in your -- in this case, you
25 were the person who ensures that the property



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- 1 is posted and that public notice of application
2 is given?
- 3 A: That's correct.
- 4 Q: And you also contacted the City of Columbia,
5 advised them of the application, and I believe
6 -- did you leave protest forms with the City of
7 Columbia as well when you went by ---
- 8 A: Yes.
- 9 Q: Okay. And did you receive any communication
10 from anyone at the City of Columbia that they
11 had an objection or there was a problem with
12 this location?
- 13 A: No, I did not.
- 14 Q: Okay. And you made your own inspection of the
15 location of the area as well?
- 16 A: That's correct.
- 17 Q: Okay. And you interviewed the Applicant and
18 you reviewed the documents that you requested
19 and were provided?
- 20 A: That's correct.
- 21 Q: Okay. And does what I have had marked as
22 Exhibit 1, that you're looking at, the
23 investigation checklist, did you actually
24 complete this checklist?
- 25 A: Yes, I did.



- 1 Q: Okay. And so, you indicate what you've looked
2 at and who you've talked to and what you found.
3 Now, when you looked at this, you indicated in
4 A-8 that you've checked with the appropriate
5 police agency to determine these things and you
6 indicate you just charge that by going by and
7 dropping off the forms with the City of
8 Columbia?
- 9 A: That's correct.
- 10 Q: Okay. And then when you went through Section
11 B, I think which starts on the number that's 60
12 at the bottom, that gives you the issues
13 relating to what needs to be found from a
14 standpoint of the restaurant part of the
15 application; is that correct?
- 16 A: That's correct.
- 17 Q: So, you confirmed the business could seat at
18 least 40 or more persons as it set forth in B-
19 1; is that correct?
- 20 A: That's correct.
- 21 Q: And you confirmed that they have a separate
22 kitchen that is used solely for the
23 preparation, service, and disposal of meals?
- 24 A: That's correct.
- 25 Q: And did you confirm that the kitchen had a



1 working fixed grill, stove, or microwave oven?

2 A: That's correct.

3 Q: And did you confirm that they had at least 21
4 cubic feet of cold storage?

5 A: Correct.

6 Q: And that the menu -- business had a menu or
7 sign listing the meals offered for service and
8 available for customers?

9 A: That's correct.

10 Q: And you actually, I believe, took a picture and
11 included that in the record as well of those
12 things?

13 A: Yes. We often would send the -- and that's one
14 of the requirements from the Department of
15 Revenue, that we send a copy of the menu to the
16 Department of Revenue.

17 Q: And you confirmed, it looks like, the location
18 has, during normal meal times, adequate food to
19 serve 40 people a variety of hot meals, which
20 occurs when the business plans to be open to
21 the public?

22 A: That's correct.

23 Q: How do you go about making that determination?

24 A: That determination is basically upon the
25 Applicant. It's upon him. The question -- the



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1 question B-6 says, does the location plan to
2 have. I don't know. I cannot answer that.
3 So, the answer would actually be up to the
4 Applicant. And that's what the Applicant
5 actually told me.

6 Q: Okay. And you actually -- does SLED sometimes
7 go and check and go back and determine if
8 people are able to serve meals as part of ---

9 A: The enforcement. The enforcement division.

10 Q: Okay. And is that something that occurs on a
11 regular basis?

12 A: I don't know, sir.

13 Q: Okay. Now -- and you confirmed it complied
14 with the distance requirements from schools,
15 churches, and playgrounds; is that correct?

16 A: That's correct.

17 Q: What other items do you look at when you go in
18 to do these inspections?

19 A: Basically what's on the checklist. For this
20 one, and I do recall this one very much, Mr.
21 Bland was asked by me to clean his place up,
22 because it was so -- and I know it's not in the
23 ramifications of the questions on the
24 checklist, but he was asked by me before I
25 signed off on it to clean the location up.



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1 Q: And he did that, I presume.
2 A: Yes.
3 Q: Okay. And you completed your investigation on
4 October 24th and -- on page 64. And that's
5 your initials that you completed and you found
6 that it met the requirements in the statute.
7 A: That's correct.
8 Q: Okay.
9 A: Thank you, Ms. Dixon. I have no further
10 questions. If you'd answer any questions that
11 these other gentlemen have.
12 **MR. MCCABE:** No questions from the Department, Your
13 Honor.
14 **THE COURT:** Okay.
15 **MR. HARPOOTLIAN:** May it please The Court, Your
16 Honor.
17 **MS. DIXON - CROSS-EXAMINATION BY MR. HARPOOTLIAN:**
18 Q: Ms. Dixon, how long were you with the ABC
19 Commission? How long did you work with them?
20 A: I worked with them from 1986 until the ABC
21 Commission was actually resolved in '91, but
22 actually went on assignment to SLED in '88.
23 Q: Was Wilbur Hodge chairman of that Commission
24 while you were there?
25 A: Yes. He was one of them.



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1 Q: What happened to him?

2 A: What happened to him? I don't recall what
3 happened to him.

4 Q: Didn't he get convicted of perjury and removed
5 from office?

6 A: Okay.

7 **MR. MONTGOMERY:** Your Honor, I will object. I don't
8 think there's any relevance to that.

9 **MR. HARPOOTLIAN:** We're just reminiscing.

10 Q: Okay. I don't recall. Was that the one in an
11 accident? I don't know.

12 A: No, that was another one.

13 Q: Okay.

14 A: Let me ask you a little bit about this. This
15 form you filled out, is this a form that given
16 to you by DOR?

17 Q: It's actually sent to us through our ASAP
18 System, yes.

19 A: It's computerized and sent to you?

20 A: Uh-huh (affirmative response).

21 Q: And that process -- this form, did you or
22 anybody at SLED help create this form?

23 A: We've actually revised it several times. I
24 think after the legislation have met for years

25 ---



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1 Q: Did you revised it or DOR?

2 A: No, no, no. They would ask for our input as in
3 the changes that would take place. So, it has
4 been changed in the past. And I'm assuming,
5 according to this legislation, it may, it may
6 not be.

7 Q: Okay. So, when you get this form, you go out.
8 And a question just a moment ago was how do you
9 ascertain whether they have enough food on hand
10 to feed 40 people. You said because they tell
11 you they do. Is that about right?

12 A: Okay. The question -- this particular
13 checklist does not require me to have to see
14 the food on premises. Years ago, it was. I
15 had to see the actual food on premise. But the
16 new revised checklist only provides if the
17 person or the Applicant lets you know that,
18 yes, we plan to serve food.

19 Q: So, the -- it used to be a requirement by DOR
20 you actually see food ---

21 A: Yeah. We had to see it.

22 Q: You can see a kitchen ---

23 A: You had to see everything.

24 Q: You have to see the kitchen.

25 A: Uh-huh (affirmative response).



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1 Q: You have to see the refrigerator.
2 A: Oh, you -- yeah. We do that now.
3 Q: And is it -- does it have to be a stove like
4 you have in a restaurant or can it be something
5 else?
6 A: It can be just -- it's according to what type
7 of location it is. A stove.
8 Q: Can it be a microwave?
9 A: Yes. It could be a microwave.
10 Q: Okay. And the microwave would be enough to --
11 for the preparation of meals?
12 A: Yes. According to the checklist, yes.
13 Q: Okay. But that's dictated to you by DOR.
14 A: That's correct.
15 Q: You don't make that independent judgement?
16 A: No, sir.
17 Q: DOR has told you a microwave is a stove.
18 A: A grill, microwave, or a stove.
19 Q: Right. Okay. Now, do you determine whether or
20 not the establishment advertises?
21 A: No, I do not.
22 Q: So, you wouldn't know what percentage of their
23 income is spent on advertising food?
24 A: No. You're referring to advertisement as in
25 they've applied or advertisement as in what's



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1 in the location itself?

2 Q: What's in the location itself.

3 A: Within the location itself?

4 Q: Right.

5 A: No.

6 Q: Do you ask any questions about advertisement?

7 A: No.

8 Q: Not on the checklist?

9 A: Uh-uh (negative response).

10 Q: Okay. So, what documents do you request from

11 the Applicant to determine whether or not they

12 intend on selling food other than a copy of a

13 menu?

14 A: Copy of the menu. And with this new one, I

15 don't know what year it was revised. I think

16 it has a revise date on it or it could be

17 final. But most of the time -- well, now it's

18 more of a trustworthy thing, if you actually

19 does. And I think that's when our enforcement

20 comes into play.

21 Q: Does it -- do the enforcement folks go to every

22 bar and determine?

23 A: I really don't know. I don't know.

24 Q: But they're supposed to do something?

25 A: Yes.



1 Q: Based on a complaint or they do random or do
2 you know?
3 A: I really don't know.
4 Q: Okay. How about go over to this question about
5 the police, A-8. I checked with appropriate
6 police agency to determine if law enforcement
7 officers have had any problems with public
8 intoxication at or near the proposed location.
9 Is that what it says?
10 A: Yes, sir.
11 Q: Now, did you ask anybody at the police
12 department that specific question?
13 A: We basically drop off. We have a contact
14 person at each law enforcement agency. And
15 that contact person gives it to the designated
16 person of that ---
17 Q: Gives what? Gives what?
18 A: Give a protest form.
19 Q: Okay. But maybe you misunderstand my question.
20 That contact person, do you actually see them
21 or do you just drop it off?
22 A: The contact person ---
23 Q: Person.
24 A: --- that I leave it with?
25 Q: Yes.



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1 A: I actually see that person.

2 Q: Do you ask that person if the law enforcement

3 officers have had any problems with public

4 intoxication at or near the proposed location?

5 A: No. I ask the contact person to give it to the

6 designated person. And that person have until

7 that day that's on it ---

8 Q: To protest?

9 A: --- to make contact.

10 Q: Well, so -- and let me read the other questions

11 to you and make sure I understand this. Or if

12 police have been summoned to the location on

13 prior occasions, you don't ask them that

14 either, do you?

15 A: No. But he has ample time to protest with that

16 question.

17 Q: We'll get to that in just a second.

18 A: Okay.

19 Q: I just want to first of all make sure I

20 understand whether these questions were asked.

21 Or if the location is near other locations that

22 have been either a constant source of law

23 enforcement problems or if this is a location

24 where young people congregate and loiter. You

25 didn't ask that question either?



1 A: No.

2 Q: And the corporation or association has a
3 reputation for peace and good order in its
4 community, you didn't ask that question either?

5 A: I didn't ask that question, but the ---

6 Q: Okay. Well ---

7 A: --- form that I ---

8 Q: Okay. What's on the form?

9 MR. MONTGOMERY: Your Honor, if he'd let her answer
10 the question he asked, I'd appreciate that.

11 MR. HARPOOTLIAN: She's going to say ---

12 A: The form that I ---

13 Q: Okay. Go ahead.

14 A: --- used, I don't know -- do you have one in --
15 is it -- a protest form.

16 Q: I don't think so.

17 MR. HARPOOTLIAN: You got one?

18 MR. MONTGOMERY: There's some in the record, but...

19 A: It lists basically what's listed in A-8 as in
20 knowing that the person ---

21 Q: Is the protest form -- I'm sorry.

22 A: --- or location is a nuisance ---

23 Q: Is the protest form for the police any
24 different than anybody else's protest form?

25 A: No.



1 Q: Okay. Maybe I can help you there.

2 A: I have one, I can -- I don't have my -- what
3 mines would look like.

4 **MR. MONTGOMERY:** The ABL-20 is what you're referring
5 to, correct? They're in the records. Page 95.

6 **THE WITNESS:** Ninety-five?

7 **MR. HARPOOTLIAN:** Of the complete form?

8 **MR. MONTGOMERY:** Yes.

9 Q: Page 95? You see page 95 in there?

10 A: Okay.

11 Q: Is that what the form looks like?

12 A: Page 95 is actually the second page to it.
13 It's a three-page -- it's three pages.

14 Q: What's right before 95 in here? So, what does
15 the first page say?

16 A: The first page actually gives the location
17 name, what type of license he or she has
18 applied for, the address and when the person
19 has to have the protest in. In that, the
20 person has to agree to attend the hearings once
21 the hearing comes up. And I actually place in
22 ...

23 Q: Okay. And then attached to that is that
24 protest form we just looked at?

25 A: And another one. It's a three-page request.



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1 Q: I think that's a two-page request.
2 A: Two-page?
3 Q: Look at page 95, 96. Right?
4 A: Yeah.
5 Q: Yeah, okay. So it's ---
6 A: So, there's a top page.
7 Q: A top page, which just tells them these folks
8 have applied?
9 A: Uh-huh (affirmative response).
10 Q: And if you want to protest, you need to fill
11 this form out and get it back to us by a
12 certain day; is that correct?
13 A: Yeah. And have a reason.
14 Q: And have -- yes, ma'am.
15 A: Yeah.
16 Q: But, again, the form requires a reason.
17 A: You're right, right.
18 Q: Okay. Now, let me get back to my original
19 question. Nowhere in writing, in writing --
20 we've confirmed that you verbally don't ask
21 them these questions. But nowhere in writing
22 does it say, ask the police to determine if law
23 enforcement officers have had problems with
24 public intoxication at or near the proposed
25 location. That's not on that one-page form you



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- 1 talked about?
- 2 A: No.
- 3 Q: Okay. And it doesn't ask if they've been
- 4 summoned to the location on prior occasions,
- 5 the form?
- 6 A: No, it's on the second page. It's -- I may
- 7 have one. It's another first page. And right
- 8 now I ---
- 9 Q: But that language isn't contained on that first
- 10 page, is it?
- 11 A: I don't recall. I don't know.
- 12 Q: Okay. That's good. That's a good answer.
- 13 That's fine.
- 14 A: I don't remember.
- 15 Q: But you don't ask those questions, we've
- 16 determined that. And other than dropping off
- 17 a form that somebody could then -- the police
- 18 department can protest, you don't know whether
- 19 these specific questions I've reviewed to you
- 20 were asked of the police by anybody, correct?
- 21 A: That's correct.
- 22 Q: Okay. Now, you would agree with me that there
- 23 are many instances in which the police would
- 24 have information about these categories we've
- 25 talked about, but might not want to protest; is



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1 that correct?

2 A: That's correct.

3 Q: But -- never mind. Never mind. Withdraw that.
4 Okay. So, as you go through this checklist it
5 says, I've interviewed the Applicant in order
6 to confirm, this is A-1, the principals and
7 owners have been listed on the application.
8 Now, specifically on this application, were you
9 aware that 60 percent of the ownership of this
10 entity was by a woman in Massachusetts?

11 A: Was that the Elizabeth?

12 Q: Wells. I think it's called Schatze. It's an
13 LLC called Schatze.

14 A: No, sir.

15 Q: Now, if you go over to page A-13 -- I mean,
16 page 60, which is A-13.

17 A: A-13?

18 Q: Question A-13.

19 A: Okay.

20 Q: I've left protest form showing protest
21 deadlines with the authorities in charge of
22 nearby schools, churches, and playgrounds; is
23 that right?

24 A: That's correct.

25 Q: And is that the same thing you did with the



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1 police department?

2 A: Yes.

3 Q: Okay. So, but A-8 says, I've checked with the
4 appropriate police agency to determine these
5 questions. A-13 says, I left protest forms
6 showing protest deadlines. I guess what I'm
7 asking you, are your instructions from DOR to
8 leave forms with the police, as you did? Were
9 you following their directions?

10 A: That's correct.

11 Q: Okay. Now, in any of the questions you asked,
12 other than getting a menu and looking at the
13 physical layout of the kitchen, what else do
14 you do -- and seeing there's 40 seats in there
15 to serve food, what else are you looking for of
16 the physical plan?

17 A: The physical? The seating.

18 Q: Seating 40 people.

19 A: The restrooms.

20 Q: Well, there's no restroom question on here.

21 A: Yes, there are.

22 Q: Is there? Okay. I must have missed it.

23 A: Yeah.

24 Q: Restrooms.

25 A: Restroom. Making sure the location does not



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- 1 have a drive-thru for curb service.
- 2 Q: Okay.
- 3 A: The refrigerator or some type, making sure
- 4 that's in the kitchen area, the stove, the
- 5 grill, or microwave. I just go down the
- 6 checklist. I don't ---
- 7 Q: In your mind, is there any difference between
- 8 -- you know what a bar is?
- 9 A: A bar?
- 10 Q: A bar. You know what a bar is?
- 11 A: Yeah.
- 12 Q: And you know what a restaurant is?
- 13 A: Yes.
- 14 Q: What's the difference?
- 15 A: The difference is a bar basically sells
- 16 alcohol. They may have snacks or whatever in
- 17 it. But when a restaurant, they may have --
- 18 they will have alcohol, plus they will have a
- 19 kitchen area where they prepare food.
- 20 Q: Prepare food and serve food?
- 21 A: And serve, yes.
- 22 Q: Are hotdogs enough?
- 23 A: Hot dogs?
- 24 Q: Yeah.
- 25 A: If they're making it on -- actually there, not



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1 prepackaged hotdogs.

2 Q: Okay. What about if they just have pretzels?

3 A: Pretzels?

4 Q: Yeah.

5 A: With the pretzel machine ---

6 Q: Let me strike that. What about pizza?

7 A: Pizza?

8 Q: If it's made there?

9 A: If it's made there, that's food.

10 Q: That's food. If it's brought in from somewhere

11 else?

12 A: I ...

13 Q: Okay. But you basically just go by this form?

14 You don't interpret the form?

15 A: That's right.

16 **MR. HARPOOTLIAN:** Beg The Court's indulgence. Thank

17 you. No further questions.

18 **MR. MONTGOMERY:** Your Honor, I just have one thing

19 on Re-Direct.

20 **THE COURT:** Okay.

21 **MS. DIXON - REDIRECT EXAMINATION BY MR. MONTGOMERY:**

22 Q: Ms. Dixon, if you would look at page 59,

23 question A-1.

24 A: Uh-huh.

25 Q: You obtained a copy of the operating agreement



1 of the entity; did you not?

2 A: The operating agreement was actually sent to
3 DOR.

4 Q: Okay.

5 A: I actually looked at it onsite.

6 Q: Okay. And if you looked at the operating
7 agreement, if you looked at page 35, I believe,
8 of the record there, that's the signature -- or
9 the Schedule A of the operating agreement at
10 the time of the application. And that ---

11 A: Thirty-five?

12 Q: Yes, ma'am, 35. That shows the ownership
13 percentages; does it not?

14 A: Okay. Yes, sir.

15 Q: Okay. So, if you had access to that and Mr.
16 Harpootlian asked you, you just didn't remember
17 you had seen that, I guess as to the ownership
18 there.

19 A: Right.

20 Q: Would that be fair?

21 A: Yeah.

22 **MR. MONTGOMERY:** I have nothing further.

23 **MR. HARPOOTLIAN:** Just one further question.

24 **MS. DIXON - RECROSS-EXAMINATION BY MR. HARPOOTLIAN:**

25 Q: Just one further question. You don't make any



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1 decision about who gets a license or not, do
2 you?
3 A: No, sir.
4 Q: That's up to DOR?
5 A: That's correct.
6 Q: And who -- do you know who at DOR dealt with
7 this application?
8 A: The ABL specialist was Justin Swearingen, yeah.
9 Q: Okay. Thank you.
10 A: Uh-huh.
11 **MR. MONTGOMERY:** Your Honor, if the Department has
12 nothing, we have nothing further from Ms. Dixon
13 and would ask that she be released.
14 **MR. HARPOOTLIAN:** No objection.
15 **THE COURT:** All right. You're excused.
16 **MS. DIXON:** Thank you.
17 **THE COURT:** All right. Do you have another witness?
18 **MR. MONTGOMERY:** Yes, ma'am. At this time we call
19 Tony Perricelli.
20 **THE COURT:** Well, do y'all want to -- does anybody
21 need a break or do you want go forward with the
22 next witness?
23 **MR. HARPOOTLIAN:** I'm fine, Your Honor.
24 **THE COURT:** Okay. All right.
25 **COURT REPORTER:** Please state and spell your full



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1 name, sir.

2 **MR. PERRICELLI:** Anthony Perricelli, A-N-T-H-O-N-Y P-
3 -E-R-R-I-C-E-L-L-I.

4 **ANTHONY PERRICELLI**, being duly sworn, testifies as
5 follows:

6 **MR. PERRICELLI - DIRECT EXAMINATION BY MR.**
7 **MONTGOMERY:**

8 Q: Mr. Perricelli, if you would just tell The
9 Court a little bit about your educational
10 background and training.

11 A: I attended Winthrop University and received a
12 bachelor's degree in accounting and then
13 attended the University of South Carolina with
14 a master's degree in taxation. And been
15 working with my firm, Scott and Company since
16 1998.

17 Q: Okay. And in that practice, can you tell The
18 Court a little bit about the nature of your
19 practice in public accounting?

20 A: Yes. My practice is primarily in the area of
21 tax, prepare tax returns or oversee a staff
22 that prepare tax returns, do consulting,
23 business consulting and advise individuals and
24 businesses on tax issues, assist with all types
25 with filings, whatever is required, assist with



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1 issues that might arise in terms of IRS or
2 Department of Revenue problems or notices or
3 just clearing up items like that and just
4 whatever is needed in terms of -- primarily
5 with tax.

6 Q: Okay. And you produced some document, I
7 believe, according to subpoena today.

8 A: Yes, sir.

9 Q: And I'm going to just show you a copy of one of
10 those documents.

11 **MR. MONTGOMERY:** I'm going to ask the court reporter
12 to mark this as number two.

13 **MR. HARPOOTLIAN:** No objection.

14 **THE COURT:** Petitioner's Two is admitted.

15 **(Petitioner's Exhibit Number 2 was marked and**
16 **admitted into the record.)**

17 Q: And if you could, just tell The Court what this
18 document is, Mr. Perricelli.

19 A: This is a general ledger for the months January
20 through April, 2018 for the Rooftop Bar, LLC.

21 Q: Okay. And this document is something that you
22 prepared?

23 A: Yes.

24 Q: And if you would explain to The Court how you
25 gathered the information, worked to prepare the



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1 general ledger for Rooftop.

2 A: Okay. The primary method was -- this is a --
3 I use an online system called QuickBooks
4 online. And primarily, the information is
5 downloaded from the client's bank account. And
6 so, there's a digital connection. It's
7 downloaded directly into the software and then
8 I basically go in and categorize the different
9 transactions based on whatever their --
10 whatever is appropriate. So, if it's an
11 expense category, I put it in the appropriate
12 category. If it's a revenue category -- and so
13 on. And so, basically I do as much as I can
14 based on the descriptions that are given by the
15 bank. And then the ones -- the items that I
16 have questions about, I ask the client or
17 whoever is appropriate to ask about that to see
18 where it needs to be categorized.

19 Q: Okay. As it relates to this, if you would,
20 just from a background standpoint, let's step
21 back and if you'll tell The Court a little bit
22 about how you came to work with Rooftop Bar.

23 A: Well, I was referred to Mr. Bland by his
24 friend, Dan Wells. Dan Wells is a client of
25 mine. Also I do prepare tax returns and have



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1 prepared tax returns for him. Dan, Stephen,
2 and I had lunch together several months ago and
3 he introduced me to Stephen and said,
4 recommended that I would do a good job for him
5 and help him out with his accounting and his
6 tax preparation work.

7 Q: And since that time, have you dealt with anyone
8 other than Stephen or Adam Ruonala as it
9 relates to Rooftop Bar and Grill?

10 A: No, just the two of them.

11 Q: Okay. And when you first met with Mr. Bland,
12 did you have a conversation as to accounting
13 practices and things that you felt like he
14 should implement?

15 A: Just a very basic overview. I recommended that
16 he set up with a professional payroll service
17 to make sure that his payroll is recorded
18 correctly, in particular with dealing with the
19 service industry, restaurants, bars, things
20 like that. We have tips often involved and so
21 I recommended strongly that he use a
22 professional payroll service. And just other
23 general topics related to accounting. That's
24 probably the only specific thing I can think
25 of.



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- 1 Q: From a standpoint of the payroll service, can
2 you just explained to The Court how are their
3 tips and pay handled as it relates to the
4 payroll service?
- 5 A: Well, everything is reported to the payroll
6 service and then the payroll service issues
7 checks and also issues the quarterly filings
8 for the government agencies; IRS, Department of
9 Revenue. And those are handled by the payroll
10 service.
- 11 Q: So, were their tips all captured and reported
12 to their employees as they come in?
- 13 A: It's my understanding that's the way it works.
14 I don't have any direct involvement in that
15 process. But I -- the service that they are
16 using is a professional service and they
17 include that as part of their package.
- 18 Q: From your view of the records that come into
19 you, would your review indicate that that's
20 occurring that way?
- 21 A: Actually, I haven't reviewed any of the payroll
22 reports as of yet.
- 23 Q: Okay.
- 24 A: I'm still working on those.
- 25 Q: And I notice your general ledger it says draft.



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1 Is there a reason that your general ledger says
2 draft at this point?

3 A: Yes. It says draft because it is not complete.
4 As I mentioned, we're still working on getting
5 the 2018 accounting caught up. I was very busy
6 with doing, preparing tax returns before the
7 April 17th deadline. And so, Mr. Bland was
8 gracious enough to allow me some time to take
9 care of that. And then once we got through the
10 deadline, we're going get back and kind of
11 catch everything up with the accounting. So,
12 there are incomplete -- this general ledger is
13 incomplete. There's definitely missing
14 transactions and it is not a complete record at
15 this point.

16 Q: But does it fairly present what has come on the
17 bank account as far as you've been able to
18 define from your analysis?

19 A: Again, whatever has been recorded in this
20 general ledger, I think fairly presents what
21 should have been recorded. But there's
22 definitely missing transactions. They just
23 haven't been recorded yet.

24 Q: Okay. And from a transparency standpoint, does
25 this general ledger reflect what you've



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1 determined, based on your experience, in
2 classifying the expenditures and the revenues?

3 A: I drew on both my experience as well as
4 guidance from Mr. Bland.

5 Q: Okay. And in looking through it, and I just
6 want to walk through the general ledger,
7 initially -- the first account you have is the
8 cash account; is that correct?

9 A: Correct.

10 Q: And that account shows all of the transactions
11 from January 2nd, 2018 to April 30th, 2018 in
12 the account; is that correct?

13 A: Yes.

14 Q: And then after that, which is probably about
15 halfway through, you have a total business
16 advantage checking of 146,817.79 and then you
17 have a debit and a credit that balances there
18 with a -- and then you go and you have a short-
19 term note receivable, furniture and fixtures.
20 You go down through each general accounting --
21 account in the chart accounts; is that correct?

22 A: Yes, that's correct.

23 Q: Okay. And in looking at that, you've got your
24 sales of various categories after retained
25 earnings when you get to the income statement;



1 is that correct?

2 A: Correct.

3 Q: So, you've got a beer sales, a food sales. And
4 then as you go through those, those reflect all
5 of the different transactions that went into
6 each of those accounts?

7 A: Correct.

8 Q: And then you have cost of goods sold for
9 various items as well. So, you have your
10 income items, then you expense items going
11 through?

12 A: Yes.

13 Q: Okay. And from working with -- how many
14 restaurants, food service establishments,
15 entertainment establishments do you work with?

16 A: Probably about six or seven.

17 Q: Okay. And from a standpoint of how this
18 account is managed and how this account is
19 operated. Can you describe to The Court how
20 you would characterize that?

21 A: I'm not sure I understand what you're saying.

22 Q: Well, are there any practices that they're
23 using that you would not advise from an
24 accounting standpoint?

25 A: No, there's -- nothing they're doing is



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1 anything I would not recommend. I mean, I --
2 they're following any of the recommendations
3 I've given them. And to the best of my
4 knowledge, everything is being done in
5 accordance with basic accounting principals
6 that should be followed.

7 Q: Okay. And to your knowledge, are the income
8 and expenses being captured through the bank?

9 A: Yes.

10 Q: Okay. And I'm going to show you another
11 document and ask you if you can tell me a
12 little bit about that, which is something that
13 I asked you to look at for us, just over the
14 last couple of months.

15 **MR. MONTGOMERY:** Mark that as 3, please ma'am.

16 **MR. HARPOOTLIAN:** Your Honor, I have no objection to
17 the total sales numbers, food as percentage of
18 total. But these others, food as a percentage
19 of beer. Food at no beer. Food as a percentage
20 of \$2 drinks. Food as a percentage of \$1
21 drinks. I mean, I don't understand why he
22 would be somebody to testify. This is pure,
23 just simple math. You know what, I withdraw my
24 objection with this one point. This is pure
25 speculation down below, the actual numbers.



1 **THE COURT:** Okay. Well, let's let him flush out what
2 it is and so maybe I can understand. You
3 obviously, are much quicker to look at this
4 piece of paper and understand what it means
5 than I am.

6 **MR. HARPOOTLIAN:** Well, I've seen it before. It's
7 food as a percentage if they sold drinks for a
8 \$1.

9 **THE COURT:** Oh, I see.

10 **MR. HARPOOTLIAN:** You see? Food as a percentage, if
11 they sold drinks for \$2.

12 **THE COURT:** I see. I see your point. Thank you.

13 **MR. HARPOOTLIAN:** So, but I don't -- as long as you
14 understand that, I don't care. Thank you.

15 **MR. MONTGOMERY:** If you would enter that as Number
16 Three, please.

17 **THE COURT:** No -- Petitioner's 3 is admitted without
18 objection.

19 **(Petitioner's Exhibit Number 3 was marked and**
20 **admitted into the record.)**

21 **Q:** Mr. Perricelli, if you would, just tell The
22 Court a little bit about how you came to get
23 the numbers behind that spreadsheet.

24 **A:** Okay. So, the different categories at the top,
25 the top three lines, beer sales, food sales,



- 1 and liquor sales, those figures came directly
2 from the point of sale system that's used at
3 Rooftop. And so, I basically recorded all of
4 the sales for each of the months and then broke
5 those down based on that report that Mr. Bland
6 provided to me from the point of sale system
7 that he uses in the bar.
- 8 Q: Okay. And as Mr. Harpootlian accurately
9 pointed out, once you put those numbers
10 together, then those percentages are simply
11 mathematical calculations; is that correct?
- 12 A: That's correct, yes.
- 13 Q: And are you aware of what the lowest price
14 beverage that's sold, as far as alcoholic
15 beverages sold at Rooftop?
- 16 A: Yes, based on previous conversations, my
17 understand is \$3.
- 18 Q: Okay. And would it be fair to say from
19 accounting standpoint when you calculate
20 percentages, if the denominator changes, the
21 percentages change; is that fair to say?
- 22 A: Yes. Correct.
- 23 Q: And in this case the denominator would be the
24 total sales?
- 25 A: Correct.



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1 Q: And would it also be fair to say that, if the
2 units remain the same, but the price changes,
3 that that would affect the percentage?

4 A: Yes.

5 Q: So, if we look at the math on this particular
6 sheet, it essentially assumes that we have cost
7 of number of units sold, but at different
8 prices; is that correct?

9 A: Correct.

10 Q: And it shows what the food percentage would be
11 if those prices changed and that's all it sets
12 out and shows, correct?

13 A: Correct.

14 Q: But in that case, it would be true that you'd
15 be selling the same number of units of
16 alcoholic beverages and the same number of
17 units of food, correct?

18 A: Correct.

19 Q: Because the only thing that would change then
20 would be the price of the alcoholic beverage?

21 A: Yes.

22 Q: So, in that case, in the month of April, for
23 example, had that price point been \$1 instead
24 of \$3, the food percentage, instead of being
25 just over 15 percent, would have been over 35



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1 percent?

2 A: Correct.

3 Q: And would it be fair to say that the practices
4 and the policies that Rooftop has been
5 implementing had resulted in a general trend
6 upward in the amount of their food sales?

7 A: Based on these numbers, yes, correct.

8 **MR. MONTGOMERY:** Bear with me just a second, Your
9 Honor.

10 Q: Now, Mr. Perricelli, can you tell me what this
11 document is?

12 A: Yes. This is a document that Mr. Bland
13 provided to me to assist with some of the
14 bookkeeping that was done for Rooftop Bar. And
15 basically it gives the various transactions
16 that were in a sense -- or the transactions
17 that were for purchasing food items to be used
18 in the bar -- in Rooftop Bar.

19 Q: So, this would be -- where we talked about in
20 the prior exhibit, we talked about the revenue
21 for food. This is the expense that's incurred
22 in the raw ingredients to create that food?

23 A: Correct.

24 Q: Okay. And this would show, I think, that
25 during those months, their total food



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1 expenditures in March were 1511.74 and in April
2 they were 3,088.02; is that correct?

3 A: Correct.

4 Q: Do you know what their cost of food is budgeted
5 to be for their menu items?

6 A: I've not discussed that, but in general most
7 food ---

8 **MR. HARPOOTLIAN:** Objection, Your Honor. I mean, he
9 doesn't qualify as an expert. He's about to
10 give an opinion. In general about food sales.
11 He's an accountant.

12 **MR. MONTGOMERY:** Let me lay a foundation, if I may,
13 Your Honor.

14 **THE COURT:** Okay.

15 Q: Mr. Perricelli, as a CPA, is it true that you
16 work with a number of other establishments
17 that provide food?

18 A: Yes.

19 Q: And do you regularly attend continuing
20 professional education that deals with things
21 like cost structures and how to look at cost
22 structures for your clients' businesses?

23 A: On occasion.

24 Q: And are you familiar, as a professional, with
25 the manner in which restaurants account for



1 their food costs as part of their venue?

2 A: I have a basic understanding.

3 Q: Okay. And from your basic understanding, is
4 the food cost generally determined or targeted
5 to be a percentage of the total food sales?

6 A: Yes. Each establishment -- it can be different
7 for different types of establishments. But,
8 yes, generally -- in most cases, most food
9 service establishments do have a budgeted
10 amount they target for their food costs.

11 Q: Okay. From your experience, have you observed
12 that there's a range of food costs associated
13 with your restaurant audits?

14 A: Yes.

15 Q: And could you tell The Court, just from your
16 experience and your knowledge, the range of
17 that range of food cost runs into?

18 A: It's different depending of the type of
19 establishment. But generally, it's anywhere
20 from, maybe 15 to 35 percent.

21 Q: And from your looking at this particular
22 establishment, are these costs consistent with
23 the sales that you recognize in looking at this
24 data?

25 A: They seem to be fairly consistent, yes.



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1 Q: Thank you, Mr. Perricelli.

2 **MR. MONTGOMERY:** Your Honor, we move this, I think
3 into the record as Number 4. Or is this 5?
4 Four. Okay.

5 Q: And when you look at Exhibit 4 ---

6 **THE COURT:** Wait a minute. Hold on. Any objection
7 to admitting Petitioner's 4?

8 **MR. MCCABE:** No objections from the Department, Your
9 Honor.

10 **MR. HARPOOTLIAN:** No objection for the Intervenor,
11 Your Honor.

12 **THE COURT:** All right. Petitioner's 4 is admitted.
13 **(Petitioner's Exhibit Number 4 was marked and**
14 **admitted into the record.)**

15 Q: Mr. Perricelli, have you had an opportunity to
16 go back and compare these or some of these
17 transactions with the transactions that you
18 show in the bank account?

19 A: Yes.

20 Q: And are they consistent?

21 A: Yes.

22 Q: And would it be your belief from your review
23 that from a standpoint of -- an accounting
24 standpoint, that there is a reasonable -- that
25 they're reasonably accurate and reflect the



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1 actual transactions that took place in the bank
2 and the books?

3 A: Yes.

4 Q: Now, as an accountant, you also deal with a
5 concept of materiality.

6 A: Yes, on occasion.

7 Q: And could you tell The Court a little bit about
8 what materiality is?

9 A: Well, from an accounting standpoint, the term
10 materiality means something that would -- an
11 amount that would sway someone's opinion about
12 financial statements or about the financial
13 health or financial status of a particular
14 company or entity.

15 Q: So, it would be something that, if it were
16 changed, would have a substantial impact on
17 what happened to the business; is that fair to
18 say?

19 A: Yes.

20 Q: Okay. And from the standpoint of businesses
21 that you work with, would a loss of 15 percent
22 or more of sales ---

23 **MR. HARPOOTLIAN:** Your Honor, I would object to his
24 opinion. He has not been qualified as an
25 expert.



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1 **THE COURT:** Well, so far he's just given me a
2 definition of materiality in accounting.
3 Maybe I wasn't listening closely enough to the
4 next question. Were you asking for an opinion?
5 What was the question?

6 **MR. MONTGOMERY:** Well, my question was, would a 15
7 percent change have an impact here or be
8 material?

9 **THE COURT:** I'm going to overrule the objection.

10 **MR. HARPOOTLIAN:** Thank you.

11 Q: So, the question is, in this particular
12 business, would 15 percent be a material part
13 of their business?

14 A: I believe so.

15 Q: Okay. I thank you, Mr. Perricelli. I have no
16 further questions. If you'd answer any
17 questions that these other gentlemen have.

18 **MR. MCCABE:** No questions from the Department, Your
19 Honor.

20 **THE COURT:** All right.

21 **MR. PERRICELLI - CROSS-EXAMINATION BY MY HARPOOTLIAN:**

22 Q: Pronounce your last name for me, please?

23 A: Perricelli.

24 Q: Okay. Are you a CPA, Mr. Perricelli?

25 A: Yes, sir.



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1 Q: Okay. So, when I look at this general ledger,
2 which is Exhibit Number --

3 **MR. MONTGOMERY:** I believe that's Number 2.

4 Q: -- 2, let me walk this through with you. I'm
5 a history major from Clemson, so it's tough for
6 me to figure all this out. If I go, for
7 instance, to page 17 of 34 -- strike that.
8 Let's start over. This is all the transactions
9 recorded between January 2nd of 2018 to when?

10 A: April 30th, but it's not everything. It's what
11 has been recorded into the software. There's
12 still others that have not been recorded.

13 Q: Others like what?

14 A: Other checks, other debit card transactions.

15 Q: That would have come late in April?

16 A: No. Throughout the entire period. As I
17 mentioned before, I have not yet completed the
18 entire -- all the transactions have not been
19 recorded for this time period.

20 Q: But you would agree with me that this chart
21 that Mr. Montgomery introduced was based on
22 these numbers?

23 A: Correct. That's because the revenue
24 transactions, we did go through and did our
25 best job to completely record all of the



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1 revenue side.

2 Q: The revenue? Okay.

3 A: The expense side is what is primarily not
4 completed yet.

5 Q: Okay. Okay. So, if we look at the -- let me
6 walk through a couple of things. If you go to
7 page 17 of 34.

8 A: My copy doesn't have page number. For some
9 reason, they've been cut off it looks like.

10 Q: Okay. Well, it's the owner's investment.

11 **MR. HARPOOTLIAN:** Your Honor, does your have
12 numbers?

13 **THE COURT:** Mine doesn't have page numbers either.

14 **MR. HARPOOTLIAN:** Okay. Well, apparently the one I
15 got this morning had page numbers. It's owners
16 investment.

17 **THE COURT:** What's at the top or bottom of the page,
18 so that we can get there?

19 **MR. MONTGOMERY:** Beginning balance of 42850 is at
20 the top of the page.

21 **MR. HARPOOTLIAN:** Right. At the top, in the top
22 right-hand corner, 42850.

23 **THE COURT:** Okay. I've got it.

24 **MR. HARPOOTLIAN:** Okay.

25 Q: So it's says owner's investment, 4TBs, LLC,



- 1 \$10,000. What does that mean?
- 2 A: It's a -- the 4TBs, LLC is the name of an LLC,
3 an entity.
- 4 Q: What's the \$10,000 represent?
- 5 A: \$10,000 represents the amount of cash that has
6 been invested by that entity into this company.
- 7 Q: Okay. And it says beginning balance, it says
8 minus three and \$7,000 balance. So, total for
9 4TBs is minus \$3,000. What does that mean?
- 10 A: It means there was a check issued to that
11 entity.
- 12 Q: For \$3,000?
- 13 A: Yes, sir.
- 14 Q: Between January -- the first of January, end of
15 April?
- 16 A: Yes.
- 17 Q: Okay. And then we get down to the next one.
18 It says Mongo (phonetic) Adam Ruonala,
19 beginning balance \$7,000. Mr. Ruonala receive
20 any money?
- 21 A: Not according to this report. But again, there
22 may be transactions I haven't recorded.
- 23 Q: Do you know if he did?
- 24 A: I do not know.
- 25 Q: Okay. What about Schatze Capital, beginning



- 1 balance 54500; is that right?
- 2 A: Correct.
- 3 Q: And that was the beginning balance of -- and
- 4 that's Brenda Wells; is it not?
- 5 A: Correct.
- 6 Q: And her, so her total investment was 54500?
- 7 A: Up to that point, yes, sir.
- 8 Q: Up until the point of April 30th?
- 9 A: No, that's at the beginning of the periods of
- 10 January 1st.
- 11 Q: So, do you know whether she put money in after
- 12 January 1st?
- 13 A: I'm not aware of anything else. But, again,
- 14 this is incomplete, so I don't know.
- 15 Q: And some money was paid out to her, right?
- 16 A: There was a check written to that entity, yes.
- 17 Q: For how much?
- 18 A: \$6,000.
- 19 Q: What is that minus nine -- it says total for
- 20 owner's investment minus nine. Is that here
- 21 and Mr. -- and 4TBs, LLC?
- 22 A: Yes, correct. That's a three and a six.
- 23 Q: So, \$9,000 was taken out total?
- 24 A: Yes, sir.
- 25 Q: Okay. Now, if you go down a little bit, you



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1 see total for beer sales, 28,701.76; is that
2 right?

3 A: Yes, sir.

4 Q: And then total for food sales is 16,941.

5 A: Correct.

6 Q: Okay. And then it says liquor sales, but we've
7 got to go over to page 22. So, we're going
8 from -- we're going one --

9 **MR. HARPOOTLIAN:** Your Honor, if you'll look for a
10 page that has 206,934.39 up in the right-hand
11 corner.

12 **THE COURT:** Okay.

13 Q: So, liquor sales ARE \$193,135.58; Is that
14 right?

15 A: Yes.

16 Q: Over the four-month period?

17 A: Correct.

18 Q: And so -- and then we go to cost of goods after
19 that, right?

20 A: Yes.

21 Q: So, the beer cost \$12,000. If we go back, you
22 sold it for \$28,000, right?

23 A: Yes, sir. But again, this is not correct.
24 This is not complete. There are missing
25 transactions in this.



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- 1 Q: But within range? I mean, this is your
2 document. I understand it's not complete. But
3 according to this, \$28,000 for beer that you
4 bought for 12,000, right? According to this
5 document.
- 6 A: The -- according to this document, yes.
- 7 Q: Yeah, just ---
- 8 A: Twenty-eight thousand represents only March and
9 April for the sales.
- 10 Q: What now? I'm sorry.
- 11 A: We were attempting to get this document
12 completely -- as complete as possible for
13 revenue for March and April only. That's why
14 it's stamped draft. This is not a final
15 document ---
- 16 Q: Okay. You would agree with me then, you sold
17 \$28,000 of beer, right?
- 18 A: Yes, sir. In the months of March ---
- 19 Q: \$193,135 worth of liquor?
- 20 A: Correct.
- 21 Q: Over the four months, right?
- 22 A: Correct.
- 23 Q: And then food would be -- the sales would be
24 16,941, right.
- 25 A: Correct.



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- 1 Q: So, if we wanted to know the percentage of food
2 to alcohol, you would add the beer sales, the
3 liquor sales and then divide that into
4 \$16,941.58?
- 5 A: Correct. But you just have to be careful of
6 the timing. Again, the food sales are only for
7 March and April. But the liquor sales
8 represent the entire period January through
9 April.
- 10 Q: Well, why would you only do the food sales for
11 two months? I mean, this is a point of sale
12 accounting system, right?
- 13 A: Yes, sir -- no. This is not a point of sale.
14 This is manually entered from the bank
15 accounts.
- 16 Q: So, these numbers are only for March and April?
- 17 A: Well, it's the March and April revenues. I re-
18 classed those two months only.
- 19 Q: Well, you handed me another document. The cost
20 of the food, right. This document.
- 21 A: Yes, sir.
- 22 Q: Okay. And this is the cost of the food?
- 23 A: Right.
- 24 Q: Now, on a cost basis, if you look at --
- 25 MR. HARPOOTLIAN: Your Honor, do you have this



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1 exhibit?.

2 **THE COURT:** Which one are you looking at?

3 **MR. HARPOOTLIAN:** Number 5.

4 **THE COURT:** Number 4? Number 5? I don't think I've
5 got a Number ...

6 **MR. HARPOOTLIAN:** Number 4.

7 **MR. COURT:** There hasn't been a Number 5 marked yet.

8 **MR. MONTGOMERY:** It's 4.

9 **THE COURT:** Okay. Yes, I have 4.

10 **MR. HARPOOTLIAN:** Okay.

11 Q: So, this shows the cost of food for basically
12 March and April; is that right?

13 A: Yes, sir.

14 Q: Okay. And what I'm wanting to know is, if you
15 look down this, it says US Food Chef's Store,
16 533.63, right?

17 A: Yes.

18 Q: Now, what's Village? Is that Village Idiot?

19 A: That's my understanding.

20 Q: Okay. Village Idiot is a pizza place?

21 A: Yes, sir.

22 Q: Okay. So, we got Village, Village, Amazon,
23 Wal-Mart, Village, Village, Village, Village,
24 Wal-Mart, Village, Village, Village, Village,
25 Village, Village, Village, Village, Village,



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- 1 Village, Wal-Mart, Village, Village, Village,
2 Food Lion, Village, Food Lion, Village,
3 Village, Village. Would you be surprised to
4 know that almost 22 percent of the expenditure
5 on food that's listed here was spent on The
6 Village Idiot?
- 7 A: Not really surprised.
- 8 Q: And at for next month it was, when the food
9 went up, about 12 percent. Is that right?
- 10 A: I haven't done that calculation.
- 11 Q: Well, who's 2 Fat 2 Fly, do you know who that
12 is? Isn't that a food truck?
- 13 A: Yes, sir.
- 14 Q: So, Village Idiot, do you know whether they
15 prepare that food there or not?
- 16 A: I do not know. I just record the transactions.
- 17 Q: How about 2 Fat 2 Fly, that's a food truck,
18 right?
- 19 A: Yeah, I just recorded the - yes, it is a food
20 truck.
- 21 Q: Okay. And there are a lot of purchases from
22 Publix and Food Lion, right?
- 23 A: Yes, sir.
- 24 Q: Do you know what a DJ payback is?
- 25 A: The explanation I was given from Mr. Bland is



1 that that's one of his employees who purchased
2 items on -- using personal funds and he's
3 paying that person back.

4 Q: Okay. And 2 Fat 2 Fly again, on the next page,
5 which was food not prepared onsite, right?

6 A: I don't know.

7 Q: Okay. So, if we go to the revenue. And you're
8 telling me the revenue on the spreadsheet is
9 not accurate or is it accurate?

10 A: The revenue for the total period is recorded
11 that I only re-classed from -- okay, let me
12 walk you through my process. I put everything
13 into liquor sales initially. And then using
14 the point of sale reports that was provided to
15 me by Mr. Bland, I re-classed the beer and the
16 food to those appropriate categories, but only
17 for March and April.

18 Q: Okay.

19 A: I've not yet completed the other months.

20 Q: But we will agree that, according to this, for
21 the first four months was almost \$200,000 worth
22 of liquor sold?

23 A: Well, again, there's probably going to be some
24 re-class -- further re-classing in January and
25 February.



1 Q: What use is this? What use is this document?

2 A: Not much. But you subpoenaed it, so I provided

3 it.

4 Q: Okay. So, not much. But you would agree with

5 me -- now are the revenue figures for food

6 accurate in this document?

7 A: For the months of March and April, yes, sir.

8 Q: Okay. And what page in that on? How far back

9 is that? Maybe here. Is this it?

10 A: It's on the same page as the retained earnings.

11 Q: 206,934?

12 A: Let's see.

13 Q: This one, food, food items?

14 A: Correct.

15 Q: Okay. And that's revenue, right?

16 **MR. HARPOOTLIAN:** Your Honor, we're on this page,

17 206,934. This document. I'm sorry to keep

18 jumping around on you.

19 **THE COURT:** Okay.

20 A: Actually the beer -- I'm sorry, the food sales

21 are on the page -- the top number is 42850, the

22 top right. If you look at the bottom of that

23 page, you'll see total food sales.

24 Q: So, wait just a second. What is this beginning

25 on this page. What are these listed, what's



1 these items?

2 A: That I believe is the -- let me turn to that
3 page in mine. I think that's the beginning of
4 the food costs.

5 Q: Right. Is that food costs?

6 A: Yes, sir. Food costs. Not food sales, that's
7 food costs.

8 Q: Where is the food sales?

9 A: That's a couple of pages back. Right here.
10 You see the one that has 42850 at the top?
11 Turn back a couple of pages.

12 Q: Okay. Forty two. Oh, there it is. Okay. So
13 ...

14 **THE COURT:** Yeah, I tell you what. Why don't we
15 take a break and let's number these documents
16 so that we can -- if we're going to go through
17 them and try to understand. Because I'm having
18 a real hard time following. And it would be
19 good to make a clean record.

20 **MR. HARPOOTLIAN:** Yes, Your Honor. So, would you
21 like Mr. -- since they're his exhibits, you
22 want Mr. Montgomery to make one copy, number
23 them and then copy ---

24 **MR. MONTGOMERY:** I think we can number all of them
25 during the break would be fine, Your Honor.



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1 **THE COURT:** Okay. Yeah, I don't mind numbering that
2 one, if y'all just want to all -- we can all
3 number our own copies if you want. All right.
4 Well, let's take a ten-minute break and number
5 those and then we'll ---

6 **MR. HARPOOTLIAN:** Your Honor, would you mind
7 reminding the witness that he's not allowed to
8 talk to anybody while we're on break?

9 **THE COURT:** Yeah. If you would just -- you can leave
10 the witness box, but just don't have
11 conversations on the break. Thank you.

12 **(Off the Record)**

13 **THE COURT:** Y'all have a seat. Thank you for that.
14 I appreciate it very much. Somebody wrote very
15 neat on my copy. That's very nice, thank you.

16 **MR. HARPOOTLIAN:** So, if please The Court.

17 **THE COURT:** Please.

18 **Q:** So, if we go to -- is there a detailed
19 explanation of the sales of food for those two
20 months or you just have a summary?

21 **A:** It's just the summary. As I mentioned before,
22 I put everything into the liquor category
23 initially and then re-classed out back to the
24 food sales only the totals.

25 **Q:** Okay.



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1 A: There's no detail on that.

2 Q: Let's go to the first two pages of Exhibit

3 Number ...

4 **MR. MONTGOMERY:** That's Number 5. That's just the

5 summary of the sales.

6 Q: Summary of sales -- oh, summary of purchases,

7 right?

8 A: Yes.

9 **THE COURT:** You're still talking about Petitioner's

10 4?

11 **MR. MONTGOMERY:** 4. I keep saying 5, but it's 4,

12 Your Honor.

13 **MR. HARPOOTLIAN:** It's 4.

14 **THE COURT:** Okay.

15 Q: And this would be the food that was bought and

16 where it was bought from in March and April?

17 A: Correct.

18 Q: And what it would show is that in March there

19 was a total of \$1,511.74, right?

20 A: Yes.

21 Q: Of which -- if you'll accept my calculations.

22 If you look at the Village Idiot, which is a

23 pizza store, and the -- I think it's just

24 Village Idiot on that one in March. \$320 for

25 21, almost 22, percent of that would be food --



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1 already prepared food bought. Pizza's already
2 made from a food truck, right?

3 A: That's my understanding.

4 Q: Okay. And then if we go to April and include
5 2 Fat 2 Fly and Village of the 3,088 sales, 280
6 -- I'm sorry. Of the 388.02 (sic) food
7 purchases, I apologize, 842 of that was from 2
8 Fat 2 Fly or from the Village Idiot; is that
9 correct?

10 **MR. MONTGOMERY:** Your Honor, I do just object to the
11 form of the question, because he's assuming
12 something on 2 Fat 2 Fly that's not in evidence
13 and I don't think it's correct. If he wants to
14 break those out, but I think the record and the
15 testimony will reflect that the 2 Fat 2 Fly is
16 food purchased, not food prepared offsite.

17 **MR. HARPOOTLIAN:** I just remember what they told us
18 when we did The Roost, I'm sorry. It was a
19 food truck.

20 **THE COURT:** Well, we don't have any evidence about
21 what the 2 Fat 2 Fly is. I'll ---

22 **MR. HARPOOTLIAN:** For the record, Your Honor ---

23 **THE COURT:** The day is young.

24 **MR. HARPOOTLIAN:** But if you will just note that
25 there's a couple of things about this. Most of



1 the ---

2 **THE COURT:** We do have testimony that it's the
3 understanding that 2 Fat 2 Fly is a food truck.

4 **MR. HARPOOTLIAN:** Yes.

5 **THE COURT:** Okay. All right.

6 **MR. HARPOOTLIAN:** Okay.

7 Q: So, and these are only for two months, but we
8 see -- I'm looking -- I mean, US Foods -- you
9 deal with other restaurants, right?

10 A: Yes, sir.

11 Q: And they buy most of their foods through
12 wholesalers like US Food, correct?

13 A: Correct.

14 Q: They're the biggest -- US Food is the biggest
15 food distributor in the country or world?

16 A: That and Cisco.

17 Q: Cisco, I'm sorry. You're right. So, where we
18 have in the month of March one purchase from US
19 Foods for \$533 and the rest are from Amazon,
20 Wal-Mart, Food Lion, right?

21 A: Yes, sir.

22 Q: Is it your experience that restaurants
23 typically go to grocery stores to buy their
24 food?

25 A: They do sometimes.



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1 Q: Sometimes, but on this -- I mean, we don't see
2 but one purchase for \$500 ---

3 MR. MONTGOMERY: Your Honor, I object. It's
4 argumentative.

5 THE COURT: Overruled. He's asking questions.

6 Q: Go ahead. I mean, this is a significant number
7 of food -- a lot of food bought from a grocery
8 stores.

9 A: I think it depends on what type of food you're
10 preparing..

11 Q: Absolutely.

12 A: Yeah. So ...

13 Q: Absolutely. Okay. And then in April you see
14 a 398 to US Foods, a 240, and a 317, but the
15 rest of these are, again, from retail outlets.
16 US Foods is wholesale, right?

17 A: Yes, sir.

18 Q: The rest of these are retail?

19 A: Correct.

20 Q: Okay. So, the bulk of the food they purchased
21 came from either a retail establishment or from
22 a food truck or from a pizza parlor, correct?

23 A: That's what the descriptions indicate.

24 Q: I mean, that's how he described it, how Mr.
25 Bland described it, right?



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- 1 A: Uh-huh.
- 2 Q: I'm sorry?
- 3 A: Yes, sir.
- 4 Q: Okay. So, the majority of the expenditures for
5 food come from a pizza parlor, a food truck, or
6 retail, correct?
- 7 A: According to these calculations.
- 8 Q: Well, I mean, sir -- and I'm not about to get
9 flustered with you. Where do the numbers come
10 from?
- 11 A: This report was provided to me by Mr. Bland.
- 12 Q: Mr. Bland.
- 13 A: Yes, sir.
- 14 Q: Who runs the establishment, correct? Is that
15 right?
- 16 A: Yes, sir.
- 17 Q: Okay. And these are the numbers. This isn't
18 guessing. This isn't supposition. These are
19 the numbers?
- 20 A: Correct.
- 21 Q: That he supplied to you?
- 22 A: Correct.
- 23 Q: And this is what he paid for food?
- 24 A: Correct.
- 25 Q: Okay. Now, you've produced a chart of food



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1 sales, right? Which is number 2, 3?

2 **MR. MONTGOMERY:** It's Number 3.

3 Q: Number 3. Let's walk through that a little

4 bit. Beer sales were about the same in March

5 and April, right?

6 A: They were close, a little bit less ---

7 Q: Food sales went up \$2400; I don't know what

8 percentage that is, from March to April, right?

9 A: Yes, sir.

10 Q: Liquor sales went down; is that right?

11 A: Yes, sir.

12 Q: I mean, not just down. They went down \$13,000.

13 A: Yes, sir.

14 Q: Why?

15 A: I don't know.

16 Q: Mr. Bland never discussed that with you?

17 A: I can only speculate.

18 Q: Well, you've been speculating all day, go

19 ahead.

20 A: My guess is probably St. Patrick's Day, is one

21 of the biggest days of the year for them, would

22 be my guess.

23 Q: St. Patrick's Day was in March.

24 A: Yes, sir.

25 Q: Not in April.



- 1 A: Correct.
- 2 Q: Okay. So, when we look at these figures. We
- 3 have an aberration in March of a high liquor
- 4 sale, right?
- 5 A: Correct.
- 6 Q: Okay. And in April, is that 41,000 a month
- 7 about right in liquor sales?
- 8 A: That's what it was for that month.
- 9 Q: You know what it is every other month?
- 10 A: I haven't studied it enough to know for sure.
- 11 Q: Well, if you look at your numbers -- and you
- 12 think these revenue numbers are pretty, pretty
- 13 good, the first ---
- 14 A: The totals.
- 15 Q: The totals?
- 16 A: The breakdown is only accurate for March and
- 17 April of 2018.
- 18 Q: But for liquor sales, is it accurate for the
- 19 whole year?
- 20 A: No, only for March and April.
- 21 Q: Well, why did we only do March and April?
- 22 A: That was all I had time to do. I received your
- 23 subpoena just like a week ago or so and that's
- 24 all I had time to ---
- 25 Q: You prepared this chart for me?



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- 1 A: I'm sorry?
- 2 Q: You prepared this chart for me?
- 3 A: Well, this was prepared for the -- for this
- 4 case.
- 5 Q: For who?
- 6 A: For evidence in this case.
- 7 Q: I guess, did you have a conversation with Mr.
- 8 Montgomery about preparing that chart?
- 9 A: Yes, sir.
- 10 Q: Okay. And when did that conversation take
- 11 place?
- 12 A: It was last week.
- 13 Q: After I subpoenaed you?
- 14 A: Yes, sir.
- 15 Q: And up until that subpoena, you did not have
- 16 accurate figures for anywhere during the six
- 17 months?
- 18 A: Well, not the breakdown.
- 19 Q: Yeah, not the breakdown.
- 20 A: Well, the different types of sales. I had
- 21 totals.
- 22 Q: So, you had total sales, but not liquor, not
- 23 beer, not food?
- 24 A: Correct.
- 25 Q: And then Mr. Montgomery asked you to break down



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1 March and April?

2 A: Yes, sir.

3 Q: Not January and February?

4 A: No, sir.

5 Q: Just those two months. So, when you say you

6 only had time to do, they were what Mr.

7 Montgomery asked you to do, not -- you didn't

8 call me and say, what do you want, did you?

9 A: No, sir.

10 Q: I called you; did I not?

11 A: Correct.

12 Q: And I asked you bring all the documents you

13 have.

14 A: Yes, sir.

15 Q: So, let me ask you this. This food sales --

16 and we've seen a significant number of those

17 food sales come from a pizza parlor.

18 MR. MONTGOMERY: I'm going to object to the

19 characterization, of form.

20 THE COURT: Overruled.

21 MR. HARPOOTLIAN: Your Honor?

22 THE COURT: I said, overruled.

23 MR. HARPOOTLIAN: Thank you.

24 Q: I mean, based on what we saw food purchased,

25 you would agree with me that a significant



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1 amount of the food sales in both months were
2 from the sale of pizza?

3 **MR. MONTGOMERY:** Again, I'm going to object to the
4 form.

5 **THE COURT:** On what basis?

6 **MR. MONTGOMERY:** Well, it's conclusory and it
7 assumes facts that are not into evidence. He's
8 characterizing something as significant. If he
9 wants to talk about the numbers, he can talk
10 about the numbers. But it's just a pure
11 characterization when he says a significant
12 number. What's a significant number? We've
13 spent the morning, Your Honor, talking about
14 well, what's this and what's this? And this is
15 what Mr. Harpootlian wants to do. Can't have
16 it both ways. If he wants to deal with the
17 numbers, he needs to deal with the numbers. If
18 he wants to deal with broad characterization's
19 then it goes both directions.

20 **MR. HARPOOTLIAN:** Is it material, how about that
21 one?

22 **MR. MONTGOMERY:** It's a better word.

23 **MR. HARPOOTLIAN:** Your Honor, maybe this is the way
24 to get at it.

25 **Q:** Baked into this food number, you would agree



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1 with me, is a certain amount of sales from pre-
2 prepared pizza. Would you agree with me on
3 that?

4 A: That is my understanding.

5 Q: Okay. And based on the -- well, all we have
6 are your -- what they paid for it. It may be
7 as high as 20 percent of this number. Is that
8 correct?

9 A: Of the total cost.

10 Q: Okay. Of the total cost.

11 A: I did not break down the sales, though. In
12 terms of food sales itself, that one line of
13 food sales ---

14 Q: Right.

15 A: --- I did not break that down between prepared
16 and onsite or prepared offsite.

17 Q: Did Mr. Montgomery ask you to break that down?

18 A: No, sir.

19 Q: Was it ever discussed?

20 A: I don't know.

21 Q: But you would agree that baked into these
22 numbers are certain amount of food that was
23 pre-prepared?

24 A: Yes, sir.

25 Q: But you can't tell us how much?



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- 1 A: No, sir.
- 2 Q: Could it be 20 percent?
- 3 A: I don't know.
- 4 Q: Could it be 40 percent?
- 5 A: I don't know.
- 6 Q: Well, who would have a better appreciation for
- 7 what percentage, other than the accountant?
- 8 Would Mr. Bland know? Does he do the numbers?
- 9 A: That information is probably in their point of
- 10 sale system.
- 11 Q: Do you have access to the point of sale system?
- 12 A: No, sir. I don't have access to the point of
- 13 sale. I only have access to the bank account
- 14 and the QuickBooks.
- 15 Q: But if we had access to the point of sale, we'd
- 16 know exactly, right?
- 17 A: I believe so.
- 18 Q: Okay. And so, total sales for two months were
- 19 135,000, is that correct?
- 20 A: Yes, sir.
- 21 Q: That's food, beer, right?
- 22 A: Yes, sir.
- 23 Q: And even in your numbers, over the two-month
- 24 period is 12.28 percent for food, right?
- 25 A: Yes.



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- 1 Q: Of which some of it we know was prepared
2 offsite?
- 3 A: Yes.
- 4 Q: Okay. Now, is cash included in these numbers,
5 cash received?
- 6 A: Yes, any cash deposited into the bank account.
- 7 Q: Okay. So, if it's not deposited in the bank,
8 it's not in these numbers?
- 9 A: Yes, sir.
- 10 Q: And this is a cash business pretty much?
- 11 A: Cash, credit cards.
- 12 Q: Okay. And so, your number for liquor sales was
13 135,000, but in this sheet it's 193,000 on page
14 22.
- 15 A: Right. For different time periods. This ...
- 16 Q: Oh, this is two months?
- 17 A: This is -- this document here is only for March
18 and April.
- 19 Q: Just the beginning of the year. Okay. And if
20 I look at page -- make sure I got it. You
21 know who Collin Elledge is?
- 22 A: Say it again, please?
- 23 Q: Collin Elledge, you know who that is, or Troy
24 Davis?
- 25 A: I believe that's one of the employees. I'm not



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1 positive.

2 Q: And what about -- if I compare -- you're
3 telling me that the revenue figures, that the
4 expense figures in Exhibit Number 4 are not
5 accurate; is that correct?

6 A: Correct, not complete.

7 Q: That would make them not accurate.

8 A: Correct.

9 Q: Okay. Let me ask you a couple more questions.

10 **MR. HARPOOTLIAN:** I apologize to The Court. Okay.

11 See if the witness can identify these.

12 Q: Have you ever seen this before?

13 A: Yes, sir.

14 Q: What is that?

15 A: That's a sales and used tax return.

16 Q: And tell me -- I looked at the numbers on your
17 sales and tax use form and they're different
18 than the monthly figures on the numbers you
19 have. Why is that?

20 A: Yes, sir. There was some -- this needs to be
21 corrected. There was a deposit that's put into
22 the bank account for this company. It was
23 mistakenly included in the sales number on the
24 sales tax return, about -- approximately
25 \$6,000. You can see that's about the



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1 difference between these two figures. And when
2 I recorded in the QuickBooks, I recorded it
3 correctly. It was actually a transfer of
4 funds.

5 Q: So, show me which -- okay. It's the \$73,000
6 number versus the \$79,282?

7 A: Right. Yes, sir. The difference between those
8 two was a deposit that was just a transfer.
9 Whoever prepared that accidentally included that.

10 Q: So, this includes liquor and food and beer and
11 wine?

12 A: Yes, sir.

13 Q: Huh. Really? I thought liquor had a different
14 tax rate, liquor by the drink. It was higher.

15 A: Yes, sir.

16 Q: Is it?

17 A: My understanding is that there is a different
18 tax for ---

19 Q: So, do you pay that different tax on the sale
20 of liquor?

21 A: Yes, sir.

22 Q: In these --

23 MR. HARPOOTLIAN: I'm sorry. Let me turn this off.

24 A: I didn't prepare that.

25 Q: Who prepared that?



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- 1 A: I don't know. Whoever name is on it.
- 2 Q: Well, Eric Thompson, who's that?
- 3 A: I don't know.
- 4 Q: How about Stephen Bland?
- 5 A: Yeah.
- 6 Q: So, this was for what month? Okay. If they
- 7 reported all their income from liquor on their
- 8 sales tax form and paid -- what's the sales tax
- 9 on regular sales, how much?
- 10 A: State sales tax is six percent. And there's
- 11 local options, depending on where you're
- 12 located.
- 13 Q: And what's the sales tax on liquor by the
- 14 drink?
- 15 A: I'm not sure exactly. I don't prepare those
- 16 returns.
- 17 Q: Who does?
- 18 A: I don't have any clients for whom I prepare
- 19 those.
- 20 Q: So, Mr. Bland and Mr. Ruonala don't have you
- 21 prepare a separate tax return for the revenue
- 22 they make off of liquor by the drink?
- 23 A: No, sir. They never hired me to do that.
- 24 Q: Huh.
- 25 A: They do that themselves. From I understanding,



1 it's someone in-house where they do that
2 themselves.

3 Q: Okay. Thank you. I don't have any further
4 questions.

5 MR. MONTGOMERY: And I'd just ask -- to eliminate
6 confusion, I think The Courts aware of that,
7 but from a standpoint -- you file a sales tax
8 report on all of your gross sales, including
9 your alcoholic beverages, then you file a
10 separate liquor tax, which is a separate tax.

11 THE COURT: Okay.

12 MR. MONTGOMERY: Okay. And I think Mr. McCabe ---

13 THE COURT: And that's what we don't have.

14 MR. MONTGOMERY: That is correct, Your Honor.

15 MR. MCCABE: Correct, Your Honor. That was not
16 requested in discovery -- or excuse me, by
17 subpoena.

18 MR. MONTGOMERY: Your Honor, I have a few things on
19 Re-Direct. I want to try and see if I can
20 clarify the mud here a bit.

21 THE COURT: All right. That would be most welcome.

22 MR. PERRICELLI - REDIRECT EXAMINATION BY MR.
23 MONTGOMERY:

24 Q: Mr. Perricelli, just want to make sure. At
25 what date did you actually receive a subpoena



1 from Mr. Harpootlian?

2 A: I received it personally, on -- I believe, it
3 was May 8th.

4 Q: Okay. May 8th, were you here? I thought you
5 were -- my understanding was you received it on
6 May 10th when you returned from Las Vegas. Is
7 that correct?

8 A: I'm sorry. Yes, that's correct. I got my days
9 mixed up. What date was Thursday of last week?

10 Q: May 10th.

11 A: That's correct. Thursday -- it was Thursday of
12 last week, May 10th. Sorry.

13 Q: And at the point that you received that
14 subpoena, what work had you done for Rooftop
15 for 2017 and 2018?

16 A: For 2017, I had completed the majority of the
17 bookkeeping and accounting. There are some
18 minor questions that I still needed to be --
19 need to be resolved. And so, you know, most of
20 it was done. For 2018, very little had been
21 done.

22 Q: And I believe you and I had previously talked
23 about doing the March and April food sales. Is
24 that correct?

25 A: Yes, sir.



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1 Q: And then when you received the subpoena, you
2 asked what to do and I said as much as you can;
3 is that correct?

4 A: Correct.

5 Q: And apparently, you made the decision to try to
6 complete March and April to the best you could
7 in the write-up?

8 A: Yes, sir.

9 Q: Okay. And so, when you talked with Mr.
10 Harpootlian about the liquor sales, I want to
11 make sure The Court understands that, am I
12 correct in understanding your testimony to have
13 been that initially when you do -- for sales
14 tax purposes or whatever, when you do the
15 write-up, all the bank deposits get charged to
16 liquor; is that correct?

17 A: Only in QuickBooks, correct.

18 Q: Right. So, they're all debited to liquor in
19 QuickBooks? And then when you get the point of
20 sale system reports later, you then go back and
21 reclassify those receipts to their proper
22 categories?

23 A: Correct.

24 Q: Okay. So, when you look at the number, the
25 \$192,000 number that Mr. Harpootlian was



1 discussed with you of liquor sales for the
2 months of January through April, 2018, only the
3 other sales for the months of March and April
4 have been taken out and reclassified; is that
5 correct?

6 A: Correct.

7 Q: So, if you did that, you would have food sales
8 from January and February and beer sales from
9 January and February that would have to be
10 taken out and reduced that sales number?

11 A: Correct.

12 Q: Okay. Now, you indicated that there are
13 additional transactions that you haven't
14 written into the books yet. Can you tell us a
15 little bit about what transactions those might
16 be?

17 A: Mostly, they are the checks that have been
18 written. And the reason is because I don't
19 have descriptions on those yet. And it takes
20 me time to go through. I can look them up
21 online, the bank account online, or I can get
22 copies from Mr. Bland. And I just haven't had
23 time to do that. Or at least for all of them.
24 There are some checks that have been recorded.

25 Q: But the checks that are recorded are checks



1 you've looked at. And all of the revenue's
2 recorded because you've taken that from the
3 deposits to the bank?

4 A: Yes, sir.

5 Q: All right. Now, I want to also make sure that
6 we're clear. The sales tax return that was
7 brought in that Mr. Harpootlian showed you, you
8 indicated there was a discrepancy and that
9 actually a transfer in had been reported in --
10 as sales?

11 A: Correct.

12 Q: So, what that means is that, in fact, Rooftop
13 for their March 2018 sales tax return overpaid
14 their sales tax by the sales tax on 6,000 some
15 odd dollars, \$6200?

16 A: Correct.

17 Q: Okay. And at some point, hopefully, they'll be
18 able to amend that return and correct that
19 figure?

20 A: Yes.

21 Q: Okay. And you indicated, in fact, that you
22 don't file the sales tax returns. Do you file
23 sales returns for any of your restaurant
24 clients?

25 A: None of my restaurant clients. I do for other



1 types of industries.

2 Q: So, but it would be fair to say that it's not
3 unusual for a CPA to do book write-up and tax
4 work and have the client do their monthly sales
5 tax returns?

6 A: That's correct, yeah.

7 Q: Okay. And there shouldn't be any inference
8 drawn by the fact that a client does their own
9 returns, because you look at them and compare
10 with the sales when you do the tax work, don't
11 you?

12 A: Correct.

13 Q: And, in fact, as part of doing the tax work,
14 you're going to verify their sales and the fact
15 that they filed those returns?

16 A: Yes.

17 Q: Okay. Now, there was some question made about
18 purchases to 2 Fat 2 Fly. At this point, do
19 you know what those purchases were for?

20 A: I do not know exactly what those were for.

21 Q: And would it be fair to say that in a small
22 restaurant client, it is not unusual for them
23 to purchase items from a grocery store when
24 they need condiments or when they need supplies
25 that they can't get in an order from a



1 wholesaler?

2 A: Correct.

3 Q: Just to close up. As it relates to the sales
4 from March and April, are you comfortable that
5 the total sales and the breakdown sales is
6 accurate as you reflect in the records?

7 A: Yes.

8 Q: Okay. And do you have any reason to believe
9 that there are any discrepancies in those
10 numbers?

11 A: No.

12 Q: I don't have any further questions. Thank you,
13 sir.

14 MR. PERRICELLI - RECROSS-EXAMINATION BY MR.
15 HARPOOTLIAN:

16 Q: Just a couple of questions. You were not
17 planning to be here this week, were you? You
18 hadn't been asked by your clients or Mr.
19 Montgomery to be here, were you?

20 A: I had it on my calendar. Yes, sir. I planned
21 to be here.

22 Q: You were going to be here?

23 A: Yes, sir.

24 Q: When did you decide to come, after my subpoena?

25 A: Well, why would I come without a subpoena?



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1 Q: That's my point. You weren't asked by Mr.
2 Montgomery or ---

3 **MR. MONTGOMERY:** Your Honor, I would object. This
4 is irrelevant. It's not proper. It's not
5 proper. It's Re-Cross. He has to stick to
6 what's on Re-Direct. The rules restrict him to
7 that.

8 **MR. HARPOOTLIAN:** Your Honor, he asked him
9 specifically about when he got served with the
10 subpoena, so I believe it's appropriate.

11 **THE COURT:** I think this is related to what you were
12 asking.

13 **MR. HARPOOTLIAN:** Thank you.

14 Q: Mr. Montgomery and Mr. Bland, none of your
15 clients over here asked you to be at this
16 hearing, correct, prior to the subpoena?

17 A: Prior to the subpoena, no, sir.

18 Q: Okay. So, if I hadn't served you with a
19 subpoena, you wouldn't be here today, would
20 you?

21 A: Correct.

22 Q: And you wouldn't have prepared any reports,
23 correct, if I hadn't served you with a
24 subpoena, you wouldn't have known to come here?

25 **MR. MONTGOMERY:** Your Honor, I'm going to object to



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1 that question. That's completely speculative
2 and cause for nothing but speculation. He
3 doesn't know what might have happened. He's
4 trying to predict.

5 **MR. HARPOOTLIAN:** Strike that. Let me --

6 Q: Prior to last Thursday, when you got my
7 subpoena, had Mr. Montgomery or anybody asked
8 you to come?

9 A: They did not specifically asked me to come to
10 this hearing.

11 Q: Did they discuss with you doing a report?

12 A: I believe we had a -- I don't remember exactly,
13 but I know we had a conversation ---

14 Q: How long ago?

15 A: It was -- I believe it was after you and I
16 talked that you said you were going to send a
17 subpoena.

18 Q: Okay. Did you call them and tell them that I
19 was sending a subpoena?

20 A: I honestly don't remember who initiated the
21 call, but I did have a conversation.

22 Q: Because I sent them a copy of the subpoena.

23 A: Okay.

24 Q: So, up until my service or copying them with a
25 subpoena, had you discussed with Mr. Montgomery



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1 or anyone, any of your clients over here from
2 the Rooftop, your coming to this hearing today?
3 A: No, sir.
4 Q: No; isn't that correct?
5 A: Correct.
6 Q: And there was no report prepared by you until
7 Mr. Montgomery told you what he wanted you to
8 bring here today, correct?
9 A: I had done a little bit of the initial
10 bookkeeping work, but, no, I had not prepared
11 any specific reports.
12 Q: And that chart that we introduced here, that
13 was prepared at Mr. Montgomery's request?
14 A: Yes, sir.
15 Q: Okay. Did Mr. Montgomery ask you to do
16 anything about food sales; that is, where --
17 what made up the food sales; how many were
18 prepared food; how many pizzas; how many of the
19 sales? Did Mr. Montgomery ask you to do that?
20 A: At what time frame?
21 Q: Any time after Thursday.
22 A: I honestly don't remember when the exact timing
23 was.
24 Q: Do you have numbers that's showing -- that show
25 food sales, detailed by what was sold?



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- 1 A: I only have the point of sales reports, like I
2 mentioned before.
- 3 Q: And those aren't accurate?
- 4 A: It gives a total. It give a total.
- 5 Q: Total, but you don't have detailed what was
6 sold?
- 7 A: No, sir.
- 8 Q: But that's in the system somewhere?
- 9 A: I would assume it is, yes, sir.
- 10 Q: But Mr. Montgomery didn't ask you to prepare
11 that?
- 12 A: Well, no, there's nothing to prepare. It's
13 already included in the point of sale system.
- 14 Q: But you've said the point of sale system is not
15 accurate right now; is that correct?
- 16 A: No. The point of sale system is the system
17 that's at the location. What I use is
18 QuickBooks.
- 19 Q: Could he produce -- okay. And it's not in
20 QuickBooks, point of sale?
- 21 A: I've never broken down QuickBooks into that
22 specific. I've always grouped it in general --
23 -
- 24 Q: But I'm the one that got you here, right?
- 25 A: Yes, sir.



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1 Q: Okay. Thank you.

2 MR. HARPOOTLIAN: No further questions.

3 THE COURT: Anything further for this witness?

4 MR. MONTGOMERY: I don't think I get another turn,
5 Your Honor, but thank you.

6 THE COURT: I usually let people make sure they've
7 had their -- gotten all their questions out.
8 All right. Can we excuse this witness then or
9 does he need to hang around?

10 MR. HARPOOTLIAN: Not from me.

11 MR. MONTGOMERY: Yes, ma'am. He can be excused.

12 THE COURT: All right. You can step down. And you
13 can leave if you'd like. You're welcome to
14 stay if you'd like.

15 MR. PERRICELLI: Thank you.

16 THE COURT: All right. Mr. Montgomery, do you have
17 another witness?

18 MR. MONTGOMERY: Yes, Your Honor. We call Mr.
19 Ruonala.

20 MR. HARPOOTLIAN: Your Honor, for the record, I have
21 been, I think lenient is too strong a word, and
22 not objecting to leading. I will with this
23 witness. It's his client. I object to any
24 leading questions.

25 THE COURT: Okay. Well, let's -- you can object if



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1 the leading questions are asked.

2 **MR. HARPOOTLIAN:** I understand that ---

3 **THE COURT:** You've got us all on notice. Thank you.

4 **MR. HARPOOTLIAN:** I'm just putting Mr. Montgomery on
5 notice. Thank you.

6 **COURT REPORTER:** Sir, please state and spell your
7 first and last name.

8 **MR. RUONALA:** Adam Ruonala, A-D-A-M R-U-O-N-A-L-A.

9 **ADAM RUONALA,** being duly sworn, testifies as
10 follows:

11 **MR. RUONALA - DIRECT EXAMINATION BY MR. MONTGOMERY:**

12 Q: Mr. Ruonala, if you could, just tell The Court
13 what your involvement is with Rooftop.

14 A: I am an owner in Rooftop establishment.

15 Q: Okay. And what do you deal with or know about
16 the business on a day-to-day basis?

17 A: On a day-to-day basis the majority of the day-
18 to-day operations, who's working the shifts and
19 so on and so forth, that's Mr. Bland. I am
20 more concerned in the overall operations and
21 the way we operate our business.

22 Q: And with regard to how you operate your
23 business, what had you done in the last several
24 months to work on your food sales?

25 A: Well, it became very obvious after the last



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1 time we were here that that was one of the main
2 points that we needed to focus on in terms of
3 not only having the sales, but emphasizing the
4 sales as part of our establishment's goal and
5 the establishment's image as a whole. We
6 recognize that while a lot of people like
7 hotdogs and pizza, maybe we needed to come and
8 kind of create our own image, our own
9 personality if we were going to truly succeed
10 as more than just a drinking establishment.
11 And so, Stephen and I sat down and said, well,
12 what does everybody like and kind of came to
13 what is now our image and that is grilled
14 cheeses and brunch. And we created an awesome
15 -- well, I say we, but let's be honest, I'm not
16 much of a cook, so we brought in some amazing
17 people who have created a menu that we're very,
18 very proud of.

19 Q: Okay. I'm going to show you a document.

20 **MR. MONTGOMERY:** And ask the court reporter -- this
21 will be 5 and I will finally have a 5 to get
22 right. To mark this as 5.

23 **(Petitioner's Exhibit Number 5 was marked for**
24 **identification purposes.)**

25 Q: Can you identify that document in those pages,



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1 Mr. Ruonala?

2 A: This main page on the front is our daily menu.

3 Q: Okay. And if you just thumb through so you can
4 tell The Court what all these -- we're going to
5 go through it, but I just want to get it in the
6 record first. If you could tell us what it all
7 is.

8 A: Our daily menu, Sunday brunch, it looks like
9 the picture of the exterior of our
10 establishment. One of our advertising
11 employees, which is a sandwich board which
12 sits on the street daily, some different
13 pictures of that. Yet another sandwich board
14 that advertises our Sunday brunch. Our warmer,
15 which has now transitioned from what was a
16 pizza warmer to, it displays some of our more
17 popular grill cheeses that sell in volume.
18 Looks like some patrons enjoying -- that looks
19 like to be lunch. That's definitely a brunch,
20 lots of those. Showing kind of people from all
21 walks of life. Then it looks like our
22 establishment. My guess would be that would be
23 before it's open showing our seating inside and
24 outside. We have high tops, low tops, some
25 non-conventional seating as well as outdoor



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1 benches and tables.

2 Q: If I could, would this just be information,
3 photographs about the business?

4 A: Yes, sir.

5 Q: I want to try to show them on the screen if you
6 can, so that we can walk through and let you
7 talk about each one. Okay. And if you could,
8 just tell us what we have here.

9 A: These are the grillies. So, I was actually in
10 Wisconsin recently for work and they have a
11 place called Tom & Chee, which is a very
12 popular establishment up there. It was
13 featured on Shark Tank, is the first time I saw
14 it. And it's a restaurant chain that focuses
15 almost solely on grilled cheese sandwiches.
16 And they're very, very popular. And it kind of
17 -- they basically -- their whole pitch is that
18 it takes you back to a simpler time. But now,
19 obviously, with Kraft being a lot more
20 important, then they've taken like what I guess
21 you'd call the old dog and taught it new tricks
22 and added some really interesting flavors, some
23 neat profiles in regards to the different
24 toppings and ingredients you can add to it.
25 So, we did just that. And we've created a menu



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1 that we're very proud of that has, after we've
2 perfected it over the last couple of months,
3 has seen a lot of success and growth and
4 acceptance by the community.

5 Q: Okay. Did you have any help with designing
6 your menu and your offerings, I'll say your
7 food offerings?

8 A: I would love to take credit for it, but it
9 wasn't really as much help as it was somebody
10 kind of led us down a path. There's a
11 gentleman named Ramone Dickerson, who has
12 gained some credibility in this market for his
13 business 2 Fat 2 Fly. And obviously, he's very
14 innovative in regards to stuffing chicken
15 wings, so we went to him and said, hey, listen,
16 we want grilled cheeses, but what could we do
17 to really stand out. So, he helped us create
18 this menu. He was voted, I believe, it was
19 City of Columbia's most outstanding African
20 American Chef recently; was noted -- given a
21 national attention by the Oprah Winfrey Show as
22 well as a show on the O network, as well Steve
23 Harvey show. So, we felt that was somebody
24 that not only had great community ties and
25 know-how, but also was a friend of ours that



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1 could really lead some credibility to a making
2 a menu we could be proud of and would have
3 success.

4 Q: What hours are you open and serving this menu?

5 A: So, we open every day, 11:30 til 2:00 a.m. I
6 don't know if I'm really suppose to reference
7 our lesson learned from before, but it became
8 very apparent that, not only did we need to
9 increase sales, but we needed to make a
10 dramatic effort to be everything that the law
11 apparently needs us to be, that this Court
12 asked us to be, that the community wants us to
13 be in order to really serve food. So, even
14 when it's slow, we're open. And that's seven
15 days a week. The majority of the time we are
16 offering this menu. But on Sundays, we boost
17 it up even more with a fun Sunday brunch. But
18 we're open every day 11:30 to 2:00 a.m. or
19 until closing, obviously, if we close earlier,
20 depending on the volume, which is pretty
21 standard for a small business.

22 Q: Okay. And this, what is this next item here?

23 A: This is what I call, the get-you-fat menu.
24 This is everything that is good that is Sunday
25 brunch, but probably not the best for you. But



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1 it's people's vices. You got BLTs. You have
2 a french toast that has Fruity Pebbles,
3 Cinnamon Toast Crunch, Captain Crunch all
4 ground into it. We have what's called The Five
5 Points, which is a fantastic smorgasbord of
6 deliciousness. And fritas (sic). I mean,
7 there's really something that's outside of what
8 is the traditional norm is for a southern
9 cuisine and, you know, what people offer. My
10 personal favorite is the chicken and waffle
11 sandwich. It's just amazing, but it's one of
12 those things you're going to go take a nap
13 afterwards.

14 Q: Okay. And since you've had your brunch, tell
15 us about the reception you've gotten as far as
16 the public and the attendance you've had there.

17 A: You know the first couple, we were nervous.
18 They were slow. We had to get the word out
19 there. And then people started doing amazing
20 things like what I call, organic marketing.
21 And that's people were taking pictures of it
22 and posting it on their Instagram and talking
23 about it. And seeing the next week it might
24 have been two people and the next week it's
25 three. And word of mouth is far better than



1 any sort of monetary advertising, because
2 that's what I do for a living is advertising.
3 And the fact that this food spoke for itself
4 really just helped it take off. And we've
5 actually had lines and a wait for the last two
6 brunches.

7 Q: Okay. And has that caused you to think about
8 doing any -- well, first, is all this food that
9 you're preparing for brunch, where is it
10 prepared?

11 A: Everything that we are making now, everything,
12 is in-house.

13 Q: And how many employees or what type of staffing
14 do you have to do that?

15 A: So, we've really had to -- obviously, that
16 we've seen the interest in this -- and, not
17 only is it an interest in the community, but
18 it's a money-maker for us. It's profitable.
19 We've had to expand our staff. That's one of
20 the things that, not only do we have to ask for
21 Ramone to help us create it and then perfect
22 the day-to-day operations of it, but we've
23 actually had to ask him to bring in a staff to
24 help us and then we've also trained our staff
25 in the daily preparation as well as how to



1 handle high-volume situations. So, we've
2 drastically had to increase it to the point
3 where we not realize that this is something --
4 we've got something good here and we want to
5 expand it. The only fear has been that there's
6 this looming possibility of us not having an
7 establishment. And if so, I didn't want to
8 invest too much money at this point in growing
9 it. We have the basic utilizations of a stove.
10 We have, you know -- we have a convection
11 oven. We have a grill. We have all the -- you
12 know, massive more amounts of refrigeration.
13 We have 40-feet of square footage of
14 refrigeration now, as well as we've drastically
15 expanded our prep stations, and our utensils
16 that we have used for larger events. But I'm
17 kind of -- I'm at that point now of essentially
18 of diminishing return to try to pack anymore
19 small stuff in there. And, obviously, there's
20 a huge overhead cost in regards to putting in
21 a hood system and expanding that kitchen until
22 we kind of know what or future holds. So,
23 we're at that point now of we see the advantage
24 of going bigger, but frankly, after the lesson
25 learned in the last situation, it cost us a lot



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1 of money and I'm kind of strapped unless I know
2 that I can go bigger with this and take it to
3 the next level.

4 Q: Okay. And this next slide is just the outside
5 of your building?

6 A: It is. One of the things we're really proud
7 of, as silly as it sounds, minus that random
8 cup up there is that we kind of -- if you look
9 at it, Five Points unfortunately people are
10 very focused on the exterior of Five Points and
11 how it looks. And I'm a huge fan of
12 beautification. And one of the little things
13 we did is even to paint the colors a little
14 different to make it stand out and show some
15 proud in it. Even to the iron cast rail above
16 the sign, we had it done. You know, we had all
17 of our signage and the logos. We wanted to
18 show pride in what we were. We didn't just
19 want to throw up a name. That's actually the
20 City of Columbia silhouette. We wanted to take
21 pride in everything we did. Everything we do
22 has a meaning. And then, obviously, the
23 sandwich board out there. Five Points is so
24 driven. I mean, obviously, one of the reasons
25 it's so passionate to the protestors is it is



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1 a community down there. And there -- whether
2 it's a student body or, you know, patrons
3 shopping or neighbors, there's a lot of foot
4 traffic and slow moving traffic. So, one of
5 the best ways to get our message out there, in
6 our opinion, was to directly advertise to those
7 with a sandwich board and to make it as bright
8 and as appealing as possible, but also keep it
9 simple so somebody could assess in 10 seconds
10 as they're walking by if their fancy struck
11 them for a grilled cheese.

12 Q: Okay. And this sandwich board out here, is
13 that out there -- how often is that out there?

14 A: Every day. Every day. It gets blown over
15 sometimes, but we're still figuring out how to
16 weight it down.

17 Q: Okay. What do we have next here?

18 A: It looks like more sandwich board. We're
19 really proud of that sandwich board.

20 Q: Okay.

21 A: More sandwich board.

22 Q: Okay. So, you've got the menu out on the
23 street here?

24 A: Yes, sir. Every day.

25 Q: Okay. You have any advertising for anything



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1 else out on the street?

2 A: The only advertising we do at all, to be very
3 frank, is for food. We've never done any
4 advertising for our alcohol sales, beer, wine,
5 or liquor. You know, after our lesson, I keep
6 referencing, it was very evident that we needed
7 to focus 100 percent of our extra time on
8 growing our food business. And that's what
9 we've dedicating this to completely. More
10 sandwich board. We really like our sandwich
11 board. This is another example -- so obviously
12 on Sundays we have our brunch. It's a lot more
13 labor intensive, so we have to kind of break it
14 down into a small area. We serve food the
15 whole day, the grillies. But in order for the
16 things like the sensational french toast and
17 all the other things that we -- the chicken
18 waffles, we have a smaller window. And we also
19 buy -- that's less of a drinking time and more
20 generally people are getting up a little bit
21 later, they're starting their day a little
22 slower, a lot of people are getting out of
23 church and they'll come in for that kind of
24 food then. And that's really what we want to
25 cater to on that Sunday brunch, is more of an



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1 atmosphere of actually getting some lunch and
2 having a nice time and enjoying the weather
3 rather than focusing on a later night crowd.
4 Even though it's a very popular service
5 industry, their big day is Sunday and they like
6 to go out drinking. While that's fantastic,
7 that's not what we're trying to grow here. To
8 be frank, if we get too popular with drinks,
9 it's just going to hurt our food sales and
10 we're kind of going backwards in regards what
11 we need to do to prove that we are dedicated to
12 doing things the right way.

13 Q: And this next one is ---

14 A: Oh, yeah. So, obviously, you know, we started
15 out hotdogs and pizza. We had popcorn. We had
16 what we called spaghetti, but to be frank it
17 was one of the things that's been an age-old
18 usage for here. And Mr. Harpootlian hit on it,
19 that you have 40 food items to meet the
20 requirements. We were never going to go that
21 low in how we did things. But we had some
22 simpler things that were prepackaged, but then
23 we also were compliant in regards to that we
24 did make the hotdogs in-house, including the
25 fixings and all those kind of things. But this



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1 was the pizza by the slice. And as we grew our
2 business with the grillies, it became very
3 evident that people enjoyed our own local touch
4 rather than having to bring in pizzas as
5 another source. We wanted people to eat. And
6 if they didn't want a hotdog, cause there's
7 some people that just don't like hotdogs, they
8 got pizza. And while that was good for the
9 time and we felt like we were doing more than
10 the community on the -- our direct competition,
11 it wasn't enough. And as the grill cheeses
12 have grown in popularity, the pizza slice
13 warmer has now become a warmer for our mass
14 volume grilled cheeses, which are like the
15 chicken pesto, the basic, the kitchen sink, and
16 the Gamecock. So, we keep those in there
17 warmed and displayed well so that obviously it
18 draws attention to them, so people might go in
19 there as a watering hole will then realize that
20 we have some really good food as well.

21 Q: What hours are you serving the grillies?

22 A: Every day from 11:30 in the morning until
23 usually, if we're open on the weekends that
24 we're open later, 2:00 a.m. Sometimes we are
25 open that late, so we're always -- every day at



1 11:30. And that's available for people that
2 want to come in and eat, as well as one of the
3 new things that's come to town is Uber Eats.
4 And we looked at having a delivery service
5 ourselves, but with that comes more insurance
6 and more overhead. And to be quite frank, we
7 couldn't justify it right now, especially for
8 all the other expenditures that we have. So,
9 Uber Eats was a huge opportunity for us to now
10 touch hospitals, dorm rooms, and all the
11 caveats that are right around there. And we've
12 been amazed to see it with as simple as an iPad
13 in the kitchen with a guy watching it intently
14 to on the Under Eats menu how fast it's grown.
15 It went from -- you know, I think the first day
16 we opened and we had like seven sandwiches and
17 we were blown away. People like grilled
18 cheeses and it was something new on the menu --
19 on Uber Eats menu. And, I mean, if it good
20 enough for McDonald's to do it, which is a
21 billion dollar corporation, and it's successful
22 for them, I read something in the Wall Street
23 Journal about that the other day, then it's
24 good enough for us to do the grilled cheese
25 depot.



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1 Q: Well, tell The Court a little bit, so that we
2 all know, about what Uber Eats is and what
3 process you went through to ---

4 A: Yeah. So, UberEats, obviously, is based on its
5 name. It's -- you know, you can commission a
6 driver via your app to bring you food. Uber
7 Eats is -- being that it is associated with
8 such a powerful brand, they have some serious
9 regulations in regards to what it takes an
10 order to be registered as an Uber Eats account.
11 Everything from how you operate your business,
12 your ability to fulfill orders in a timely
13 manner. And so, we went through the checklist.
14 We -- I was proud enough in Stephen's work and
15 the staff's work to say that we passed with
16 flying colors. And, I mean, it took a little
17 bit of time, because there is a vetting
18 process, but now we're rolling strong. And
19 actually in here, I might be jumping ahead.
20 But there's some examples of how those orders
21 come in. And it's a really neat system. I
22 just wish I had thought of it first.

23 Q: And what kind of orders are you getting on Uber
24 Eats on a daily basis now?

25 A: Well, it may not sound like a lot to a lot of



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1 people, but we're seeing 100 plus dollar days
2 every day. And some days fluctuate even higher
3 than that, which, if you look at it, seven days
4 a week, start doing the math on it, it
5 definitely becomes a number generator. And
6 that's only, you know, a small part of, you
7 know, overall sales for our grilled cheeses and
8 our brunch. So, you know, supplementary income
9 from that is definitely something that -- where
10 that cost, that hard cost, the delivery cost,
11 is passed onto the end users as opposed to us
12 is a win. Because, I mean, our food cost is
13 aggressive. So, you know, they spoke on it
14 earlier, I could speak a little more on that.
15 We try to keep ours around 25 to 27 percent.
16 I've been in the service industry for many,
17 many years on a corporate level and that's
18 aggressive. We saw it much higher when I was
19 with Wild Wing Café for seven and a half years.
20 Average food cost there was about 32 percent.
21 And some of the things that we've done to
22 simplify that and bring the cost down is we --
23 a lot of our menu items I call it the Mexican
24 food approach, because it's kind of the same
25 ingredients and a bunch of different items that



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1 just kind of cook differently or seasoned a
2 little bit different, it changes the profile of
3 them. But whether you ordered a tacos or
4 nachos or an enchiladas, it's kind of the same
5 thing. And we can do that with a grilled
6 cheese. So, all of the grill cheeses have the
7 same Texas toast. There's only three or four
8 cheeses we use. And with the pestos, the meats
9 are very similar. So, we're able to do that.
10 And what we've found -- and I know I'm jumping
11 ahead, but just bear with me. Is we've found
12 that sometimes it's, A, more efficient and, B,
13 sometimes even cost effective to go to some
14 local grocery stores and utilize their
15 services. On the alcohol side, you're told
16 where you have to buy from, beer and stuff like
17 that. But sometimes, to be frank, Food Lion
18 has better sales on ham. And if it's the same
19 ham that we can get at US Foods, I'm a small
20 business and I got to save every penny I can
21 right now, so we're going to buy from where we
22 can. And other times, you know, their
23 deliveries got to be Thursday and we ran out
24 because our business is constantly growing
25 every day, so we don't allot for that much par,



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1 so we need more turkey or we need more pesto,
2 so we have to go to a grocery store to get it.
3 And also, then the 2 Fat guys have helped us
4 with that, because, obviously we're paying
5 their labor, but then also they say, hey, we're
6 going to come in on brunch and we'll go ahead
7 and buy the stuff in advance; we'll buy the
8 Captain Crunch; we'll buy the Fruity Pebbles;
9 we'll buy the waffles. And then what we do is
10 they come in, they prepare everything in-house
11 and then, as we're getting starting and
12 learning it, we're reimbursing them for the
13 items, not the actual -- you know, the prep
14 items. And then everything is prepped,
15 prepared, cooked inside.

16 Q: So, I just want to make sure I understand. So,
17 when you're talking about these checks to 2
18 Fat, that's actually for food that they
19 purchased for you and it was used in the
20 preparation of ---

21 A: Yes, sir. Yes, sir. It's basically when we
22 run out of stuff or we don't have everything we
23 need. It'd be like when we had the one -- the
24 DJ expense, it literally was -- it's, hey,
25 we're out of cheese, can you guys get the right



1 kind of cheese we need? And as soon as they
2 come in, it goes into our refrigeration system;
3 it goes onto our grills as being cooked there;
4 and they were basically doing us a solid by
5 just helping us get the proponents we need to
6 in-house create these items.

7 Q: Okay. Is this a picture of -- what is this a
8 picture of?

9 A: This is a couple that came in and was enjoying
10 brunch. What I thought was the most unique
11 thing about it, is they didn't come in for any
12 sort of adult libations. They came in strictly
13 to try our food. And they came in and that was
14 a lunch, like normal day, normal customers, and
15 we were just really proud to have it, so
16 somebody snapped a picture.

17 Q: This is?

18 A: Definitely a college group. Same thing, came
19 in, eaten. And, kind of cheesy, but asked if
20 we could take a picture.

21 Q: And does this show part of your establishment?

22 A: Yes, sir. That's the outdoor establishment,
23 which is part of kind of what we highlight as
24 part of the -- the rooftop. The little thing
25 is when we noticed that this was a viable



1 establishment, I said, what does this place
2 have that nothing else has. And it was a
3 rooftop. So, you know, obviously it's getting
4 to that point where it's a little tough out
5 there for the heat, but a lot of the time of
6 the year we have beautiful weather and people
7 like to be outside if they can. Not only that,
8 but you've also got a view of the historic Five
9 Points. So, it's something that we can use as
10 a selling point that not a lot of other places
11 have. This looks like -- if I had to guess,
12 I'd say this is Sunday brunch. Coming in --
13 yeah, you can see the chicken and waffles, so
14 it's definitely Sunday brunch. Coming in, a
15 group of people having a good time and -- yeah.
16 It looks like somebody stuffing their face with
17 a chicken and waffle sandwich. Yet another
18 example of people enjoying a good time. This
19 guy's seems really excited about his chicken
20 and waffle sandwich. Apparently, it's really
21 bright in there. The chicken and waffle
22 sandwich is kind of popular, as you can see.
23 Another example of the outdoor establishment or
24 the outdoor side of it, individuals coming in.
25 As you can kind of see, it kind of ranges in



1 terms of demographic and age. Guys are hungry.
2 These are examples of the open seating. So,
3 while we know that there's been argument in
4 regards to obviously 40 -- the ability to seat
5 40 people is one of the stipulations on the
6 checklist. On any given day from 11:30 in the
7 morning we can 70. So, again, an example of
8 going above and beyond that. We also found
9 that, for what volume of our kitchen can
10 currently do, if we added any more seating than
11 that and we got full, we'd be in a lot of
12 trouble. So, we're kind of having to --
13 there's that point where you want to be busy.
14 And then there's a point that if you get them
15 in here and you don't give them their food in
16 a reasonable time and quality, you're just
17 going to make a bad impression and they're not
18 going to come back. So, we've kind of had to
19 regulate how fast we want to grow to do it the
20 right way. More examples of seating. We have
21 high tops. We have low tops. We have some
22 non-traditional, which is that long one. And
23 then we obviously have the outside seating as
24 well. More seating. That's the low tops.
25 Same, high tops. Some rooftop porch. You can



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1 notice there's the picnic benches around the
2 perimeter. And then if people want to stand
3 and -- we don't even count that as seating, but
4 if they want to stand and eat or enjoy the
5 outside and have a cocktail, that's where
6 they're available to do so. Same. Just a kind
7 of example of the view. We have to have that
8 first perimeter fence as, you know, standards
9 for safety. We added the second perimeter
10 fence just because better safe than sorry. One
11 of the things that I thought was really neat in
12 regards to, you know, adding the southern
13 charm, if you look, you'll see the canopy
14 lightening. We have those stretched out across
15 the top place and just added a real warm feel
16 at night. The white soft glow canopy
17 lightening, which just kind of gives it that
18 southern feel of an outdoor backyard that I
19 think is one of the things -- it's small things
20 like that that make people feel a little pride
21 in where they're at. And it kind of, in my
22 opinion, creates more than just what you would
23 call a drinking atmosphere and more of a place
24 to socialize and actually enjoy your evening.
25 Obviously, we need the bathrooms, so I guess we



1 took pictures of the bathrooms to show that
2 we're compliant. A big thing for us is keeping
3 them clean. I don't even like going in a
4 bathroom that's dirty and I'm a guy. I can't
5 imagine what that would be like for a lady.
6 So, it's a big -- it's really important to us
7 to keep them clean and keep them, things as
8 silly as making sure the doors latch and things
9 like that are really important to us to make
10 sure that we're doing everything for our
11 customers to enjoy the day. A good example of
12 the prep stations. So, as I explained, we've
13 had to make the best of the situation we have
14 in terms of space. We've already talked to
15 people in regards to how to expand and how to
16 take this to the next volume. But as you see,
17 we have a griddle or grill. We have a
18 convection oven. So, the process for it
19 without giving away too much is basically how
20 my mom made me grill cheese sandwiches. And
21 Ramone showed us this is basically, you don't
22 want to try to melt everything and cook
23 everything just by throwing it on a grill and
24 pressing it down, like I did when I'd get home
25 from school, until it cooked real fast. You



1 want it to warm up and kind of bake a little
2 bit and then you actually apply it and have
3 that charred crust. So, attention to detail on
4 that. And it's Texas toast too, so we butter
5 it up. But an example -- a rough example of
6 some of the utilities that we use in order to
7 prepare. That is a refrigerated prep station.
8 That is additional cubic feet of refrigeration,
9 as well as then an expanded area to prep and
10 prepare the sandwiches and the brunch. Okay.
11 That's the convection oven again, as well as
12 some of the tools. So, that's the open prep
13 station, as you can see, you got the cheeses,
14 you've got the different things you need in
15 order to prepare some of our menu items.
16 That's 23 feet of refrigeration, which that
17 alone, is over the 21 feet that you would need
18 in order to be compliant. That's 23 feet right
19 there. We've also got two additional -- as
20 we've grown this and, obviously, a lot of our
21 items are -- need to be refrigerated. We've
22 expanded drastically our refrigeration. I
23 think we're right at like 40 feet -- cubic feet
24 right now. That's an example of kind of how it
25 looks. You know, in regards to organization,



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1 I think everything -- especially as volume
2 goes, we need to know exactly where everything
3 is, so they have places for everything. And
4 that in return, obviously, creates the
5 inability to stack things and make it more, I
6 guess space efficient. But it, in the long
7 run, it helps you to be more efficient in terms
8 of getting the end result to the customer.
9 Prep ideas, our prep utilities, obviously, the
10 microwave, the infamous microwave, things like
11 that. One thing I noticed, I don't really know
12 if it's important, but if you look down on the
13 bottom you have the steam stations. The steam
14 stations are mainly utilized when we have
15 private parties. Anything from a graduation
16 party, to somebody's birthday party, to,
17 obviously, if we have some of the Greek life.
18 But what's really important to us is that --
19 and we've been doing this since before we even
20 went to court for The Roost. Is that all
21 private parties have to have food. There's a
22 minimum requirement in regards to the amount of
23 food they order. And that is basically to
24 ensure that we are doing everything in our
25 priority to not just be a watering hole, but to



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1 also offer our food. And I thought it was a
2 really good opportunity to let people try our
3 food for the first time and be like, wow, it's
4 pretty good; we ought to come back here and eat
5 some time. And it's gone really well in
6 regards to kind of getting the message out
7 there. General view of the kitchen.
8 Obviously, everything we talked about. You've
9 got your sanitation sinks over there.
10 Everything we need to be compliant plus some.
11 And to be honest, my vision is to really have
12 that thing to be about two and a half times
13 that size and to get some -- a little bit more
14 modern equipment. While all that's compliant,
15 we've got our A, we keep it very clean, you
16 know, my mom always told me cleanliness is
17 close to godliness and, you know, I want to
18 have it as efficient as possible and to really
19 see how far we can take this in terms of the
20 restaurant side. That's DJ, we figured -- you
21 know, my mom always told me, never to trust a
22 skinny chef, so we got DJ, because, well, if
23 anybody's going to know how to make a grill
24 cheese, it's going to be him. He works across
25 the board and other things other than just the



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1 food. But he was one of the first ones to
2 stepped in and say, hey, we're going to really
3 embrace the culture of being a restaurant. So,
4 he's worked closely with Ramone and Sean, who
5 is Ramone's partner, to learn all the recipes
6 and to work hard in regards to making all the
7 products. This is Ramone from 2 Fat 2 Fly. As
8 you can see, he was very intricate in how he
9 does things, but it's been amazing to work with
10 him. He's been a friend for years and, you
11 know, I've always been a fan of 2 Fat 2 Fly
12 wings. But I never realized how much of a
13 labor of love and how artistic is really is to
14 create a menu. And he's done a fantastic job.
15 And he's a huge part of our success.

16 Q: What's happening here in this photograph?

17 A: It looks -- I want to say that -- I don't know
18 if that's a frittata or something. But it
19 looks like it's almost to the end point being
20 served at the table. But he's grilling and
21 preparing -- or cooking and preparing stuff
22 that's soon going to go out to the tables.
23 It's got to be Sunday brunch. We have Sunday
24 brunch. So, the interesting thing about this,
25 simple prep station. Keep things simple is



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1 really how you're going to -- especially as
2 small as we are, keep up with the volume. I
3 think the most important thing on this is,
4 you'll notice the iPad sitting next to the
5 sandwiches, that's how the orders come in from
6 Uber Eats. They come in simply on that, they
7 read in. It's as simply as somebody looking at
8 there, confirming it, starting making it.
9 They'll give you an estimated pick-up time.
10 And that's been an extra source -- a really
11 positive extra source of growth for us. And,
12 you know, we spoke on marketing and
13 advertising. That's something that doesn't
14 actually cost us in regards of advertising, but
15 it is -- brand association, being associated
16 with something like Uber Eats helps with the
17 legitimacy of our establishment and to grow.
18 And then getting our food in people's hands
19 that might not necessarily be in Five Points
20 usually.

21 Q: And if I wanted to get Uber Eats like right
22 now, what would I have to do?

23 A: Well, that's funny, because I wanted to order
24 Uber Eats for everybody in the courtroom at
25 lunchtime and I was going to have it delivered



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1 to Mr. Harpootlian, but Mike yelled at me and
2 told me that wasn't funny. But I thought it
3 was hilarious and we would have had grilled
4 cheeses. But it's as simple as that. You
5 download the app, you go on there and you click
6 on us, it pulls up our menu, you select what
7 you want. Like I said, everything from a
8 traditional grilled cheese, to the kitchen
9 sink, to the Gamecock, you order it. It'll
10 tell you -- charge you a small delivery fee.
11 It give you a window of how long it's going to
12 take til it gets there. Comes in and you have
13 your food. Charges your credit card. Real
14 simple.

15 Q: Okay. And this is just?

16 A: DJ making sandwiches. Obviously replying to an
17 Uber Eats order. This is an example of Sunday
18 brunch. So, as you can see, you got all your
19 cereals. You've got a frittata. You've got
20 the bread for french toast. It's just an
21 example of what it looks like in a kitchen on
22 a Sunday when you're trying to -- there's so
23 many different menu items. Even only 10, 15
24 menu items takes a large effort to make it
25 happen for -- when you got 20 people coming in



1 to eat at once. Apparently, we really like DJ
2 cooking stuff. It's like the sandwich board.
3 Okay. French toast and orange juice. What's
4 more classically breakfast, brunch, and
5 American than that? You know, fresh maple
6 syrup, orange juice, and french toast. It's my
7 favorite, the chicken and waffle sandwich.
8 That is a maple syrup aioli. I didn't even
9 know what an aioli was until Ramone showed us,
10 but it's delicious. And that's all I'm really
11 worried about. And that's our chicken and
12 waffle sandwich. Frittatas, you got the french
13 toast with the cereal, you got another french
14 toast in the back. Those are just examples of,
15 you know, our vegetable of our Sunday brunch
16 menu. That would be the kitchen sink grilled
17 cheese. Basically everything but the kitchen
18 sink is on it. That is available every day
19 from 11:30 to 2:00 a.m. or to when we close
20 both in-house as well as available on Uber
21 Eats. That's the Gamecock, we had to have
22 something associated with the university. It's
23 another classic. It's got bacon and cheese.
24 You can't be mad at bacon and cheese. That's
25 the classic. I'm a big fan of the classic,



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1 melted cheese on some toast. It's a grilled
2 cheese. I imagine that's -- Uber Eats website,
3 very simple. It's got a large variety of
4 customers across it, as you can see,
5 Smashburger and Main Street Bakery. And then
6 right there in the middle is the Grilled Cheese
7 Depot, opens daily at 11:30. And we're excited
8 and proud to be on it. This is an example,
9 obviously, of the menu featured on the website.
10 These are examples of how orders come in. So,
11 it'll tell what the order is, obviously the
12 amount to be paid the courier, which would be,
13 you know, the Uber driver, if it was
14 satisfactory or not, obviously the thumbs up,
15 thumbs down, and, I mean, who the customer --
16 it's pretty simple, I think. Same things.

17 Q: Just different days?

18 A: Yes, sir. Okay, yeah. It's different days of
19 the week.

20 Q: And I guess this one would show for, it looks
21 like May 5th?

22 A: May 5th, yes, sir.

23 Q: So, on May 5th, you had 14 orders for \$130.90?

24 A: Yes, sir. Okay. Yeah, I guess so. I'm sorry.
25 Yep. So, this obviously completes -- includes



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1 all orders May 5th at 4:00 a.m. to May 6th at
2 4:00 a.m.

3 Q: All right, Mr. Ruonala. Now, that would be
4 what you have on the menu in the kitchen?

5 A: Yes, sir. I think we beat that one to death.

6 Q: Okay. Let me show you another group of
7 photographs and see if you can identify those
8 for me. Can you tell me what this book
9 includes?

10 A: You want me to go picture by picture or just
11 start at the first one?

12 Q: Well, if you generally could just tell what it
13 is first so that we can ---

14 A: It looks to be a bunch of pictures of people
15 entering the establishment.

16 Q: Okay. And would these be -- what would be --
17 these be taken from?

18 A: These -- it's time stamped, so it should --
19 yeah, this was this past weekend the 11th. And
20 it looks like it's an array from 10:51 p.m. to
21 -- yeah, all different times throughout the day
22 -- throughout the evening.

23 Q: Okay. And so, would this be from your security
24 cameras?

25 A: Yes, sir. So, we have -- I believe it's 12, 13



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1 cameras throughout the establishment publishing
2 everything from the front door, to covering
3 outside, to all the different angles inside the
4 building as well.

5 Q: Okay. Who are these people that are shown in
6 these photographs?

7 A: Well, the one gentleman that's holding the ID
8 and our scanner is one of our doormen. And it
9 appears that the rest are patrons that are
10 coming in. As you can see, I mean, all walks
11 of life. You've got some older clientele, as
12 well as the younger clientele. Some of they
13 appear to be together, some of them appear to
14 be -- I love to see -- I mean, you've got
15 gentlemen in ties. You've got ladies in
16 dresses. Young, old. I'd say overall, if I
17 had to call it, a pretty good-looking crowd.

18 Q: Okay. And these are pictures from your
19 security camera taken on May 11th?

20 A: Yes, sir. So, that would have been what,
21 Friday night? Yes, sir.

22 MR. MONTGOMERY: Move to admit this as Number 6.

23 MR. MCCABE: No objections from the Department, Your
24 Honor.

25 MR. HARPOOTLIAN: None, Your Honor.



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1 THE COURT: Petitioner's 6 is admitted.
2 (Petitioner's Exhibit Number 6 was marked and
3 admitted into the record.)

4 THE COURT: Did we ever admit Petitioner's 5?

5 THE WITNESS: I think that was this, ma'am.

6 MR. MONTGOMERY: I thought we did.

7 MR. MCCABE: I believe we did, Your Honor.

8 THE COURT: Did we? Okay.

9 (Petitioner's Exhibit Number 5 was admitted into the
10 record.)

11 Q: Mr. Ruonala, as you move forward in looking at
12 the business, let's talk about, again, just for
13 the record, what kind of safeguards are you
14 putting in or are you implementing on a day-to-
15 day basis to deal with the issues that have
16 been raised by the Protestants?

17 Q: So obviously, the blaring issue was the idea
18 that we were only concerned about libations and
19 drinking. So, while that was always an
20 important part, having the food as part of our
21 establishment from day one, we wanted to
22 adamantly make it very clear that the message
23 was received and that we knew we needed to do
24 even more to make sure we were doing it in
25 compliance with whatever this -- whether it was



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1 a new standard or whatever it was, we were
2 going to play by the rules and do even better
3 than just what the rules ask. In regards to
4 safety of our customer, you know, obviously I
5 think I maybe didn't clarify as well as I
6 should have in regards to like the line, which
7 you touched on earlier. A line generates in
8 our establishments when we've reached our
9 capacity. And one of the things that's very
10 important to us is to be compliant with
11 capacity and with what the fire marshal require
12 as our maximum number of patrons at one time.
13 And so, when that happens, we immediately start
14 a line. And, I mean, patrons are aware that
15 they're going to wait in line. And, you know,
16 that line can move quickly if a large group
17 comes out at one time or that line can move at
18 a snail's pace if nobody comes out for a while.
19 And as they come out, it's a strict one in and
20 one out policy. So, it's not a madhouse to the
21 door, but it is a controlled environment that
22 allows both for the safety of a patron and also
23 for the ability for us to make sure that we're
24 doing our due diligence to ensure that
25 everybody that's suppose to be in there --



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1 that's in there is suppose to be in there from
2 both a legal age and consumption. If they seem
3 overly intoxicated, we try to give them a heads
4 up before they even get to the front of the
5 line; hey, just letting you know, your buddy's
6 too drunk to be in here, so can we get you a
7 ride home, something like that? Or, you know,
8 we don't allow people to have open containers
9 in our line. If they walk from one
10 establishment -- that establishment should have
11 them throw it away. But if they don't, that's
12 a no-no. You're not going to stand in our line
13 with an open container. If you're acting
14 ruckus or creating a scene, even if you're not
15 intoxicated, we're not going to allow you in.
16 So, it gives us a good buffer to allow to do
17 our best to ensure that we have the right
18 people in there.

19 Q: When I look at Exhibit 6, this first
20 photograph, you pointed out the scanner.

21 A: I don't have the exhibit anymore, I'm sorry.
22 Oh, yes, sir. Yeah, so that's our ID scanner.
23 So, one of the things that for -- obviously
24 SLED has done an amazing job in regards to
25 spreading the word of how to spot fake IDs and



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1 stuff. But things were -- it was very obvious
2 that things were still slipping through the
3 cracks, so we got black lights. That was
4 something that, when all the kind of
5 conversations started long before this had ever
6 even happened, Mr. Harpootlian and some other
7 people that actually brought a light, that TSA
8 uses black lights, so we got black lights. We
9 got the exact same kind of bulb and everything
10 they do. And it helped. And it was one of
11 those things that showed dividends. But then
12 we said, well, if we're going to go this far,
13 let's basically go another step. And we found
14 these scanners that, to be quite frank, are
15 very expensive, they're really \$2,000. But
16 what they do is they cover all 50 states. I
17 believe they got Canada, Mexico, military IDs,
18 all this. And they verify if the ID is
19 compliant or is a valid ID, but also they do
20 more than that. They have what's called pass-
21 back protection. And the pass-back protection
22 is something that, if you and I are walking in
23 together and I swipe my ID and then I try to --
24 I pass it back to you and you come in a few
25 minutes later and swipe the same ID, it's going



1 to give me a notification that that ID was
2 recently swiped, which is obviously a trigger
3 that something's afoul. And so, that was yet
4 another feature that we thought was going above
5 and beyond to be sure that we have the right
6 crowd in our establishments.

7 Q: Okay. How are you addressing over serving?

8 A: So, all of our staff are SLED certified. And
9 in regards to, not only, identify but then how
10 to handle people that are overly intoxicated.
11 To say that we've never had a drunk person in
12 our establishment would just be a falsehood.
13 Unfortunately, sometimes it creeps up on people
14 and then they're drunk. And they may not have
15 intended to get sloppy drunk or they might
16 have, but they didn't show the signs when they
17 first got there. The point there is not to
18 start placing blame and getting mad, but it's
19 just to rectify the situation. And so, what we
20 do there is, you know, we have food. And I
21 have no problem taking a hit on \$5 worth of
22 food cost to get somebody a grilled cheese if
23 they need it. And then, I stand by this, you
24 know. We kind of got attacked a little bit for
25 saying that we have a corporate Uber account to



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1 get people home safe. I think that absolutely
2 is something that we have to do and we still do
3 it. You know, if somebody needs a ride home
4 for free, we'll get them home. And it's not
5 because -- it's not just because it's a
6 liability or something like that. It's because
7 it's the right thing to do. And, you know,
8 I've been in other cities where I don't live
9 and don't have any sort of business there. And
10 seeing somebody that just needed a ride home
11 and you put them in a cab or you put them in an
12 Uber and you pay the 20 bucks to get them home.
13 And you hope somebody would do that for you or
14 for your friend or loved one one day. So, we
15 do that. And with the Uber over cabs, what it
16 does, we're not giving them cash to get into a
17 cab that they can walk into another
18 establishment and get a cocktail. We're not
19 just putting them in a cab that then they can
20 get out and we have no sort of way of tracking
21 it. And if they force that cab or that Uber
22 off the road and say, I want to get out here,
23 which is their right, we can't kidnap them, we
24 know. And when they get home safe, we know.
25 And that we have a document of how much it



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1 cost, how many times we've done it. It's a
2 very trackable system that we're very proud of.
3 And to be frank, if that makes me look bad
4 because we have people that are drunk, then so
5 be it. I'm not going to change that ever
6 because it's the right thing to do.

7 Q: Okay. Any other issues. How do you -- you
8 talked a little bit about regulating your
9 lines. Explain a little bit more how you
10 regulate your lines and what's you've done with
11 ---

12 A: Okay. So, you know, there's issues in regards
13 in the past of, you know, people calling it
14 loitering, people calling it, you know,
15 congregations of young people. Any time there
16 are places are busy, you're going to have
17 business and you're going to have -- but one of
18 things that we do is we work very well with CPD
19 to ask them, hey, we have a line. We have a
20 roped line. So, it sections off the people
21 that are in line for our establishment. We
22 allow no loitering in the door for a couple
23 reasons. Obviously, it messes up traffic flow
24 and it's a safety hazard to have people
25 blocking the doorway. So, if you look, you can



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1 see where the ropes are in some of the
2 pictures. But then also what it does is it
3 allows local law enforcement to know who is in
4 line for our establishment and who would be
5 considered loitering. So, it helps, A, with
6 the protection and the safety of our patrons or
7 future patrons and, B, we think it's a way of
8 working with local law enforcement to ensure
9 the fluidity of the streets and the walkways.

10 Q: And you reached out to law enforcement and had
11 conversations with them?

12 A: Multiple times. You know, we reached out to
13 the Chief initially. We've actually -- I take
14 that back. We initially reached out to Captain
15 Roberts, who was the head of south region at
16 the time, then Patterson. Like, we've worked
17 with the -- whoever was the head of the south
18 region. Captain Roberts met with me, came into
19 the establishment, talked to me about safety
20 procedures, what he called better practices.
21 He had just recently returned from a, I guess
22 you'd call it conference in New York that the
23 City had paid for him to go to in regards to
24 nightlife and how to best do it. And obviously
25 the clubs and stuff in New York are much larger



1 and higher volume, but we can still ensure that
2 those priorities. So, one of the things he
3 said is, hey, you need at least one doorman for
4 every hundred people under capacity. I'd love
5 it if you'd do one for every 75. We do one for
6 every 50 and I said, that's still not enough.
7 So, for instance, our capacity at the Rooftop
8 is 150 every given night that we're busy -- on
9 the busy nights we have at least six, plus then
10 our additional staff that, if a situation got
11 out of hand, some of our bartenders and so on
12 and so forth that could -- they're trained in
13 how to handle that. And then we also -- you
14 know, everything we could do. For instance,
15 the aggregate insurance policy that the City
16 requires, the million dollar aggregate, we have
17 a five million dollar aggregate insurance
18 policy that covers everything from what would
19 be the standard traditional insurance issues;
20 the accidents, slips and falls, and that. But
21 then it goes even in depth as counseling and
22 stuff if something were -- I think I spoke of
23 this last time. If a tragedy were to happen
24 that is much more defined than just somebody
25 slipping and falling, somebody getting



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1 assaulted or abused or something like that, it
2 goes into helping with those situations as
3 well. So, yet again another example of us just
4 trying to go above and beyond to ensure the
5 safety of our customers and then set an example
6 for the community.

7 Q: What kind of plans do you have moving forward
8 as it concerns with both of your restaurant
9 sales and just the general operation of the
10 business?

11 A: The general operation of the business is we
12 just want to become more efficient and we want
13 to continue to separate ourselves from what is
14 considered the norm, I guess, and what we can
15 do better. Honestly, I didn't see coming what
16 happened with The Roost. It kind of blind-
17 sided me because we were trying so hard to do
18 everything right. But if it's a lesson learned
19 and we're given the opportunity to continue
20 operating the Rooftop, we're just going to
21 continue to make it better. It's from the
22 volume of food we serve, to the quality and
23 efficiency of our food, to the safety measures
24 with, you know, the serving of alcohol. I
25 genuinely believe -- I know, and I'll say it



1 under oath, I'll say it front of my mom, I'll
2 say it with my hand on a Bible, we're in it for
3 the right reasons. I'm not trying to hide
4 anything. I welcome people to come in and, I
5 guess, call it an audit or an inspection. We
6 welcome that. I want -- I just want to -- you
7 know, Five Points has been just berated over
8 the last six months to a year in just how
9 terrible of a place it is. But I think we all
10 forgotten, and it pains me to say this now as
11 I go into a different stage of my life, but we
12 were all kids once. And kids can be loud. And
13 kids can be silly. And kids don't always wear
14 the most appropriate clothes, but it doesn't
15 make them bad people. And it doesn't make
16 their intentions bad. And, you know, we all
17 wanted to be around -- guys wanted to be around
18 pretty girls, and pretty girls wanted to be
19 around guys, and you wanted to feel liked, and
20 you wanted to feel happy, and you wanted to
21 feel accepted. And I think establishments in
22 Five Points do that. Could we all work as a
23 collective and work as individuals to ensure
24 the safety and maybe do things a little bit
25 better? Yes. And that's genuinely what we're



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1 trying to do. So, you know, I'm genuinely
2 striving just to get the opportunity to do
3 that. I get that, you know, one overly
4 intoxicated alcohol poisoned person is too
5 much, much less 200. But I can do my due
6 diligence to not allow that to happen, I think
7 I should be given a fair shot. You know, we
8 talk so much about majorities and all this,
9 whatever the legalese that we've been using for
10 how much food should be sold and how much --
11 we're genuinely trying and we're heading in the
12 right direction, you know. I understand that
13 our accounting numbers aren't complete yet. It
14 takes a process. Trust me, I'm frustrated. He
15 did my personal taxes too and I was yelling at
16 him every five minutes trying to get them
17 because I was -- it's annoying, but I don't
18 know how to do it. But we're bringing food
19 sales up drastically. The numbers are trending
20 up drastically. And I don't see a point of
21 diminishing return yet, so I'm willing to
22 invest in it and continue to grow the business.
23 We've just go to be given the opportunity to do
24 so.
25 Q: From the standpoint of the time that you've



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1 been open under your temporary license, have
2 you had any citations of the establishment or
3 any of your employees for any violations at all
4 at any time?

5 A: No. We have had none. And, I mean, we got a
6 list the other day of anything that's even on
7 record. And even everything on that, we didn't
8 -- I mean, it's clear if you read it. We had
9 -- I saw there was one where an officer found
10 a -- I don't know if it was a man or a woman
11 that had a ID that wasn't theirs that was in
12 our establishment. And we acknowledge that.
13 It was a valid ID and it was a valid ID that
14 looked like the person. We couldn't -- I mean,
15 while I understand we can do more, there's only
16 so -- I don't have the resources. I can't pull
17 a background check on somebody. We did -- we
18 swiped it, we black lighted it, the person
19 looked like it. For instance, you know, my
20 little brother looks a lot like me. If I had
21 low moral character and, when he was 19, gave
22 him my ID and he was able to use it, that's
23 really tough for -- even for a SLED officer.
24 You know, we had another one where we wouldn't
25 allow somebody in the establishment. I believe



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1 it was because they had an open cocktail. And
2 we told them no. And the person with them
3 assaulted our bouncer, hit him. And we called
4 the police instead of -- you know, first
5 instinct is you want to defend yourself or get
6 aggressive. And I was so proud that they
7 didn't. They, you know, charged local law
8 enforcement doing that and they handled it and
9 arrested. We had another one where -- I was so
10 proud to see this on the docket. Was that the
11 officer had apparently talked to a young person
12 about being 21 or something, didn't have any
13 basis to judge them on. She got bold enough to
14 go to our door and swipe their ID through our
15 scanner and it came back as a fake ID. And the
16 officer then used that as grounds to, I guess,
17 field book them. And so, that was one of the
18 incidents on our report. To me, that's a win.
19 If I have 50 of them -- you know, 50 incidents
20 at 638 Harden Street and they're like that,
21 then I would love to see the article on that,
22 you know, because we genuinely are trying to do
23 the right thing.

24 Q: Where do you see your food sales going as you
25 move forward over the next few months?



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1 A: I think as the word gets out about this and the
2 prices are affordable -- we priced them so that
3 we can -- generally the average consumer can
4 afford them. And as the quality continues to
5 grow and the efficiency and the ability of us
6 to up speed even where we're at now, but then
7 obviously if we're able to expand our facility,
8 I love the idea of opening a second one and it
9 being -- you know, having this Grilled Cheese
10 Depot. That's kind of the reason we even said,
11 let's give it a second name -- an ancillary
12 name inside of it, because I think it's a
13 really unique thing. And I don't know anybody
14 in this market that's doing anything close.
15 You might have a grilled cheese at Yesterday's,
16 which is a great place and I love it, but it's
17 usually going to be on the kids' menu and it's
18 going to be this little flat piece of bread
19 pushed together. I think we've found a niche
20 that we can genuinely get if given the
21 opportunity to grow. I think the sky's the
22 limit. I really -- and I hate to not be able
23 to put a quantitative number on it, but I don't
24 want to put a quantitative number on it. I
25 want to keep, you know, feeding it until



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1 eventually we've -- everybody's grilled cheesed
2 out.

3 Q: Does anyone other than you and Stephen Bland
4 have the authority to do anything, make
5 decisions relating to this business?

6 A: Absolutely not. And I'm willing to be asked
7 any question about that. We're completely
8 transparent. Ms. Wells is an investor. And
9 when we saw an opportunity on this
10 establishment, we needed money. And that was
11 the person that was already in our lives and we
12 went to her about it and she helped us. And,
13 you know, but that does not mean she's guilty
14 by association. Dan Wells is not a part of
15 this establishment. And I'll say it til I'm
16 blue in the face. And the idea of me lying is
17 not something that I want. My career is based
18 on who I am as a person and my integrity. And
19 Dan Wells is not an owner of this business.
20 It's myself, Stephen, and Brenda Wells. And I
21 can't make it any clearer than that. I don't
22 know if I'm not supposed to say that name in
23 here, but it's just -- it is what it is. I
24 have nothing to hide.

25 Q: And do you and Stephen have the ability to



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1 purchase all of the interest that Ms. Wells has
2 in this business?

3 A: Yes, we do.

4 Q: I don't have any further questions. If you'd
5 answer any questions these other gentlemen
6 have.

7 **MR. RUONALA - CROSS-EXAMINATION BY MR. MCCABE:**

8 Q: Good afternoon. I've just got some general
9 questions. Just some things that may have not
10 been covered by your attorney. Kind of all
11 over the board, so if you'd just kind of bear
12 with me.

13 A: Yes, sir.

14 Q: So, if you were to describe your business, how
15 would you describe it at this point?

16 A: I'd call -- I'd describe it as a full, you
17 know, service industry and establishment. We
18 have everything from quality food to enjoyable
19 libations.

20 Q: All right. And if you could, just real
21 quickly. There's a couple different LLC --
22 well, there's the LLC. Can you just explain,
23 once again, your position within the LLC?

24 A: Yes, sir. So, my LLC is Mongo, LLC. And then
25 I own a percentage partner in the



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1 establishment. There's three of us: Brenda
2 Wells, myself, and Stephen all have LLCs.

3 Q: And all three are listed on the application
4 that was provided to the Department of Revenue?

5 A: Yes, sir. And then as well we listed two
6 principals, which are Collin and Eric, because
7 they are managers. And just to do everything
8 we could to possibly make sure that there was
9 no gaps, we had them go through the process of
10 being vetted as well.

11 Q: Okay. Collin and Eric, they have day-to-day
12 operational control?

13 A: Not operation control, but, I mean, essentially
14 yes. So, they can hire and fire. They'll work
15 the books out at the end of the day. If a meal
16 needed to be comped, they can do that kind of
17 thing, yes, sir. So, I guess if that's your
18 definition of day-to-day, yes, sir.

19 Q: Okay. That's fine. Thank you.

20 A: But they can't make a decision that would
21 impact the business as a whole.

22 Q: They're not signing checks and ordering?

23 A: They can order some small things if we need,
24 you know some food or something, yes, sir. But
25 they can't decide to stay open passed 2:00 or



1 to shut the kitchen down if, you know, they
2 don't feel like selling grilled cheeses on a
3 Thursday afternoon.

4 Q: Okay. And I know you probably answered this in
5 the last hearing, but you are a resident of
6 South Carolina?

7 A: Yes, sir.

8 Q: And you are over the age of 21?

9 A: Yes, sir. Just barely.

10 Q: Okay. Your LLC, was that in existence for 30
11 days prior to filing your application?

12 A: Yes, sir.

13 Q: Okay. Have you or any of the named principals,
14 including the two that were just added
15 recently, have any them had an alcohol license
16 or beer and wine permit revoked or suspended?

17 A: No, sir. Not to my knowledge. No, sir.

18 Q: Okay. Do you or any of the named principals --
19 and you may not know this, so I'll just ask for
20 you.

21 A: Yes, sir.

22 Q: You don't have any delinquent taxes with South
23 Carolina?

24 A: No, sir. You guys get my taxes.

25 Q: All right. So, we saw some pictures here of



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1 some different people coming into the club.
2 So, if you had to describe your typical
3 clientele, what would it be?

4 A: It really depends on the day part. To be
5 candid, you know, after midnight, you're going
6 to see a little bit younger crowd. I don't
7 think that's because of the atmosphere we
8 create, I just think -- I'm 35 now, I get tired
9 earlier. And, you know, we have a much more
10 diverse crowd. I'd say from -- if we're
11 operating -- talking about the night operating
12 hours, say from 9:00 to 12:00 it's a little
13 more diverse. As the night gets from like
14 12:00 to 1:30 when we call last call, you're
15 going to see a little bit younger crowd, a
16 little more energy. During the day it really
17 is people from all walks of life. Every
18 ethnicity, every age group, every demographic
19 in terms of household income. It really is --
20 you know, you'll see businessmen and
21 politicians, and then you'll see the college
22 kid or the guy that, you know, is cutting the
23 grass across the street.

24 Q: Okay. So, do you allow anyone under the age of
25 21 in the business, say for brunch or during



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1 the lunchtime menu, are you allowing -- so, if
2 I got my kid with me, can my kid not come in or
3 how do you handle that?

4 A: To be honest with you, I don't know. Like I
5 said, I ---

6 Q: Okay.

7 A: I don't. I'm sorry.

8 Q: No, that's fine. If you don't know, that's
9 perfectly fine. And what's -- what is
10 surrounding your location business-wise? What
11 do you have on each side of you there?

12 A: You have the gas station right there then you
13 have Latitude 22, which is below us or kind of
14 to the -- if you're facing to the right. And
15 then you do have an establishment called Pinch
16 on the left.

17 Q: Okay. And during the evening or even during
18 the day, do you guys provide music? Do you
19 have a DJ, do you have bands?

20 A: Yes, sir. We traditionally have a DJ.

21 Q: Okay. And what time is the DJ usually there?

22 A: The DJ usually starts probably around 9:30,
23 10:00 o'clock. And maybe a little earlier,
24 depending on the night. If we have a private
25 event, it might start 7:00, you know, or 5:00



1 whatever. But then it'll they traditionally go
2 until about 1:15.

3 Q: So, would it be safe to say they're more there
4 in the evening hours?

5 A: The entertainment side of it, yes, sir.

6 Q: Okay.

7 A: Unless we have a special event.

8 Q: All right. Let's see here. We've talked about
9 preventing underage sales. You said that you
10 had -- your staff was trained -- or received
11 some training about over consumption. What was
12 that again?

13 A: It's the SLED certified. It's -- I forget --
14 there's an acronym for it, so I don't know off
15 the top of my head.

16 Q: You know what, I see it on my list. Okay. So,
17 you have -- your staff has attended training
18 provided by SLED?

19 A: Yes, sir. And then we also use for our -- for
20 any documentation of incidents we have, the
21 SLED endorsed incident book and calendar and
22 all that stuff we use as well.

23 Q: Let's talk about security. Do you guys have --
24 I know you said you have a gentleman at the
25 door.



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- 1 A: Yes, sir.
- 2 Q: And I'm focusing more in the evening hours as
3 opposed to lunch time ---
- 4 A: Yes, sir.
- 5 Q: --- I'm assuming. How many security ---
- 6 A: Minimum ---
- 7 Q: --- people you would classify as security ---
- 8 A: Door staff and you know ---
- 9 Q: Yes.
- 10 A: Minimum of six. So, with capacity of 150, if
11 you do the math, it's less than the -- like 20
12 people to a person.
- 13 Q: Okay. And you mentioned that you have 13
14 security cameras; is that correct?
- 15 A: I believe -- you know, how -- unfortunately
16 with technology, we might have 16 one day then
17 two go down. But, I mean, I think the minimum
18 I think we have is -- I'm thinking about my
19 cell phones and the number. It's 13 that are
20 consistent.
- 21 Q: But you definitely have security cameras within
22 the building?
- 23 A: HD. We can use zoom in or play, save. Yes.
24 Yes, sir.
- 25 Q: Okay. And these here were taken from outside.



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1 This is Exhibit Number 6. Those were taken
2 from outside.

3 A: Yeah, there's ones outside, there's ones
4 inside. But these are all from our security
5 cameras. So, you can see they're in color,
6 they're HD.

7 Q: All right.

8 A: I think the blurriness is more from the printer
9 and not the actual camera.

10 Q: Okay.

11 A: They look better than that on the screen.

12 Q: My question is, are there more security cameras
13 outside the business or is this the sole camera
14 outside?

15 A: No, sir. There's that one, then there's some
16 on the Rooftop, which I guess technically would
17 be inside. And then we have some that kind of
18 overlook the street, is the one that should
19 have been used in assistance in other issues
20 that don't pertain to our establishment.

21 Q: So, the photos we saw, there seems to be pretty
22 well lit from the windows and everything, but
23 let's talk about lighting in the evening. Is
24 the club well lit? Is it sufficient enough for
25 patrons to be able to see all the activity



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1 within the club? More in evening.

2 A: Absolutely.

3 Q: The daytime looks pretty well lit.

4 A: I was looking for maybe -- so, I mean, you can
5 see in there. One of the last picture is
6 inside the establishment and it's very well
7 lit. It's -- in my opinion, you like them a
8 little dimmer, people -- that kind of -- the
9 atmosphere of having fun and -- but I just
10 think darkness and blind spots creates trouble.
11 And I want a clear line of sight for all of my
12 staff as well as a clear line of sight for the
13 patrons. So, darkness isn't the answer. We're
14 honestly -- Ms. Dixon spoke earlier. You know,
15 the place was kind of a mess when we got it and
16 we've done a lot to it in terms of renovations.
17 We're proud of it, so we want people to be able
18 to see what we've done. And we think the
19 ambience of what we've created up there is kind
20 of what sells the establishment as well.

21 Q: We talked a little bit about the food. You've
22 testified as to the food. And just to make
23 sure I've got this correct, you're serving
24 meals throughout the entire hours of operation;
25 is that correct?



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1 A: Yes, sir.

2 Q: All right. There's no designated parking for
3 your location, is there? I didn't think ---

4 A: No, sir.

5 Q: Okay.

6 A: Unfortunately not.

7 Q: That's always probably a sore spot for people,
8 I'm sure.

9 A: Yeah.

10 Q: So, let's talk about procedures. Do you have
11 any procedures in place to address neighborhood
12 concerns about littering in front of your
13 business?

14 A: Absolutely. So ---

15 Q: People throwing stuff from the roof?

16 A: Right. So that's -- if you notice we have the
17 secondary fence too. While it also keeps
18 people from being bold enough to go, it also is
19 another discourager from people chunking. We
20 set it to what was the mandatory -- I apologize
21 for not knowing the exact terminology, but the
22 distance that needed to be separate to prevent
23 people from having that ability to -- or
24 decreases the chance of successfully chunking
25 something over the roof. We -- I believe it's



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1 like three and a half feet, four feet of
2 separation, which obviously drastically effects
3 our capacity, too, but it's what we had to do
4 in order to be compliant up there. And then we
5 put that secondary fence as well as added
6 protection, because I can't imagine some -- you
7 know, somebody getting hit by something. And
8 I mean, knock on wood, we've had zero incidents
9 with anything like that.

10 Q: Okay. And you talked about the rope line in
11 front of your business. Have you done anything
12 else to address neighborhood concerns of
13 loitering outside of the establishment?

14 A: Like I said, we work very closed with the City
15 of Columbia Police Department to let them know
16 that they are welcome and let them know where
17 our barriers are and our guidelines, so that
18 they're not running off our clientele. They
19 even have a perceived idea that they're not
20 running off our clientele if they tell some
21 people, hey, move along kind of thing because
22 it's very clear who's in line. We try to keep
23 a very structured barrier there.

24 Q: Okay. And I just want to clarify something.
25 You talked about some incidences on your



1 report. That was a police report; correct?

2 A: Yes, sir. I believe -- I don't know where it

3 came from, I just saw that there was --

4 somebody had subpoenaed it or ---

5 Q: Okay.

6 A: --- petitioned for it, whatever it may be.

7 Q: My question is this: Those have not been

8 violations that have been issued by SLED?

9 A: We have had no violations from anybody.

10 Q: All right. All right. That's all the

11 questions I have. Thank you.

12 A: SLED or CPD. Yes, sir. Thank you.

13 **MR. HARPOOTLIAN:** Please The Court, Your Honor.

14 **MR. MONTGOMERY:** I'd have to say, after all that, I

15 didn't hear one objection.

16 **MR. HARPOOTLIAN:** Let's get to it.

17 **MR. RUONALA - CROSS-EXAMINATION BY MR. HARPOOTLIAN:**

18 Q: So, would you concede that The Roost was not

19 run well ---

20 A: No, sir, I would not.

21 Q: Okay. Would you concede that the amount of

22 food sold there was only five percent?

23 A: No, sir, I would not.

24 Q: How much was it?

25 A: I'd say it was a little under ten by the -- at



1 the end.

2 Q: Ten?

3 A: Under ten, sir.

4 Q: I'm sorry? Under ten.

5 A: A little under ten. Yes, sir.

6 Q: Okay. Under ten. You didn't have a stove.

7 A: Yes, sir, we did.

8 Q: Where'd you have it?

9 A: We had a microwave, which by definition of the

10 state, is a stove.

11 Q: Okay. And Mr. Wells owned a piece of it,

12 right?

13 A: No, sir, he did not. Ms. Wells did.

14 Q: Ms. Wells owned a piece of The Roost?

15 A: Yes, sir.

16 Q: Mr. Wells had no interest in it whatsoever?

17 A: That is correct, sir.

18 Q: Were y'all paying him back some money you owed

19 him?

20 A: We were paying Ms. Wells.

21 Q: How much did you pay her?

22 A: You know, I haven't brushed up on all that

23 right now. I was under the impression that I

24 needed to be sharp on the Rooftop, so that's

25 what ---



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- 1 Q: Well, but there was a deal cut with Mr. Wells
2 and his mama about the Rooftop and The Roost at
3 the same time; correct?
- 4 A: No, sir. That's not correct.
- 5 Q: Well, I think y'all explained that Mr. Wells
6 owed Ms. Wells \$300,000; is that correct?
- 7 A: That was for The Roost, yes, sir. It was
8 actually more than that, but it's okay.
- 9 Q: Okay. So, there was no money -- Mr. Wells was
10 not relieved of any debt for the Rooftop?
- 11 A: Mr. Wells has never, since day one, had any
12 association with the Rooftop ---
- 13 Q: That's not what I asked you.
- 14 A: Well, that's what I answered, sir.
- 15 Q: No, I understand. That wasn't the question.
16 The question was -- how much money did Ms.
17 Wells put into the Rooftop?
- 18 A: I believe it was \$54,500.
- 19 Q: And for that she got 60 percent of the stock?
- 20 A: Yes, sir.
- 21 Q: Okay. There was no relationship back to the
22 money owed by Mr. Wells to Mrs. Wells in
23 exchange for some interest in the Rooftop; is
24 that what you're saying?
- 25 A: They were completely separate entities. Yes,



- 1 sir.
- 2 Q: No, no. That's not -- listen to my question.
- 3 A: I am.
- 4 Q: Was there any relationship between the money
- 5 owed by Mr. Wells to his momma in relation to
- 6 her interest she obtained in the Rooftop; yes
- 7 or no?
- 8 A: No.
- 9 Q: Okay.
- 10 A: May I continue to answer?
- 11 Q: Well, I mean, it's either yes or no.
- 12 A: So, the way we had it structured, we pitched it
- 13 to her that the only way we were going to be
- 14 able to generate a faster revenue was we had an
- 15 opportunity. And we asked her to invest in
- 16 that as well with the caveat that we would be
- 17 able to pay her -- buy her out quicker if we
- 18 had these two establishments ---
- 19 Q: So, there's no tie between the money owed by
- 20 Mr. Wells to Mrs. Wells in revenue to be
- 21 generated by the Rooftop and her interest in
- 22 the Rooftop?
- 23 A: I think I just answered that.
- 24 Q: Well, I wanted to make sure I understood it.
- 25 A: I said that we told her we would be able to pay



- 1 her quicker if we had two revenue streams.
- 2 Q: And that was pay her quicker on what was owed
- 3 on The Roost?
- 4 A: Part of it, yes, sir.
- 5 Q: Okay. Now, she has 60 percent of the ownership
- 6 of this establishment, correct?
- 7 A: Correct.
- 8 Q: And you paid -- well, first of all, how much
- 9 money did you put in?
- 10 A: \$7,000.
- 11 Q: Okay. And how much did Mr. Bland put in?
- 12 A: I believe it was \$10,000.
- 13 Q: Okay. And she put in?
- 14 A: I think it was 54,500, something close to that.
- 15 Q: Okay. Now, she's appointed Mr. Bland as the
- 16 manager of her LLC, correct?
- 17 A: Correct. And then at any point you were not
- 18 able to do the duties, I would be able to. And
- 19 that she is not allowed to vote on anything
- 20 unless she has under ten percent ownership.
- 21 Q: She can remove him.
- 22 A: But then she has to place me in. She cannot
- 23 remove him -- one of us two has to be in at all
- 24 times ---
- 25 Q: And it says that in the agreement?



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1 A: It does, sir.

2 Q: Okay. Now, let me ask you something about this
3 -- the new -- you would agree that the approach
4 you're taking to the Rooftop is not the one you
5 were taking up until about March of this year;
6 is that correct? This is a new approach?

7 A: It's a bolstered approach. It's been the same
8 approach the entire time. As we learned from
9 the last one, though, while we were compliant
10 with what the Department of Revenue and SLED
11 asked us to do and even doing more than that,
12 we needed to do even more, so we've done just
13 that.

14 Q: Well, let me ask you this: Do you feel that
15 y'all acted responsibly in terms of The Roost?

16 A: Absolutely. I can hold my head high 100
17 percent.

18 Q: And do you feel that you've been acting
19 responsibly in your entire effort in Five
20 Points?

21 A: Yes, sir. I think we are on the verge or
22 whatever it is to change the way Five Points is
23 viewed by you guys, by the public or some of
24 the negative and the way the community views it
25 as a whole.



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1 Q: So, when you were quoted by The State newspaper
2 on March 9th of 2018, quote, there's nothing
3 wrong with being 21 and wanting to get a drink
4 and get laid, is that what you said?

5 A: That's absolutely what I said. Yes, sir.

6 Q: Well, I'm sorry, did you tell your momma that?
7 I mean, you quoted your momma here 20 times a
8 day.

9 A: Yes, sir.

10 Q: Did momma know that you -- listen to me. Did
11 momma know that you believe that what --
12 there's nothing wrong with getting drunk and
13 getting laid?

14 A: I didn't say get drunk, sir.

15 Q: Having drinks and getting laid.

16 A: Yes, sir. So, there's a fine line between
17 having a drink and getting drunk. And that is
18 something ---

19 Q: And what about getting laid ---

20 A: --- you recognize by ---

21 Q: What are peddling ---

22 A: --- when you're taught by SLED to notice over-
23 indulgence. So that, sir, is the difference.

24 MR. MCCABE: Your Honor, I'm sorry. What is the
25 relevance of this comment?



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1 **MR. HARPOOTLIAN:** Your Honor, we've heard 20 times
2 about his momma says this, his momma says that.
3 I don't think momma says have drinks and get
4 laid.
5 **MR. MCCABE:** This is argumentative; this is
6 adversarial.
7 **THE COURT:** Mr. Harpootlian, let's bring the emotion
8 down just a little bit.
9 **MR. HARPOOTLIAN:** Your Honor, this -- I apologize.
10 **THE COURT:** And let's keep in mind what's relevant
11 here.
12 **MR. HARPOOTLIAN:** Your Honor my relevance of this is
13 ---
14 **THE COURT:** It's really not what his momma thinks
15 about.
16 **MR. HARPOOTLIAN:** Well, if Your Honor's rejected all
17 the momma stuff, I can move on. But this guy
18 is a con man, Your Honor.
19 **MR. MCCABE:** Your Honor, I object.
20 **THE WITNESS:** That's ridiculous.
21 **THE COURT:** Mr. Harpootlian, ...
22 **THE WITNESS:** I can't call him names; he can't call
23 me names. That's ridiculous.
24 **THE COURT:** Let's maintain our decorum here.
25 **MR. HARPOOTLIAN:** I thought con man was -- you might



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1 be complimented about that.

2 **THE WITNESS:** No, sir, I wouldn't. Because actually
3 I -- there's no history of me being anything
4 but an advocate of this community. And you
5 know what, sir, if you'd like to ---

6 **THE COURT:** Mr. Ruonala ...

7 **THE WITNESS:** I'm sorry. I take offense to that.

8 **THE COURT:** Stop. Okay. I want everyone to direct
9 all remarks to me.

10 **THE WITNESS:** Yes, ma'am.

11 **THE COURT:** And we're not going to talk back and
12 forth to each other at all.

13 **THE WITNESS:** Yes, ma'am.

14 **THE COURT:** And I want Mr. Harpootlian, for just to
15 observe a higher level of decorum and courtesy
16 towards ---

17 **MR. HARPOOTLIAN:** I will. I will, Your Honor. I
18 will.

19 **THE COURT:** Thank you.

20 **Q:** So, let's move on to something other than your
21 quotes. What I did not hear was a question
22 about -- and you've shown us a picture of
23 pizza. You serve pizza?

24 **A:** No. We do not -- well, we no longer serve
25 pizza.



- 1 Q: But you did spend money in March and April on
2 pizza.
- 3 A: We absolutely did spend money in March and the
4 beginning of April, yes, I believe we did.
- 5 Q: And you no longer serve pizza?
- 6 A: We have phased pizza out due to the success of
7 the grilled cheeses.
- 8 Q: Okay. And so, the numbers that -- you would
9 agree with me that in March these numbers
10 include pizza?
- 11 A: Yes.
- 12 Q: And in April they include pizza, part of April?
- 13 A: Yes, sir.
- 14 Q: Okay. And you would also agree with me that,
15 if you take these numbers as accurate, that
16 food is -- once you backed the pizza out, is
17 somewhere around -- let me make sure I get
18 these numbers correctly. I don't have the
19 sheet, I apologize. Here it is right here.
20 That about 20 percent of your food in March was
21 from -- 21.16 percent from Village Idiot; would
22 you agree?
- 23 A: I -- unfortunately, I'm not ---
- 24 Q: Would you disagree with that?
- 25 A: I'm not going to agree to anything with you



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1 until the -- the statement unless I actually
2 have the math in front of me.

3 Q: Okay. Let's get the math in front of you.
4 Here is -- here we go. Here we go right here.
5 These are expenditures for food. This is
6 Exhibit Number 4.

7 A: Okay.

8 Q: How about look at March. Everywhere it says
9 Village, y'all bought food from the Village
10 Idiot, correct?

11 A: Yes, sir.

12 Q: Okay. So, if I look at this on 3/2/18, Village
13 \$24; 3/3/18, Village \$24; 3/7/18, Village \$8;
14 3/8/18, Village \$24; 3/8/18, Village \$24; 3 --
15 18, Village \$16. Shall I go on?

16 A: No, sir. I don't think ---

17 Q: So, you would concede that that's purchasing
18 pizza from Village Idiot?

19 A: I absolutely concede that that's purchasing
20 pizza, yes, sir.

21 Q: Okay. And the same thing in March. If you
22 start at the top. 4/4/18, Village.

23 A: That's April, sir.

24 Q: April, I'm sorry.

25 A: That's okay. Everybody makes mistakes.



1 Q: Is this a game to you?
2 A: No, sir. I'm not -- I'm addressing the Judge.
3 Q: Why address the Judge? I asked you a question.
4 A: Because she asked me to. She asked me to.
5 Q: Is this a game to you?
6 A: No, sir. This is not a game.
7 Q: Okay. So, 4/4/18, Village; right?
8 A: Yes, sir.
9 Q: \$16; 4/14 -- 4/5/18, Village \$24; 4/6/18,
10 Village \$24; 4/10/18, Village \$16; 4/11/18,
11 \$24; and even on 4/19, Village \$24; 4/20,
12 Village \$24; 4/23/18, Village \$24; right?
13 A: Yes, sir.
14 Q: So, it wasn't just the beginning of April, it
15 went all the way through April.
16 A: I said we phased it out in April, sir.
17 Q: Okay. Well, we don't have May, so we don't
18 know what you spent.
19 A: Yes, sir.
20 Q: And when did you start this brunch? When did
21 that start?
22 A: March, end of -- I believe it was the end of
23 March. I can't speak on ---
24 Q: Okay. So, you've been doing it for about five
25 weeks, six weeks?

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1 A: No, sir. It's -- I'd say the middle of March,
2 yes, sir. So, two months.

3 Q: Okay. Two months. And, now, let's understand
4 that you're open 15 hours a day.

5 A: Some days, yes, sir. The busy -- like I said,
6 we're not -- it's at the discretion of the
7 manager to, if it's a slow Wednesday and
8 there's nobody in there late night and no food
9 coming through, then they will close. That's
10 a pretty much the practice of small business.

11 Q: So, but you advertise for lunch every day?

12 A: Yes, sir. And we are open for lunch every day,
13 seven ---

14 Q: From what to what?

15 A: I mean, at least you're going to be open from
16 11:30 until I'd say 10:00 p.m. at night. So,
17 lunch and dinner.

18 Q: Is that the average?

19 A: The hours?

20 Q: You're open, I mean ---

21 A: Well, traditionally we're open later than that.
22 Yes, sir.

23 Q: Are you open -- I mean, are you open every day
24 from 11:30 in the morning until 2:00 in the
25 morning?



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- 1 A: We're open 11:30 until.
- 2 Q: Until?
- 3 A: That's -- you know, that's a common acronym in
- 4 our -- word in small business restaurants,
- 5 until. Until the volume subsides to the point
- 6 where you're losing money to stay open.
- 7 Q: Now, the items available on brunch, that's on
- 8 Sunday only, correct?
- 9 A: Yes, sir. From 11:30 to 2:00.
- 10 Q: Okay. So, the waffles and all of that, that's
- 11 only available for 11:30 to 2:00, two and half
- 12 hours?
- 13 A: Yes, sir. On Sundays.
- 14 Q: The rest of the time the only thing that's
- 15 available is a grilled cheese sandwich?
- 16 A: Well, no sir. An array of grilled cheese
- 17 gourmets, yes, sir.
- 18 Q: They're all grilled cheese sandwiches.
- 19 A: No, sir. I mean, they are -- that'd be like
- 20 saying every sandwich at Groucho's is just a
- 21 sandwich. Or everything at a Mexican
- 22 restaurant -- I mean, yes, sir, it's a category
- 23 specific, but it is a variety of things.
- 24 Q: But they're called sandwiches?
- 25 A: Yes, sir.



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- 1 Q: It's two pieces of bread and something in the
2 middle.
- 3 A: Actually a couple have three pieces of bread.
- 4 Q: Three pieces of bread and something in the
5 middle?
- 6 A: Yes, sir.
- 7 Q: Okay. They're sandwiches. But other than two
8 and half hours on Sunday, all you can get is a
9 sandwich?
- 10 A: Yes, sir. We took that model from Subway,
11 which is the fastest growing franchise in the
12 world. And they only sell ---
- 13 Q: They don't serve liquor at Subway, do they?
- 14 A: No, sir, they don't. But the sandwiches work.
- 15 Q: Pardon me?
- 16 A: But the sandwiches are very successful and we
17 needed something that was a niche for us that
18 was obviously widely received by the community.
19 And sandwiches seem to be a very good fit for
20 us.
- 21 Q: Well I'm sure that they may be a very good fit,
22 but according to the numbers your accountant
23 produced, they comprise of, on the average,
24 twelve percent of your sales.
- 25 A: Over the last two months, yes, sir.



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- 1 Q: Okay. And that includes the pizza. That
2 includes the pizza.
- 3 A: If I may? So ---
- 4 Q: Sure, you can answer any way you want. You
5 don't have to ask me if I may.
- 6 A: So, the question that asked -- that sparked the
7 thing was if you said was 22 percent of our
8 sales in food was pizza. That is incorrect
9 because what -- 22 percent of our expenditure
10 may be pizza. Because, obviously, the amount
11 of pizza we're buying. We noticed that nobody
12 was buying the pizza anymore, so we just
13 literally had cold pizza at the end of the
14 night. The sales were coming from the grilled
15 cheeses. Thus, the reason we stopped doing the
16 pizza. If you have two things and somebody
17 only wants one, eventually you say there's no
18 point in me wasting the cost on this. And even
19 if it was on the menu, phase it out of the
20 menu. So, while we still have the expenditure
21 of the pizza, the sales are being generated
22 from the grilled cheese.
- 23 Q: Do you have any data to prove that? Do you
24 have any -- just a yes or no, so we can move
25 on. Do you have any data to prove that?



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1 A: No, sir.

2 Q: Okay. And so -- but you're showing -- you
3 continue to show you were buying pizza March
4 and April.

5 A: Yes, sir.

6 Q: Even though you couldn't sell it?

7 A: I said they were phasing out, yes, sir.

8 Q: Okay. Now, you got \$10,000 from Mr. Bland;
9 \$7,000 from you and, according to your
10 accountant, about \$40,000 from -- let me make
11 sure I'm right on that. It looks like \$54,500;
12 is that correct?

13 A: Yes, sir. Yes, sir.

14 Q: And you've been operating for how long on that
15 investment?

16 A: We opened ---

17 Q: In September.

18 A: --- September. Yes, sir.

19 Q: Okay.

20 A: So, I guess that would be, what, eight months
21 now?

22 Q: Yes.

23 A: Yes, sir.

24 Q: On a total of looks like \$71,000 investment.

25 A: I'm confused. I'm not trying to be contrary.



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1 I don't understand. Is there a question there
2 or ...
3 Q: I'm saying, is that the only investment you
4 had?
5 A: Yes, sir. So, after that we were able to
6 operate. That was the money in for the initial
7 payment to the person we were buying it from.
8 And then we needed the money for the
9 renovations. Because, as Ms. Ida spoke on
10 earlier, the place was kind of a mess.
11 Q: What's your rent per month?
12 A: Off the top -- I believe it's 3200. I don't
13 know -- I apologize. It might be 4,000. but
14 it's -- I don't know off the top of my head.
15 Q: Four thousand a month?
16 A: Yes, sir.
17 Q: And it looks like between -- in April between
18 food and beer sales, you did almost -- you did
19 over \$20,000.
20 A: Food and beer, is that what you said?
21 Q: Yeah.
22 A: Yes, sir.
23 Q: Okay. And you have to have additional staff
24 because of long lines? Not this weekend, which
25 was graduation. What was the line like the



1 week before -- weekend before last? How many
2 people in the line?
3 A: I couldn't tell you off the top of my head,
4 sir.
5 Q: It's not unusual to have 150 people in the
6 line, correct?
7 A: A long line is, yes, sir.
8 Q: Okay. To get into a place that holds ...
9 A: A hundred and fifty, sir.
10 Q: A hundred and fifty. And that line goes -- and
11 let me see if I can get this in my head. On
12 the corner of Devine and Harden is a place
13 called Lucky's. And that's a bar, right?
14 A: Yes, sir.
15 Q: And then next to it coming down would be Pinch?
16 A: Yes, sir.
17 Q: And then coming down would be y'all?
18 A: Yes, sir.
19 Q: And then Latitude twenty -- whatever it is?
20 A: Yes, sir.
21 Q: And then next to that is Bar None?
22 A: No, sir. Next to that would be Kings Row.
23 Q: No, I mean I'm talking about bars now. I know
24 there's a hair ---
25 A: I'm just trying to be specific.



- 1 Q: There's a place to get your hair cut and then
2 next ---
- 3 A: And then next after that would be the jewelry
4 store.
- 5 Q: Jewelry store and then Bar None.
- 6 A: Yes, sir. And then, yes, sir, Bar None. Oh,
7 Cotton Gin, too.
- 8 Q: Cotton Gin. I forgot Cotton Gin. Where's
9 Cotton Gin?
- 10 A: Before the -- right next to the jewelry store.
- 11 Q: After the haircut place? I think it's before
12 the hair cut place?
- 13 A: It is, yes, sir.
- 14 Q: Yeah, so right in a row there we have Lucky's,
15 Pinch, y'all, Latitude, Cotton Gin; five bars
16 within 200 feet of each other and a line?
- 17 A: Well, much longer than 200 feet, but, yes, sir.
18 They adjacent to each other, yes, sir.
- 19 Q: Okay. And you're next to each other?
- 20 A: Yes, sir.
- 21 Q: Or are you above?
- 22 A: Well, yes, sir.
- 23 Q: But you got to go through a door to go up
24 above?
- 25 A: Yes, sir.



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1 Q: So, I guess there's a -- that's a pretty good
2 concentration of bars right there, isn't it?

3 A: I'm not an expert in concentration, sir. It's
4 very similar to the Vista and a number of other
5 establishments, Greenville, Charleston, yes,
6 sir. It is definitely a service industry area
7 or a food and beverage industry area.

8 Q: So, if there are 150 people standing in line to
9 get in your place, any other lines to get in
10 Pinch or any of the other bars that are there?

11 A: I can't speak to ---

12 Q: You've never seen it?

13 A: To be honest, we are one of the busier
14 establishments, yes, sir.

15 Q: Okay. And so, let me get back to the numbers
16 here for just a second. According to your
17 numbers -- now, explain this to me, and your
18 accountant had an explanation, you made \$54,000
19 in liquor sales in March and then 41,668 in
20 April; is that correct? Why'd it go down
21 14,000?

22 A: From March to April?

23 Q: Yeah.

24 A: Well, obviously St. Paddy's Day is ---

25 Q: St. Paddy's Day.



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1 A: --- hands down. Yes, sir.

2 Q: Okay. And so, in one day you sell \$13,000

3 worth of liquor?

4 A: Yes, sir.

5 Q: Really?

6 A: Yes, sir.

7 Q: And everybody's being scanned as they come in?

8 A: Yes, sir.

9 Q: And no -- I mean, how many people can get in

10 there at one time?

11 A: A hundred and fifty. Not only that, but we

12 actually hire a Richland County police officer

13 to work the door with us to ensure extra

14 security and that there was efficiency at the

15 door.

16 Q: So, in one day you sold almost \$14,000 worth of

17 liquor?

18 A: Just in -- yes, sir.

19 Q: Just liquor?

20 A: Yes, sir.

21 Q: And beer sales went down about \$1500?

22 A: Yes, sir.

23 Q: So, you would have sold \$14,000 worth of liquor

24 and \$1500 worth of beer in one day?

25 A: Yes, sir.



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1 Q: Wow.

2 A: We are obviously ---

3 Q: How much food did you sell that day?

4 A: We sold 13 pizzas that day.

5 Q: Okay.

6 A: And obviously -- pizza. We also sold like ten

7 grill cheeses and maybe five, six hotdogs.

8 Pizza was the popular, because we were selling

9 it for \$2 a slice because we weren't trying to

10 make money, we just wanted to have people fed.

11 Q: So, the numbers on food -- well, first of all,

12 the numbers on liquor, they -- I mean, is 54

13 really the high number and 41 the low number?

14 A: I'm ---

15 Q: Per month.

16 A: For like -- so, March is definitely going to be

17 one of our highest, yes, sir, every year

18 because of that. It's also right in the middle

19 of when, I guess kind of like the perfect

20 storm, people are in school, you know, it feels

21 really nice outside, so people go out more.

22 Now you rolling in with summer, so obviously

23 the university, so you'll see a dip in that.

24 Retail and service industry across the board

25 experience a lull in the summer. People are



1 traveling on vacation, going out to the lake,
2 things like that.

3 Q: What about March? March would be down while
4 they study for exams? What do they do ---

5 A: No, I said ---

6 Q: I mean, April. I apologize. April.

7 A: Yes, sir. It starts to diminish. As you get
8 closer to summer, it starts to diminish. Plus
9 it wasn't really down if you look at it. You
10 just have what is that influx for a big day
11 that brings 65, 70,000 people to one area, when
12 normally you might see 4,000 people in a night,
13 not at one time. So ---

14 Q: But ---

15 A: --- as you can imagine, it's bigger than most
16 people -- a lot of those establishments,
17 including Yesterday's and any of the
18 restaurants, they depend on that day to
19 basically buffer the summer. But I guess
20 they're -- they actually take the money and put
21 it towards I guess like a slush fund to help
22 them get through the rest of the summer.

23 Q: So, you know that one of the major
24 considerations the Judge had in not allowing
25 the liquor license for The Roost was the amount



1 of food?

2 A: Yes, sir.

3 Q: Okay. And you knew when this hearing was
4 coming that that would be a major issue here
5 also?

6 A: Yes, sir.

7 Q: Why is it you didn't get your accountant to do
8 more detailed work -- why did I have to
9 subpoena your accountant? Why didn't you bring
10 him with charts and graphs and down to the
11 penny of what you sold and what you brought in;
12 why didn't you do that?

13 **MR. MONTGOMERY:** Object to the question, Your Honor.
14 It's speculative.

15 **THE COURT:** Objection's overruled.

16 **MR. HARPOOTLIAN:** Thank you.

17 Q: Go ahead.

18 A: So, the most important thing for us was to be
19 completely compliant with taxes. And as you
20 know, 2017 has wrapped up and you have through
21 April 15th to get everything done or file for
22 an extension. This being -- as you pointed out
23 before, this is my first establishment that
24 I've owned like this. I learned there's
25 something called a K-1, which is a form that



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1 has to be filed as a service industry owner,
2 I'm guessing. I know it's something that for
3 having an establishment I guess you have to
4 file. I don't know if that's for any retail
5 establishment or just for the service industry.
6 But the biggest pressing was to have the
7 extension filed by April 15th, then have the K-
8 1 ready and get all of 2017 done before we
9 could even start looking at 2018. So, the
10 gentleman has been massively swamped. And from
11 what I understand, the hardest year to do taxes
12 is the first year of a business. So, and then
13 the fact that we had acquired it, we were
14 waiting on the previous owner to get us a list
15 of assets as well as the monetary value
16 associated with them. So, it's been quite the
17 undertaking to get that. So, he's been in the
18 weeds, to say the least.

19 Q: Did you ask him?

20 A: We had a conversation a couple weeks ago about
21 the fact that we were going to need to present
22 to The Court to show how hard we've worked in
23 terms of food sale percentage. That has been
24 our priority number one since we obviously we
25 learned a lesson ---



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- 1 Q: Two weeks ago you asked him?
- 2 A: I believe -- yes. Yes, sir. Two weeks. We
- 3 had a conversation that we were going to need
- 4 it. I didn't -- we didn't ask him specifically
- 5 for one number. We said that we were going to
- 6 need to be able to have proof that we had done
- 7 significant strides ---
- 8 Q: Did you hear him say that no one asked him?
- 9 A: No, sir. He said we had a conversation about
- 10 it a couple weeks ago but there had never been
- 11 a specific request -- we never had a specific
- 12 request until this week for any particular
- 13 document.
- 14 Q: From me. From me.
- 15 A: For any particular document, that's correct.
- 16 Q: From me.
- 17 A: Yes, sir.
- 18 Q: Correct?
- 19 A: Yes, sir.
- 20 Q: So, you were prepared to come to this hearing
- 21 without being able to show the judge
- 22 trustworthy, detailed records of what your food
- 23 sales were for the last six months?
- 24 A: Absolutely not.
- 25 Q: Well, what are you going to do?



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1 A: We were going to have him prepare something,
2 sir.
3 Q: When did you decide that?
4 A: A couple of weeks ago. We decided to asked him
5 for a specific document. We were trying to
6 figure out the best way to show it.
7 Q: You're saying the witness before who testified,
8 you talked to him two weeks ago and asked for
9 this report? Is that what your testimony is?
10 A: No, sir. That's not what I said.
11 Q: What is your testimony?
12 A: I can repeat it if you'd like me to.
13 Q: I'd like you to repeat it. I don't quite
14 understand it. Why don't we take it -- did you
15 talk to him two weeks ago?
16 A: Yes, sir.
17 Q: Did you ask him to prepare a report?
18 A: No, sir. Not two weeks ago.
19 Q: When did you ask him to prepare a report?
20 A: We discussed that we were going to need
21 something before the hearing.
22 Q: Okay. Did he prepare something?
23 A: Yes, sir.
24 Q: When?
25 A: This past week.



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1 Q: After he was subpoenaed. He testified to that,
2 didn't he?

3 A: Yes, sir. Absolutely.

4 Q: So, are you telling me he always had the
5 intention of preparing a report and being here
6 today?

7 A: No, not being here. But, yes, sir. We were
8 absolutely going to have empirical data to show
9 ---

10 Q: Well, how were you going to have -- how are you
11 going to qualify that data if he wasn't going
12 to be here?

13 A: I'm not a lawyer, sir. I don't -- I honestly
14 -- I can't speak to that.

15 Q: So, you're telling me, I want to understand
16 this, under oath that you had a conversation
17 with him two -- we have the transcript -- two
18 weeks ago asking him to be here or prepare a
19 report to show food sales and liquor sales and
20 beer sales?

21 A: That's not what I said.

22 Q: Okay. I want to know what you said. What did
23 you say to him?

24 A: I said we were going to need to have something
25 for -- in terms of empirical data to show the



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1 leaps and bounds we've made.

2 Q: That's it?

3 A: Yes, sir.

4 Q: Nothing about food sales?

5 A: That's -- that's what we were talking -- yeah

6 ---

7 Q: Leaps and bounds food sales?

8 A: Yes, sir.

9 Q: Liquor sales?

10 A: Food sales in comparing to everything else,

11 yes, sir.

12 Q: And you ask him that -- for that two weeks ago?

13 A: I didn't ask him for a specific report. I said

14 that we were going to need something to show,

15 obviously, they increased in percentage. We

16 haven't put in all this work to not be able to

17 brag about it.

18 Q: Well, you're bragging about 12 percent food

19 sales; is that what you're bragging about?

20 A: Yes, sir. I mean, over the last -- and

21 actually I'm bragging about the fact that it

22 went from nine percent to fifteen percent,

23 which is an astronomical growth. It's almost

24 doubling it. To then, let's -- I'm excited to

25 see now that we've reached the full effect and



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1 then obviously that the growth is organic to
2 see what ---

3 Q: What do you think it can get it up to?

4 A: I realistically think -- you know, I don't want
5 to speculate and crawl myself into a hole, but
6 I think realistically we could see somewhere
7 around thirty to forty percent food sales.

8 Q: Thirty to forty percent food sales. So ---

9 A: Depends on how big this thing goes and if we
10 have the ability to grow in terms of
11 renovations and so on and so forth.

12 Q: So, I mean ---

13 A: But we need the capital to be able to do that.

14 Q: Okay. But -- okay. So, that's if you get the
15 capital; if you can renovate; if -- without
16 renovating, with what you have right now, how
17 big can you get? How much food sales can you
18 have?

19 A: I think to be able to not alienate any customer
20 and like take too long, so I think we could
21 probably get 20, 25 percent.

22 Q: Twenty or 25 percent?

23 A: And that's ---

24 Q: Would that be your primary source of income,
25 food?



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- 1 A: No, sir. It would not be our primary source.
- 2 Q: Okay.
- 3 A: Well, I guess it would depend on what the
4 definition of primary is that we've been
5 discussing.
- 6 Q: The number one. The most.
- 7 A: No, sir, it would not.
- 8 Q: Okay. Because your beer sales are significant
9 also. I mean, just in -- just in April --
10 well, in March it was 11,000 for beer, 7,000
11 for food, and 54,000 for liquor. And then
12 because of St. Patrick's Day, things readjusted
13 a little bit. But we only have two months,
14 March and April.
- 15 A: Yes, sir.
- 16 Q: So, all of these changes were made eight weeks
17 ago, six weeks ago?
- 18 A: The drastic -- yeah. Like we said, we launched
19 the grilled cheeses St. Paddy's Day.
- 20 Q: Did you do it in October?
- 21 A: No, sir.
- 22 Q: Did you do it in November?
- 23 A: No, sir. We had pizza and hotdogs.
- 24 Q: Okay. Did you do it in December?
- 25 A: No, sir.

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- 1 Q: November?
- 2 A: Like I said, we didn't do until March.
- 3 Q: You didn't do it in January?
- 4 A: No, sir.
- 5 Q: You didn't do it in February?
- 6 A: No, sir.
- 7 Q: Only after this Judge ruled and ---
- 8 A: No, sir. It was before that. So, the Judge
- 9 ruled -- we had the hearing. The Judge ruled,
- 10 I believe it was March -- it was after St.
- 11 Paddy's Day that the Judge denied ---
- 12 Q: April 3rd.
- 13 A: Yes, sir. So, that's after March. So, we
- 14 actually instituted it the weekend of St.
- 15 Paddy's day, which was March 17th, so we did it
- 16 -- I guess that would be two and a half weeks
- 17 before.
- 18 Q: Okay.
- 19 A: So, far before we knew the outcome of The
- 20 Roost.
- 21 Q: I guess what I'm getting at is your plan would
- 22 never allow food or never conceive of food
- 23 being your primary source of income or
- 24 business; is that correct?
- 25 A: I would never, ever look a possibility of



1 something being profitable and being a success
2 and say it's never, ever. Absolutely -- if
3 grilled cheeses take off and it was 85 percent
4 of our business, I'm not going to turn away
5 business.

6 Q: Well, you sold \$135,000 worth of -- I'm sorry.
7 \$96,000 worth of liquor in two months. Can you
8 conceive of anything that would come close to
9 that with grilled cheese sandwiches?

10 A: Absolutely. Tom and Chee sells a franchise
11 right now for \$2.7 million.

12 Q: Who does?

13 A: Tom and Chee?

14 Q: Okay. Where is that?

15 A: They're based out of Wisconsin. They now have
16 about 40 plus franchises ---

17 Q: I'm talking about one store.

18 A: Tom and Chee started with one store, sir.

19 Q: I'm sure they did. I guess what I'm -- not
20 what your plans are, because we have eight
21 months now of operation, don't we?

22 A: Yes, sir.

23 Q: Okay. And in those eight months the highest
24 you've ever done is fifteen percent one month?

25 A: Yes, sir.



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1 Q: That's the highest you've ever done.

2 A: And that was the last month, too. So, that's
3 showing the most recent history. Yes, sir.

4 Q: But it's never going to be your primary source
5 of business, is it?

6 A: I don't think either one of us can make that --
7 I think if anybody is quantitative to make an
8 assessment of my business and the growth
9 strategy, I think I would have a much more
10 accurate assessment of that than you, sir.

11 Q: So, you're going to -- okay. I've beat that
12 horse to death. That's pure speculation on
13 your part, you're speculation, correct?

14 A: No, sir. I think I'm making an educated --
15 while, I may not be, I guess, an expert, I
16 think I've looked at the numbers, I've seen the
17 growth increase, I've seen the fact that right
18 now the investment is not yet at a point of
19 diminish and return. So, at this point I think
20 it's a fair speculation to say that the more we
21 invest in it, the more it's going to grow,
22 which is a simple asset, like I said, that I
23 learned in the business school, The University
24 of South Carolina. And I think at that point
25 I'm making a fair and sound business decision



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1 to increase the initial input into it with the
2 desired result of having revenue increase.
3 Q: Was that a sound business decision that you
4 invested in The Roost, was that a sound
5 business decision?
6 A: I felt at the time it was, yes, sir.
7 Q: You were wrong.
8 A: Well, that's speculative.
9 Q: I'm sorry, are you in business now? No. So,
10 you're wrong.
11 A: No, sir. I've always learned that you miss
12 every shot you don't take.
13 Q: Okay. And this is another shot you're taking.
14 Let me ask you this: If you -- with your rent,
15 and I'm looking at the revenue figures, you can
16 just sell beer and make a profit, correct?
17 A: The problem with that is ---
18 Q: Just answer the question yes or no before you
19 explain. Yes or no?
20 A: I don't believe we could.
21 Q: You couldn't make a profit?
22 A: No, sir. And can I tell you why?
23 Q: Sure.
24 A: So, I believe there's a thing called
25 competitive advantage. And obviously I know



1 you have an intention of addressing the issues
2 in August. But at least until then what you're
3 going to see is you're going to see us as a
4 niche establishment that's no longer able to
5 provide the services of all the competitors
6 around us. So, what that does is it puts us as
7 a drastic competitive disadvantage.

8 Q: How many of them have grilled cheese
9 sandwiches? I'm sorry, did I call them
10 sandwiches? Grilled cheese creations, how many
11 of them have that?

12 A: None.

13 Q: There you go. There's a competitive
14 disadvantage ---

15 A: So, what you have to look at is the volume of
16 sales. And what we have to do is we have to
17 find out what are all the opportunities we have
18 to increase revenue. And one of those, as we
19 are -- it's not even an elephant in the room,
20 is that alcohol sales are going to be a major
21 percentage of it, whether it's 80 percent or 30
22 percent, it's going to be -- so, in order to
23 encompass the strategy we built based on all of
24 the expenses that you so eloquently put out in
25 \$4,000 rent, in staff, in insurance and stuff



1 like that, all of these expenditures are
2 accepted during the fact that we are
3 anticipating sales for all of the different
4 avenues that we have to offer, everything from
5 if we decided to charge a cover one night for
6 a really good DJ, to grilled cheeses, to
7 private parties, to everything. All these have
8 to be encompassing, then they come together to
9 bring in what is the total combination that
10 makes a profitable business. And I think if we
11 loose one that, like I said, is a major portion
12 of what we do, then I think we're drastically
13 at a competitive disadvantage, which then,
14 frankly, how does one stand when you've chopped
15 of one of their limbs? You know, how would you
16 operate? You could still do it, but if you
17 chop off my arm, I'm going to be at a
18 disadvantage if I'm trying to play a sport
19 versus somebody that has ---

20 Q: But you've got the grilled cheese sandwiches.

21 A: Yes, sir.

22 Q: I mean, doesn't that give you a competitive
23 advantage ---

24 A: It absolutely does and we're very proud of it.

25 Q: So, when the people come in there for a beer --



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1 **MR. HARPOOTLIAN:** And a beer and a grilled cheese
2 sandwich, I got to tell you, Judge, there's
3 nothing quite as good ---

4 **A:** Have you had one of our grilled cheese
5 sandwiches?

6 **Q:** I'm not going to eat your grilled cheese
7 sandwich, trust me.

8 **THE COURT:** I'm headed right down there to get one.
9 Y'all are making me hungry.

10 **A:** You said you would if I got tomato soup. You
11 told me that.

12 **Q:** I don't think I'm going to want the spread
13 that I'd get on a sandwich at your place.

14 **A:** Sir, we would never in a million years
15 disrespect ---

16 **THE COURT:** All right.

17 **MR. HARPOOTLIAN:** I'm kidding. I'm kidding. I'm
18 kidding. Oh, my God.

19 **THE WITNESS:** With the press here, that just doesn't
20 do any good for my business either. And that's
21 -- saying that like I'm going to put something
22 on my food to hurt somebody?

23 **MR. HARPOOTLIAN:** Oh, I'm kidding. Adam, good
24 golly. A joke.

25 **THE WITNESS:** A level of professional.



1 **THE COURT:** So, let's -- do we have some Re-Direct?
2 Should we take a break before we go into Re-
3 Direct or will there be any?
4 **MR. MONTGOMERY:** Your Honor, I don't think I have
5 any Re-Direct.
6 **THE COURT:** Okay.
7 **MR. MONTGOMERY:** I think ---
8 **THE COURT:** Do you have any other witnesses?
9 **MR. MONTGOMERY:** I do. But ---
10 **THE COURT:** How many?
11 **MR. MONTGOMERY:** --- I've spoken to Mr. Harpootlian.
12 He had a witness who was only going to be
13 available this afternoon. And I have one
14 witness more who would probably lengthy and one
15 potentially short witness also.
16 **THE COURT:** Okay. Well ---
17 **MR. MONTGOMERY:** But he had someone he wanted to
18 call at 5:00.
19 **MR. HARPOOTLIAN:** He's not here yet.
20 **THE COURT:** Well, here's my thing. I need to make
21 sure we finish tomorrow. Is everybody able to
22 stay late this evening so that we can get
23 enough witnesses done so that we are sure we
24 finish tomorrow?
25 **MR. MONTGOMERY:** Yes, ma'am.



1 **MR. HARPOOTLIAN:** Let me talk to Mr. Montgomery for
2 just a second.

3 (Off the Record)

4 **MR. MONTGOMERY:** Your Honor, may it please The
5 Court. At this time the Petitioner would call
6 Mr. Stephen Bland. And in trying to help The
7 Court in saving time, we're going to eliminate
8 one witness here. So, this will be our final
9 witness in this case, unless we have to have
10 something on the fly.

11 **THE COURT:** I'm willing to stay here and hear them
12 all. So, whoever you think will be helpful to
13 me in understanding the facts in this
14 situation, I am willing to stay here long
15 enough to hear them.

16 **MR. MONTGOMERY:** Thank you.

17 **COURT REPORTER:** Sir, please state and spell your
18 full name.

19 **MR. BLAND:** Stephen Bland. It's S-T-E-P-H-E-N B-L-
20 A-N-D.

21 **STEPHEN BLAND,** having been duly sworn, testifies as
22 follows:

23 **MR. BLAND - DIRECT EXAMINATION BY MR. MONTGOMERY:**

24 Q: Mr. Bland, what's your position with Rooftop?

25 A: I am a owner as well as the operator and I have



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1 complete ownership of one of the LLCs that owns
2 the overarching LLC.

3 Q: And are you the manager for one of other owning
4 LLCs?

5 A: Yes, sir. Okay. And, Mr. Bland, are you over
6 21 years old?

7 A: I am.

8 Q: How long have you been a resident of South
9 Carolina?

10 A: My whole life.

11 Q: And have you ever been convicted of any crime
12 involving the alcohol laws or involving selling
13 or operating alcohol laws?

14 A: I have not.

15 Q: Have you ever have a liquor license revoked or
16 terminated because of an action taken by SLED?

17 A: No, sir.

18 Q: Okay. If you would, just for the record, tell
19 The Court a little bit about your background
20 and working with the Rooftop.

21 A: Well, we saw the opportunity -- we were half
22 way through with renovations on Roost when we
23 saw the opportunity for Rooftop. The owner,
24 Rob, reached out to me and said that his
25 partner wanted him to basically liquidate and



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1 get out of that one business because he needed
2 the funds to invest in another business out of
3 state and said that they were going to sell it
4 for a significant discount. We got involved
5 with that. We -- basically we were going to
6 owner finance it and just needed start-up
7 capital as well as \$10,000 to put down. So, I
8 invested \$10,000 into Rooftop, which was, I
9 think, initially -- or eventually transferred
10 over as a loan to Roost for operating funds to
11 finish construction over there. And then Mr.
12 Ruonala invested as well 7,000. And then Ms.
13 Wells invested.

14 Q: And all of the money in Rooftop is investment
15 there?

16 A: Yes.

17 Q: And the debt to the for the sale?

18 A: Yes.

19 Q: Okay. And the purchaser -- who did you
20 purchase this business from?

21 A: It's Aggressive Lifestyle LLC. His name is Rob
22 Mara. And he did complete owner financing with
23 10,000. And then there's balloon payments that
24 are structured out. I don't have the purchase
25 agreement in front of me, but I believe the



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1 first one was 25,000, then 10,000, 10,000 every
2 two to three months. I think to date we've
3 paid off almost 50,000 and then we owe the
4 rest.

5 Q: Which is the difference between 50 and the
6 82,000.

7 A: Yeah. Around 35.

8 Q: Okay. And at the time that you got that, have
9 you done renovations to the building after you
10 acquired it?

11 A: Yes. As Ida Dixon said as well as Adam, when
12 we got it from Rob, it was neglected in a lot
13 of different areas. The floors, whoever had
14 originally done them, had put tar paper as an
15 underlayment. So, it absorbed beer and stuff
16 like that and it just made the building smell
17 awful. So, we had to rip up all those floors
18 and put down new floors, which was around
19 \$14,000 just to do that. And then recently,
20 obviously, we have improved the kitchen and
21 then just decor. We built new benches, we
22 built booths that you saw in the pictures on
23 the porch, as well as just lighting and stuff
24 like that, fixtures.

25 Q: Do you or any of your other principals own any



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- 1 licenses out of state?
- 2 A: No.
- 3 Q: Do you have any parking spaces at the Rooftop?
- 4 A: I believe the building is grandfathered in, so
- 5 it's all metered spots.
- 6 Q: Okay. Do you have functioning restrooms for
- 7 men and women?
- 8 A: Yes.
- 9 Q: Is there any interior access between the
- 10 proposed premises and living quarters or
- 11 another business?
- 12 A: No.
- 13 Q: Do you have a kitchen that's a separate area of
- 14 the business used solely for the preparation,
- 15 serving, and disposal of meals?
- 16 A: Yes.
- 17 Q: Does your business seat at least 40 or more
- 18 persons simultaneously at tables for the
- 19 services of meals?
- 20 A: Yes.
- 21 Q: Do you have a working fixed grill, stove, or
- 22 microwave oven?
- 23 A: Multiple.
- 24 Q: Okay. Is there a functioning cold storage unit
- 25 with a minimum of 21 cubic feet capacity for



1 food storage?

2 A: Yes, sir.

3 Q: Do you have menu or sign boards listing the

4 meals offered for service and available to

5 customers?

6 A: Yep.

7 Q: And I think we looked at that. And that

8 information is reflected in what's been marked

9 as -- and admitted as Petitioners' Exhibit 5;

10 is that correct, Mr. Bland?

11 A: Yes, sir.

12 Q: And does that also show photographs of the

13 interior of the business and how it exists at

14 the present time?

15 A: Yes, sir.

16 Q: Does it show the seating?

17 A: Yes.

18 Q: About how many seats do you have right now

19 available for service?

20 A: As Adam said, it's -- it ranges. But I would

21 say around 70 would be the safe bet.

22 Q: Okay. Do you have at normal meal times

23 adequate food to serve 40 people a variety of

24 your hot meals that you serve on your menu?

25 A: Absolutely.



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1 Q: And when are you open to serve meals?

2 A: The first person gets there at 11:30. And then
3 usually we are open all the way through to 2:00
4 a.m. There sometimes is, like a lapse period
5 from seven to eight where they'll close for
6 prep, just to re-prep all of the food. But
7 usually it's 11:30 to 2:00 a.m.

8 Q: But even if, seven to eight, if someone's in
9 there, can they still get food if they ask for
10 it?

11 A: Yeah.

12 Q: Okay. Tell us what's led you since February to
13 change your food offerings and revamp the food
14 operations as they relate to the business.

15 A: Okay. Well, when we originally got into it,
16 you know, we did everything that we thought was
17 required and we tried to do it exactly to the
18 statutes and everything. We thought that we
19 were operating the correct way. But obviously
20 as all of these different things have occurred,
21 we are trying to transform the business into
22 what is being asked of us and asked of the
23 other businesses down in Five Points. So we've
24 really just been working on transforming and
25 being able to mold and adapt to what is being



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1 asked of us. And we believe that we've done a
2 pretty good job of that.

3 Q: And have you seen movement or improvement as it
4 relates to the amount of food you're selling?

5 A: Yes. As Adam said, as well as the numbers
6 show, we were just under ten percent, I
7 believe. And a lot of that, as Mr. Harpootlian
8 likes to point out, was pizzas and stuff like
9 that. And we've transitioned and actually
10 doubled those food sales and have now, starting
11 in May, been able to phase out pizza completely
12 as well as add the Uber Eats delivery aspect to
13 it.

14 Q: Talk about the delivery. Tell me the process
15 you had to go through to get approved for Uber
16 Eats and doing the delivery there.

17 A: Okay. Basically, I think they came in late
18 March, is when they hit Columbia. And you have
19 to reach out to -- call their headquarters.
20 They put you in touch with a representative,
21 who calls you back. They schedule a visit
22 where they come out and look at the restaurant,
23 they look at the kitchen, they look at your
24 food. They actually hire a freelance
25 photographer and you have to make your whole



1 menu for them. And they'll take pictures of
2 each item. And then you have to send them a
3 digital version of your menu with pricing and
4 everything like that. And then that goes back.
5 Once that gets approved, they send you a tablet
6 in the mail which is what is used to get all
7 orders and everything like that. And you
8 literally just power it on and it's ready to
9 go. And then they -- once you have that and
10 you confirm that you have the tablet and are
11 ready to go, then they add you to the app and
12 you're live.

13 Q: And when did you get live on the Uber Eats?

14 A: I believe it was May 5th, if that's that
15 Friday.

16 Q: Okay. And so, it was the Friday of May, I
17 think May 4th was actually a Friday, so was it
18 that day?

19 A: Yeah. Whichever the first Friday of May.

20 Q: Okay. And what have you seen happen with your
21 sales on Uber Eats ...

22 A: The first two days, which was a Friday and
23 Saturday, I think we did 130 on both days. And
24 then Sunday, since we do our brunch, we try to
25 limit what we sell on Uber Eats because we



1 can't, you know -- so many people are ordering
2 the stuff in-house like chicken and waffles,
3 frittatas and stuff, that if we did that on
4 Uber Eats as well, it would just add a whole
5 nother aspect of craziness. So, usually Sunday
6 numbers are a little bit down. And then
7 Monday, Tuesday, Wednesday, it's between 80 to
8 \$100. And they've been steadily growing. We
9 have a lot of repeat orders. You notice the
10 same names popping up and stuff.

11 Q: So, if you're doing 80 to \$100, that's going to
12 have a significant impact on your food sales
13 over the next -- as you look at it in May, for
14 example?

15 A: Yeah. Absolutely. Especially with the
16 students leaving. With the students leaving,
17 you know, obviously we were scared that that
18 might have an impact on our in-house food
19 because a lot of our clientele is, you know,
20 students in between classes or something to
21 come down and grab lunch. So, this is a really
22 safeguard, you know, to make sure that we can
23 still have food sales that are consistent.

24 Q: Okay. And if you look at Exhibit 6, I believe
25 that's in front of you there also. Okay. Can



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1 you tell me what Exhibit 6 is?

2 A: This is pictures from graduation weekend, I
3 believe. Different -- different clientele
4 coming in, IDs being checked, scanned, as well
5 as the ropes that we used at different times of
6 night, as well as, I believe -- I'm not sure
7 which picture this is, but it shows you where
8 CPD stands in relation to our business on the
9 majority of nights.

10 Q: Okay. And there were some questions asked
11 about the line. Tell me what y'all do to
12 manage and regulate the line.

13 A: We have two bouncers. So one of, like -- one
14 doorman's staff -- or one of his jobs is the
15 guy sitting right here. He's the one that
16 actually will scan the ID, will black light it.
17 And then, if there's any problem, if it checks
18 out or doesn't check out, then there's another
19 door staff sitting directly to the left on the
20 other side of the door. And he'll pass off
21 that ID to him and he runs it through the book
22 that we were referring to. Because the book is
23 like the end-all, bet-all. And this -- what
24 this does is prevents, you know, somebody that
25 might have an altered ID or whatever from



1 holding up the whole line. So, we pass it off
2 and then can continue getting people through
3 the line. The ropes make sure that it's nice
4 and to the side. The fire marshal regulates
5 how far you can put those out as well as, you
6 know, any signage or anything on there. So,
7 this, according to the fire marshal is the
8 safest way that we can have our line. And
9 then, obviously, it's a one-in, one-out once
10 we're at capacity. And that's basically it.

11 Q: Okay. And your line -- you cooperate with the
12 fire marshal to do that?

13 A: Yes.

14 Q: Are the police involved as well in making sure
15 that that's run efficiently and effectively?

16 A: Yeah. Absolutely. The cops stand usually, you
17 know, right where the meters are on the street
18 and they'll just kind of -- they do their
19 rounds of Five Points. And they know where our
20 line is. Where everybody is obviously with the
21 ropes. So, as Adam was saying, anybody that's
22 not in that line is considered loitering. So
23 it fast tracks their ability to make sure that
24 the streets and everything, the sidewalks are
25 clear.



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1 Q: Okay. And have you had any incidents or
2 problems relating to the line since you've been
3 running the ...

4 A: No.

5 Q: And if you would, just tell The Court, you
6 know, how far does the line go out of the door
7 and down the street, if you will.

8 A: Usually like we'll hit capacity probably 12:00
9 o'clock, something like that. And it really
10 doesn't get past Pinch, but that's usually as
11 far as it goes. Because Pinch's line usually
12 will cut -- will go to Lucky's, ours will go to
13 Pinch. It's usually about 20 people. Because
14 there is a certain point where people just
15 don't want to wait in line, so they'll go to
16 the next establishment down the street or
17 whatever. But there's a pretty good flow of
18 people because obviously they're not going out
19 by themselves, so, you know, a group of five
20 will come out and then that cuts the line by
21 that much and then, you know, it just repeats
22 itself throughout the night.

23 Q: Have the -- have you had the police come in to
24 the establishment in the last couple months?

25 A: Yeah. Police do -- I believe they call it --



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1 I'm trying to -- compliance walk-throughs? But
2 we appreciate it. We ask them to, to make sure
3 because, you know, we try to do everything we
4 can to catch the fakes with the scanners and
5 everything like that. People will fight us
6 tooth and nail on, you know, us saying that
7 they don't have a valid ID. But it's a lot
8 faster of a conversation if a cop is the one
9 doing it. So, if people know that, you know,
10 cops are doing compliance checks, walk-throughs
11 and stuff like that, they're less likely to
12 attempt it, which helps us before, you know,
13 they even get through our line if they're
14 dissuaded because they know that's happening.

15 Q: And, you know, there's -- let's talk about what
16 the pizza sales have been as you've talked
17 about March and April. How are you handling
18 that and why did you choose to phase out the
19 pizza?

20 A: We get pizzas essentially at wholesale price
21 from Village. I think they're \$8 a pie. So,
22 we were originally, in previous months, doing
23 like six or seven pies a night. We cut that
24 down to three and then eventually two. And now
25 it's completely phased out as of May. And the



1 reasons for that is just because, obviously,
2 with, you know, The Court -- the previous
3 ruling saying that that's not food, that's a
4 reason there alone. But we weren't selling
5 through the pizza completely. A lot of it just
6 ended up feeding our staff at the end of the
7 night. But there was enough to where we would
8 usually sell through one pie a night at \$2 a
9 slice, so \$16 a night. And that, more than
10 anything, was just to provide another avenue of
11 food for somebody that necessarily doesn't want
12 a grilled cheese or any of our other menu
13 items.

14 Q: Okay. And are you not doing that at all at
15 this point?

16 A: As of May, no.

17 Q: As we're two weeks into May, how do your sales
18 look so far in May food versus other things?

19 A: They look consistent with the April sales in
20 whichever report I saw. It's around 15
21 percent. But also we haven't got our invoice
22 from Uber Eats yet. They send it weekly. It's
23 supposed to be here today. But they'll e-mail
24 that and that should add to another -- if it's
25 consistent, another 600 possible dollars this



1 week, which could bump it another four or five
2 percent.

3 Q: Okay. And do you think that's a viable plan
4 moving forward, that you're going to be able to
5 continue to have those kind of food sales?

6 A: Absolutely. I think if anything, we'll go
7 through the period of the summer obviously
8 where everybody's a little bit slower in every
9 aspect of business. But in August, come
10 football season and stuff like that, I expect
11 a significant increase.

12 Q: And you talked about the possibility of trying
13 to -- if you're able to move forward, expanding
14 your kitchen. What kind of things are you
15 talking about doing there and what kind of
16 investment are talking about making to do that?

17 A: Well, the only thing that could increase our
18 production right now would be either to buy
19 like five convection ovens, which we don't have
20 the space for, or would be to remove possibly
21 that prep table and get a smaller prep table
22 and then put in a four range like commercial
23 stove slash oven. But to have that, DHEC
24 requires you to have a hood system put in. The
25 hood system, you know, can range from 8 to



1 \$12,000 once you buy it and install it. And
2 then also, like the stove is anywhere from 1200
3 to 2,000. Then you have to reroute the gas
4 line because it runs on gas, which I'm not sure
5 what that would be. But it'd be a significant
6 investment, but, you know, it could actually
7 make it to double, triple, quadruple our
8 production possibilities. So, on brunch when
9 -- you know, when it takes a chicken and waffle
10 sandwich 30 minutes to come out, it's going to
11 annoy some people. But if we can get it with
12 that to where it could be ten minutes, you
13 know, then we could increase our production and
14 increase our sales potentially.

15 Q: Okay. And are you willing, if you're able to
16 go forward, to make that investment to keep
17 going?

18 A: Yeah.

19 Q: What have you found as you've increased your
20 food sales; what has the response been from the
21 community and how has it changed the makeup of
22 the patrons?

23 A: It's been -- everybody loves it. It's
24 interesting because, when we were talking to
25 Ramone, we wanted to make sure that whatever we



1 were providing wasn't, you know, too messy or
2 too unable to handle a plate-type situation, so
3 we wanted to have something handheld, something
4 that people could enjoy that wasn't crazy
5 messy, that didn't get everywhere. And we've
6 seen all walks of life come in. It's funny
7 because usually we've had Uber drivers come in
8 that, you know, they come in and they see our
9 menu and all of them want to try the mac and
10 smash. I've probably sold like three or four
11 of the mac and cheese sandwiches to Uber
12 drivers while they're waiting on the Uber Eats.
13 But it's everybody, all walks of life, races,
14 ages. Putting the sign out there on the street
15 with the menu, we get just people walking
16 around Five Points shopping or whatever, they
17 come up, they get a bite, and then they walk
18 back down.

19 Q: How are you handling ID checks and ages during
20 lunch and during times when you're really not
21 focusing on alcohol sales?

22 A: We currently allow -- we do 21 and up after
23 eight. So, once we transition to the later
24 stages, that's when we go to 21 and up. We
25 have a shift leader, I guess would be the right



1 definition, that is there as well as a chef for
2 the lunchtime. So, he is trained in how to
3 check IDs and everything like that if someone
4 was to order an alcoholic beverage.

5 Q: On your brunches and your lunches how much
6 alcohol is being sold during those period of
7 times?

8 A: The most recent brunch, I want to say it was
9 around 50 percent food to beverages. And
10 that's with us doing -- you know, we're doing
11 this cool, like, little mermaid mimosa thing
12 that we've -- that a lot of people are loving
13 that you basically can put like food-grade
14 sprinkles and stuff into a drink. And that
15 sold really well. And that still -- we were
16 still at around 50 percent food sales.

17 Q: Okay. And how about -- how much -- what are
18 your lunch business like on a day-to-day basis?

19 A: It's kind of sporadic right now. It's been
20 slowly growing. But, you know, the longer that
21 we have the sign up, the longer the Uber Eats
22 is up, expect it to grow. But it's really
23 sporadic. You know, we'll get couples in there
24 and stuff like that and then randomly a group
25 of 15 students, you know, that all came down



1 from USC while waiting on a class or something.
2 So, it's kind of sporadic. The majority of our
3 food sales is still later in the afternoon.
4 But hopefully, I think that our lunch will
5 begin to up-trend as people realize that we
6 actually are serving up there.

7 Q: Okay. What are you doing to promote those
8 sales?

9 A: Any advertising we do social media-wise is
10 going to be on food. And then obviously the
11 signage and stuff like that. Towards the end
12 of the -- when we're transitioning, I believe
13 from 7:00 to 8:00, we take the sign that's out
14 there and we have places inside of the
15 restaurant that we hang them up so that while
16 people are there, you know, enjoying a drink or
17 whatever, they can see it, it's in their face.
18 We have a digital menu made that we run across
19 some of the TV screens so that, you know, just
20 catch people off guard, because, you know,
21 usually when you get something popping out at
22 you, that's when you're more likely to buy.
23 Especially a lot of people didn't realize, you
24 know, the price points. You know, a \$4 grilled
25 cheese is pretty reasonable with a bag of chips



1 and whatever drink you want, like soda-wise.
2 So, I think that the more people learn that, it
3 should continue to grow.

4 Q: Okay. And from the standpoint of -- you're
5 very familiar with the complaints that have
6 been lodged by members -- the Protestants, the
7 folks that are here today. What have y'all
8 done and what do you continue to do moving
9 forward to try to ensure that you don't have
10 the kind of problems that are being complained
11 about?

12 A: The main thing is just staff training. Using
13 all of the tools we have. Using the scanner at
14 every single person. Using the black lights in
15 conjunction with it. Using the ID book. And
16 then the last resort, you know, using any local
17 law enforcement that would assist us. We have
18 the cameras that are on 24/7. We can watch
19 them whenever we want. I can pull up my phone
20 right now and see what's going on at the
21 business. The main thing really is just
22 staffing, making sure we have the best possible
23 staff. And we do that by doing background
24 checks with SLED, references, stuff like that.
25 And then the main thing -- another one is



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1 discounting drinks. We don't go below \$3 on
2 anything, when, you know, we have neighbors
3 that are doing fifty cent liquor and \$1 liquor.
4 And what we've noticed since we've strived to
5 transform the business like this, is that we
6 don't have as many problems, we're making more
7 money, as well as the people that we're trying
8 to get in -- when we first were opening, a lot
9 of the underage clientele was trying to get in.
10 And now we've dissuaded them to where they
11 don't even try to get in anymore. So, it seems
12 like we've pigeonholed out a target market of
13 people that are of age, that are actually
14 willing to come out, eat some food, get some
15 drinks, have a good time. And all civilly
16 without having to do, you know, crazy things
17 that go around when you're selling ten drinks
18 for \$10.

19 Q: And y'all have never done that, have you?

20 A: Absolutely not.

21 Q: And do you run any kind of specials at all?

22 A: No.

23 Q: Do you have -- what are your drink prices like?
24 How are they set?

25 A: The price floor is \$3, so that's domestic



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1 beers, house liquor. Draft beer is 4. And
2 then it goes up to Paul's, which is like a
3 shelf -- a lower level shelf is 5. And then
4 imports would be \$5 as well. And then shelf up
5 is like 6, to 8, to 10.

6 Q: Okay. So, you're not selling anything
7 particularly inexpensive then?

8 A: No.

9 Q: Okay. Now, with regard to the information with
10 your CPA, how did you -- what type of
11 information does Mr. Perricelli get from you?

12 A: Well, he has complete access to all of our bank
13 accounts, all of our QuickBook, everything like
14 that. He essentially, I think as he said, will
15 take all of that information, classifies it.
16 I believe he puts it all into the liquor area.
17 And that's just so that we don't underpay, you
18 know, our liquor by the drink or sales tax.
19 That's a safeguard for that. And then I
20 believe that that's -- he has access to all of
21 our accounts.

22 Q: And are you involved in the preparation of any
23 sales tax and liquor by the drink ---

24 A: Yes.

25 Q: What do you have to do each month with those?



- 1 A: Basically you print out the POS just as a --
2 you hit entire restaurant, it just prints it
3 out. It has a breakdown by food -- or beer,
4 food, liquor, total, gross, and then net. You
5 take that, you go to the DOR or now you can do
6 it online, actually. And type in for -- let's
7 say, sales tax, you would put in the total,
8 gross, and then you also have two fees -- or I
9 think there's additional taxes. There's like
10 one percent for transportation, one percent for
11 another fee. So, you take two percent, add
12 that on top and then it calculates all of it
13 out. And then you just write that. Liquor by
14 the drink is a lot more simple. You can just
15 take the liquor number and put that in and it
16 tells you what you owe.
- 17 Q: Okay. And you'd file, I guess the April return
18 is not due yet.
- 19 A: It's the 20th, is ---
- 20 Q: But you filed the March return?
- 21 A: Yes, sir.
- 22 Q: And the March return's been filed and paid?
- 23 A: Yes.
- 24 Q: Okay. And the liquor -- how do you do the
25 liquor part?

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1 A: It's way easier. It's literally just you put
2 it in -- you put the number in and then I
3 believe you multiply it by two percent. And
4 then if there's any fees or penalties, you add
5 that and then it just spits out the number.

6 Q: And you filed your March liquor ---

7 A: Yes.

8 Q: Okay. And the Rooftop's paid up on those?

9 A: Yes.

10 Q: Okay. And is there anything that you think you
11 could have done to try to be in compliance that
12 you haven't done here?

13 A: No.

14 Q: Have you had any members of the community reach
15 out to you or come in and look at the sign
16 board or come in and try the restaurant out or
17 see what you're doing there?

18 A: Since ---

19 Q: Since March 1st say, when you started -- or
20 March 15th when you started the menu change.

21 A: Specifically like the protestors and ---

22 Q: Yes, sir.

23 A: No.

24 Q: Okay.

25 A: Not to my knowledge at least.



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1 Q: Have you had any kinds of incidents inside the
2 restaurant that you're aware of that you've had
3 to seek the involvement of law enforcement for?
4 A: I know that there have been a couple incidents
5 where they're doing a compliance check. And
6 that's usually where they check multiple
7 people's IDs, two or three. But there hasn't
8 been, to my knowledge, a specific call for an
9 officer inside of a building.
10 Q: And I believe that Mr. Ruonala talked about one
11 outside. What can you tell me about that?
12 A: As I recall -- the one with the bouncer?
13 Q: Yes, sir.
14 A: As I recall, there was someone who was leaving
15 the establishment and had a drink in his hand.
16 The bouncer informed him that you can't take
17 liquor out of the establishment and that you
18 could possibly also get a ticket with having an
19 open container on the street. He was not very,
20 let's say, nice with that. He threw his drink
21 out and his girlfriend slapped our bouncer's
22 phone out of his hand. And our bouncer, I
23 mean, that's his job, so he's used to it. He's
24 used to getting yelled at. But he took it --
25 I mean, he laughed. He took it in stride. CPD



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1 and SLED was there. SLED was out that weekend
2 in uniform and they handled the entire
3 situation. It was over in a couple seconds.

4 Q: Okay. And he was, I guess, the victim in that
5 case?

6 A: Yes.

7 Q: Okay. Any other incidents or issues you're
8 aware of?

9 A: Not to my knowledge.

10 Q: Are you aware of any problems in the community
11 related to anything that's happened to your --
12 in your business?

13 A: No.

14 Q: Has anybody come to you and said this is a
15 problem, you need to stop doing something?

16 A: No.

17 MR. MONTGOMERY: Bear with me one second, Your
18 Honor.

19 Q: Let me just asked this: When did you first
20 know Mr. Ruonala?

21 A: I guess when I first moved to South Carolina I
22 was, I believe, 19 when I transferred from the
23 College of Charleston to the USC and he was
24 currently working at Sharky's, which is the
25 downstairs of the current -- the building we're



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1 currently in. And helped me get a job there as
2 a door staff. So, it's been close to seven
3 years.

4 Q: Okay. And have y'all maintained a relationship
5 during that period of time?

6 A: Yes.

7 Q: And seen each other and known each other?

8 A: Yep.

9 Q: Why did you think to contact Mr. Ruonala about
10 getting involved in this business opportunity?

11 A: Well, I knew that he has worked with Wild Wings
12 for multiple years on a corporate level, so I
13 felt that he would have some insight on how to
14 run a restaurant-type industry from the top
15 level. And then also at that time he was a
16 marketing manager for PSA. And, to be frank,
17 I thought that he might have some extra money
18 to invest. But also, I mean, he's just a good
19 friend. We've known each other for a while.
20 When he was at Sharky's he knew what he was
21 doing and he kind of took me under his wing, so
22 I thought that it would be a good opportunity
23 for both of us to go in.

24 Q: Okay. I don't think I have any further
25 questions, Mr. Bland. Could you answer any

