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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

On appeal from
THE ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2020-000837
Docket No. 19-ALJ-17-0001-CC

Eighteen Ink, LLC, d/b/a Group Therapy.....Respondent,

v.

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

and

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

RECORD ON APPEAL – VOLUME II OF II

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INDEX

Transcript of Record Con't (February 12, 2020)
Cross Examination of Michael Drennan 443
Examination by the Court of Michael Drennan 453
Closing Statements 458
Intervenors, Appellants' Exhibit No. 1 (photograph of drink specials) 476
Intervenors, Appellants' Exhibit No. 2 (Steve's Sunday Report 2) 477
Intervenors, Appellants' Exhibit No. 3 (City of Columbia arrests – 2014 to 2019) 479
Intervenors, Appellants' Exhibit No. 4 (SCDOT data) 485
Intervenors, Appellants' Exhibit No. 5 (UofSC graphs from Alcohol Edu survey) 513
Intervenors, Appellants' Exhibit No. 6 (photograph inside Group) 517
Intervenors, Appellants' Exhibit No. 7 (photograph inside Group) 518
Intervenors, Appellants' Exhibit No. 8 (photograph inside Group) 519
Respondent Group's Exhibit No. 1 (ServSafe alcohol certificates) 520
Respondent SCDOR's Exhibit No. 1 (South Carolina Law Enforcement Division's alcohol case cover sheet, investigative report and photographs) 530
Respondent SCDOR's Exhibit No. 2 (DVD – body camera footage) 540

Intervenors, Appellants' motion to reopen and supplement record with new evidence (March 6, 2020) 541

Intervenors, Appellants' proffer regarding evidence of meal preparation and service (Feb. 21, 2020) 557

Intervenors, Appellants' motion to exclude untimely disclosed evidence (Feb. 10, 2020) 563

Intervenors, Appellants' fourth amended prehearing statement (Feb. 10, 2020) 574

Respondent Eighteen, Ink, LLC d/b/a Group Therapy's (Group's) motion in limine (Feb. 6, 2020) 585

Respondent South Carolina Department of Revenue's (SCDOR's) amended prehearing statement (Feb. 4, 2020) 592

Intervenors, Appellants' reply to Petitioner's memorandum in opposition to Intervenors' motion for discovery sanctions (Dec. 19. 2019) 596

Respondent Group's memorandum in opposition to Intervenors' motion for discovery sanctions (Dec. 13, 2019) 605

Intervenors, Appellants' motion for discovery sanctions (May 16, 2019) 612

Certificate of Counsel 694

Q: Do you drink alcohol?
A: Very rarely.
Q: Do you have anything against alcohol?
A: No. I think it's fine if people enjoy it responsibly and of age.
Q: How about Mr. Taneyhill? You got anything against Mr. Taneyhill personally?
A: I have no grievance against Mr. Taneyhill personally.
Q: You're involved in a number of other bar cases in Five Points?
A: That is correct. Because I'm trying to get relief for my neighborhood, yeah.
Q: Thank you so much. If you'd answer Mr. Sellers questions, Mr. McCabe's questions.
MR. MCCABE: No questions from the Department, Your Honor.
THE COURT: Okay. Mr. Sellers?
MR. SELLERS: Just a few questions.
MR. DRENNAN - CROSS-EXAMINATION BY MR. SELLERS:
Q: You were talking about you trek from your home in Shandon down to Five Points. How many bars and restaurants do you pass?
A: Well, let's see. I can count them. So if walk down let's say from my backyard onto Blossom

Street and I walked about two blocks and then I'm at the BB&T Bank. And then -- you want me to walk down -- you want the depiction of me walking down Harden Street?

Q: On your way to Group -- however you get to Group Therapy. Because you were ---

A: Oh, how I get to Group Therapy.

Q: How about this. Let me ask you a better question.

A: Yeah, no. I can answer that.

Q: When you were describing to him your trek and seeing all of this exodus and mass of people when you're going to Group Therapy, how many bars and restaurants do you pass?

A: I'm just going to say them out loud, so I can count them, okay? Bar None, Cotton Gin, used to be Latitude 22, I think it's Murphy's Law or something now, Rooftop, Pinch, Thirsty Parrot, Lucky's, and then I arrive at Group Therapy.

Q: How many of those bars have been around or were created since the creation of Group Therapy?

A: Since the situation with Group Therapy.

Q: Creation.

A: Oh, creation of Group Therapy?

Q: Founding.

A: I don't know. I know Group Therapy's been around a long time, so I can only -- I could speculate that Group Therapy's the oldest, but I'm not sure.

Q: I want to go to April 7th and the date these pictures were taken. By the way, did you -- all of these people in the picture, did you tap them and tell them you were taking picture of them?

A: No, but the bar has a security camera and they never asked me if it was okay for them to take surveillance pictures of me.

Q: Well, surveillance is a little bit different than a patron taking pictures; don't you agree?

A: I wouldn't know the answer to that.

Q: Did you ask any of these people in these pictures for permission when you were taking pictures of them?

A: No, I did not. I took the pictures exclusively for the purpose of this hearing.

Q: Do you do that often? Do you go into public places and take random pictures of people who are there just enjoying themselves without their knowledge?

A: No, I don't do that often.

Q: Can you tell me about your background in law enforcement or your background with the fire department?

A: I have no background in law enforcement or the fire department.

Q: Okay. That one picture with the -- I'm looking for your picture that you had with the prices. This was --

MR. KENNEY: Number 1.

Q: --- Number 1. Yeah, Number 1. This was taken on April 7th, correct?

A: Let me see. Yes, that's correct, 2019.

Q: And $2 is the house vodka there?

A: Correct.

Q: Would it surprise you to know that Mr. Taneyhill and Group Therapy changed that in light of the Rooftop ruling?

A: What it surprise me? I don't know. I deem it's probably plausible, yeah.

Q: Okay. So you deem that to be plausible that they made that change to that price. And my question to you is you've been in there subsequent times. Did you see that?

A: When I was in there most recently, that would have been February 9th of 2020, and I did see

the board. And on that particular board I did not see a $2 drink, but I did see a $3 drink.

Q: But you didn't see a $2 drink?

A: That's correct.

Q: And you're familiar with the Rooftop case, correct?

A: Somewhat, yes, as a protestant.

Q: Now, while you were in here sneaking around the bar taking pictures of people ---

MR. KENNEY: Objection. That's a mischaracterization.

THE COURT: Sustained. Rephrase.

Q: While you were undercover taking pictures of people or while you were taking pictures of people without their knowledge -- is that more accurate?

A: Well, I would say there were other people taking pictures in the bar, selfies and the like. And those selfies would contain other individuals in the picture from whom they did not get consent.

Q: Well, while you were engaging in this and you saw things that concerned you, at any point did you stop the staff at Group or asked to speak to Mr. Taneyhill at Group and voicing any of

those concerns?
A: No, I did not.
Q: Okay. You stated that you weren't carded at Group and that neither you or your ---
A: I was. I was carded at Group, but I was not frisked at Group.
Q: Okay. Neither of you were ---
A: Neither Tom nor I were frisked, but all the people in front of us were.
Q: Okay. Is there some concern that they didn't frisk you?
A: I just didn't understand the uneven application of the frisking.
Q: Okay. And could it be that you all were older patrons, with all due respect?
A: I could be.
Q: I don't mean that to be ---
A: No, that's fine. I don't have a problem with that.
Q: Okay. Just slightly.
A: That's fine. I don't know the reasons why they chose not to frisk us.
Q: Okay. You stated on the record that you were concerned about some fire code violation.
A: That is correct. That's just a feeling I have.

Q: Yeah. And would you be surprised that after you went into there on April 7th, they were actually granted their after-hours permit, in which they had to be approved by the city fire department and police department. Would that surprise you?
A: It would surprise me, yes.
Q: But you do understand that they have that, correct?
A: Yes, I understand that they have an after-hours permit. I don't know what date that was granted.
Q: Would it surprise you that that date -- that it was granted subsequent to your visit?
A: It would surprise me.
Q: I want to ask you a question about this, because this is going to come up later. How would you describe the crowd in this picture?
A: The crowd, I would describe the crowd as young, young people. A number of whom appear underage to me when I visited on ---
Q: And you have -- but you base that on your law enforcement background?
A: I don't have a law enforcement background.
Q: You base that on your teaching experience?

A: No. It's just personal observation. If you're looking for more verification of that, I would look to SLED Agent Jordan's testimony.
Q: What does the crowd look like in this picture?
A: Similarly they look young.
Q: From the back they look young?
A: Well, I had seen them from the front on my way to ---
Q: In this picture what do they look like?
A: They still look young to me, based on their dress and whatnot.
Q: And this picture?
A: What about it?
Q: What does this look like?
A: They look like young people to me. That individual looks like he's enjoying himself dancing.
Q: They look young? Okay. I like your input on young. I want to look young my whole life. I'm going to let you judge it. In this picture what do they look like?
A: They look like young people as well.
Q: And in this picture?
A: They look like young people dancing, hanging out, talking to their friends.

Q: Is it an accurate depiction to say that this is a majority African American crowd listening to hip hop? You said they were listening to rap and hip hop, so ...

A: That doesn't necessarily imply certain background.

Q: But I'm asking you, in the pictures they to me looked majority African American.

A: Well, I thinks that true. I think this picture speak for themselves.

Q: So the pictures speak for themselves in saying that's it's a majority African American crowd that listens to hip hop, correct? That is listening to hip hop in this ---

MR. KENNEY: Objection. The pictures can't characterize what's being heard.

MR. SELLERS: He actually testified that he was in the bar listening to rap and hip hop. So I'm asking ---

MR. KENNEY: If you could just rephrase it. It puts two unrelated things together.

THE COURT: He's correct. Rephrase.

Q: In this picture on the night that you took these pictures, it's a majority African American crowd, correct?

A: Yes.
Q: And you also testified earlier that the crowd was listening to rap and hip hop, correct?
A: Based on my limited knowledge of music, yes.
Q: Have you heard testimony from -- well, not testimony. But have you heard statements and public statements that one of the issues with Group Therapy is that it's a rough crowd?
MR. KENNEY: Objection, hearsay.
MR. SELLERS: Huh?
MR. KENNEY: Have you heard public statements.
THE COURT: Mr. Drennan, have you been sitting in this courtroom the majority of the hearing?
MR. DRENNAN: Yes.
THE COURT: Okay. If you heard testimony, then you've heard it. He can answer it.
MR. KENNEY: Thank you, Your Honor.
Q: Have you heard any testimony -- or even a better question, have you read anything that would say that Group Therapy caters to a rough crowd.
A: I would disagree with that characterization.
Q: Oh, you would?
A: I would. I would. But not having a law enforcement background, I may not be the best

judge of that. But I would not characterize the crowd that I screened at Group Therapy as a quote rough crowd.

MR. SELLERS: No further questions, Your Honor.

THE COURT: Okay.

MR. KENNEY: Your Honor, I don't have anything further for Mr. Drennan.

THE COURT: Okay. I've got one question, Mr. Drennan. You don't have to go back on the witness stand. But let me just ask you.

MR. DRENNAN: You have a question for me?

THE COURT: Yeah, I wanted to ask one question to you.

MR. DRENNAN: Of course.

MR. DRENNAN - EXAMINATION BY THE COURT:

THE COURT: Okay. Now, I understand that you are having issues with just Five Points in general and the atmosphere in Five Points.

A: Yes.

THE COURT: So is it your objective to kind of close down all of these bars or just to bring about some change in the way they're being run?

A: That's a very good question, Your Honor. All I know is that the current situation is untenable. The best I can figure out is, we

need to reduce the number and density of bars in Five Points. And as we do that, perhaps we'll reach a more tenable balance of concentration of bars. That's my hope. And I'm hoping that through this process we'll see which bars are meeting their legal requirements and which are not. I've looked for numerous different remedies available to me in this process and the Administrative Law Court seems to be the best chance that I have to get some remedy.

THE COURT: Thank you.

A: Sure. Thank you.

MR. KENNEY: Thank you, Your Honor.

THE COURT: Before you move to the next witness, we're going to take a ten-minute break.

MR. KENNEY: Yes, Your Honor.

(Off the Record at 2:41 p.m.)

THE COURT: Please take your seats. Okay.

MR. KENNEY: Your Honor, at this time the Intervenors would rest.

THE COURT: Okay. Thank you

MR. KENNEY: Thank, Your Honor.

THE COURT: Do we have anything in response?

MR. SELLERS: Response? Like a rebuttal?

THE COURT: As to -- yes, like a rebuttal, yes.

MR. SELLERS: Oh, no, Your Honor, we don't have any rebuttal witnesses, Your Honor. We actually would move that Brian Glenn be released from his subpoena.

MR. KENNEY: Of course.

MR. SELLERS: I don't think anybody has any problem with that.

MR. MCCABE: No objection, Your Honor.

MR. SELLERS: At this time, Your Honor, we can move to -- we could talk to the Court about how you see best closing or wrapping this case.

THE COURT: Okay.

MR. KENNEY: Your Honor, I had suggested -- and I think both Mr. McCabe and Mr. Sellers disagree with this approach. But I had suggested that perhaps we would have the transcript typed and everybody submit proposed orders that refer to the transcript. If Your Honor would rather have an argument, I'm happy to have an argument. Whatever you decide is fine by us.

MR. SELLERS: And, Your Honor, I'm someone who appreciates not constraining our judges, both in the state and federal bench, and allow you in all your wisdom to create and craft an order

that you so choose. And if you wanted us to give closing, limit those closings to three to five minutes. You've sat through this entire hearing. You've heard the evidence. This isn't a jury by any stretch, so we could just kind of surmise our statements. We are willing to do whatever, Your Honor, wishes.

THE COURT: Okay. Mr. McCabe, do you have any --

MR. MCCABE: Your Honor, the Department's position is pretty limited, so we believe that a short closing would be appropriate.

THE COURT: Okay. You're outnumbered.

MR. KENNEY: Yes, ma'am. Your Honor, I have one more housekeeping matter.

THE COURT: Yes.

MR. KENNEY: At the very beginning of the hearing we had discussed my ability to submit a written proffer that would deal with the food issue and things that have been excluded.

THE COURT: Yes.

MR. KENNEY: Would you give me a deadline in which to do that? Certainly, I could do it within seven, ten, 14 days. If you would tell me when I need to have that so I file something, I'd appreciate it.

THE COURT: Okay. That will be fine. In light of Mr. Sellers' concern about these -- the photographs, I'm going to actually remove two of these, the photographic exhibits from the -- and I don't think it detracts any -- it doesn't really detract from what the photographs are showing, but it does -- these very clearly show faces of individuals and this is a public record, so I'm going to remove those two.

MR. KENNEY: No objection, Your Honor. Which exhibits?

THE COURT: They are Exhibit 9 and 10.

MR. KENNEY: Thank you, Your Honor.

THE COURT: So if you will strike Exhibits 9 and 10.

COURT REPORTER: Yes, Your Honor.

(Intervenors' Exhibit Numbers 9 and 10 were stricken from the record.)

THE COURT: Mr. Kenney, ten days.

MR. KENNEY: Yes, ma'am. Thank you.

THE COURT: Okay. And, of course, I will -- if you will give it within ten days, but I'm going to also give Mr. Sellers, that he can file a response if he wants to or he does not have to. It's not a requirement.

MR. SELLERS: We'll notify the Court as soon as we

receive it within reasonable time whether or not we will respond or not.

THE COURT: Okay. Very good. Okay. Now we can give short closings beginning with you Mr. Sellers.

CLOSING STATEMENT - BY MR. SELLERS:

MR. SELLERS: Yes, Your Honor. I'll be extremely brief. And I know that people giggle when I say that. However, if we look at the statute, which governs the issuance of these license and a restaurant, et cetera. What we do know is, especially from the Department of Revenue's own determination, that the only issue that was before here was suitability. And we know the Department of Revenue's major issue was the incident that occurred with Mr. Outing, Your Honor. We actually would say that Mr. Outing's testimony before Your Honor was extremely strong. This young man was a sociology -- psychology major, excuse me, at the Benedict College, Your Honor, and acknowledged that he made a mistake of his own volition. I point you to 61-4-580 that says no holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee

may knowingly commit. And the testimony that you heard before you from both Mr. Taneyhill and Mr. Outing is that no one at Group Therapy knew that any legal behavior was going to be taken. No one knew that he was going to be smoking marijuana. And, in fact, I think one of the more profound portions of this, Your Honor, is when you look at the transcript and there was probably the most refreshing moment of honesty that anybody, including the lawyers in this case, had had, it came from that young man in which he talked about his apology to Mr. Taneyhill.

As we move forward to suitability, Your Honor, many of the individuals had an issue with Five Points. They have an issue with many of the things in the historical nature of Five Points. They have an issue with the collection of bars in Five Points. And, Your Honor, we would actually submit to the Court that have -- although they have operated and they have been serving -- it's been a restaurant for many years serving wine, beer, and liquor and we will say that they offered evidence that there is some nuisance behavior by the patrons of

Five Points, the establishment generally, we would say that when you weigh it against the evidence -- and we understand that it's a historically hospitality district, Your Honor. We would say when you weigh it against the evidence that they provided when it comes to Group Therapy, that evidence simply is not there. We talked about two incidents in 2018 and two incidents in 2020, and I'll wrap up on this witness, that the University of South Carolina attributed to Group Therapy and he could not testify that they were underage. They were just -- the only evidence he could provide that those individuals, due to their last drink, could say they were at Group Therapy. And when questioned whether or not he knew whether or not they were underage or not, he didn't know.

I would say that the unique nature of this case in which the University has played a central role in this going forward is enveloped in a great bit of hypocrisy, as the University of South Carolina now utilizes its own profit motive to sell alcohol to college students at games and some of which is unsupervised and

unsecured. But I can honestly say that Group Therapy is not unwilling to be more progressive, unwilling to change the behavior because they are. And Group Therapy, as established which we believe to be the most important -- what we believe to be the most important part of this case, as established in the own evidence of the Intervenors, does the corporation, association, or applicant have the reputation for peace and good order in the community? The answer from the chief of police and law enforcement was yes. Even went to state that these are the type of partners they would want.

Group Therapy has a total of three scanners -- no, I'm sorry. Group Therapy is willing to go to a total of three scanners, have all IDs checked with the scanner, roped off area on the street for control of the same. We understand that there are some issues and they need to do a better job of doing that and they're willing to do that.

Your Honor, what we're asking you to do is not shut down an establishment that's been here since 1978. An establishment that is a good

corporate partner. An establishment that is a good citizen. An establishment that can do better and is willing to do better. And your ruling has that effect. So, Your Honor, we would ask that you rule that they can keep their license and whatever restrictions, limitations, whatever enhancements Your Honor so chooses, Mr. Taneyhill is willing to do that. And during the pendency of this ruling, while we await your ruling, he's even going to take the necessary steps of going ahead and meeting with Mrs. Armstead and the citizens of Martin Luther King, because we feel as if that's necessary, Your Honor. I thank you for your attentiveness during this extremely, extremely long, extremely long ABL hearing.

THE COURT: Okay. Thank you. I'm going to now hear from Mr. McCabe.

CLOSING STATEMENT - BY MR. MCCABE:

MR. MCCABE: Yes, Your Honor, thank you. May it please the Court. Your Honor, Mr. Sellers is correct that the Department did, in fact, state that they met the requirements for licensure. However, the incident with the marijuana gave the Department concern about the fitness and

the suitability of the establishment.

Now, Mr. Sellers would like you to believe that their witness was credible. However, his own testimony stated that he had had a couple of drinks and wasn't sure of what had occurred. And somehow the door to the office mysteriously opened and two individuals he did not know, somehow get inside and are consuming drugs on the property. Also, the body camera footage shows that an employee entered, comes out of the room, grabs her nose and looks at the door, somehow indicating that she's making some type of reference to the smell of the marijuana. And they want to harp on knowingly. Well, in DOR vs. Odom, which is Docket Number 97-ALJ-17-0368, this is from 1997, the Court has said that knowingly not only includes actual knowledge, but facts or situations where a person such as -- has information or the circumstances are such that would lead a prudent person to form a belief as to the fact if followed by inquiry would have disclosed his character. So this knowingly doesn't mean that they have to be aware of the activities, but there's a situation here and we have an

employee who instead of -- when they at least seemed to notice the marijuana smell, they don't contact the staff, they don't contact the bouncers, they go about their business day and make no attempts to get this person, who's consuming marijuana off their property. So it's -- the establishment cannot create a situation and then say that we don't have responsibility. Because someone who is in an employee area, who's inside a locked office, that apparently they trust enough to be in a locked office where there's paperwork, there are excess liquor, all of these things are stored inside this office, and then because they engage in an activity, they can't just wash their hands of it and say, well, we're not responsible.

Because of this violation -- or excuse me. This is not a violation, but because of this incident, the Department now believes that this location is not suitable. I would also mention that we are not seeking any type of penalty at this time for that violation, that will come through the Administrative Law process at a later time. But right now, we are bringing

this forward as this is evidence as to the suitability of the location. So we just wanted to make that clear as well.

In closing, we would hope that the Department (sic) would affirm the Department's decision to deny the issuance of the permit and license. Thank you.

THE COURT: Thank you. Mr. Kenney.

CLOSING STATEMENT - BY MR. KENNEY:

MR. KENNEY: Thank you, Your Honor. May it please it the Court. Your Honor, I appreciate your patience with all of us these last two days. It's good to be with you again on this case. Enjoyed it, enjoyed our time, I've enjoyed the time with Mr. McCabe, my friend, Bakari Sellers. And have had an opportunity to chat with Mr. Taneyhill on break. He is a very nice guy. He seems like he would be a great guy to go get a beer with. I like all of the people in this room. This case, however, is not about whether Steve Taneyhill is a good guy or a bad guy. This case is not about whether certain people in the community or even the city have a sense of nostalgia for one specific establishment. That is the not the question

before you. The question before you is suitability. And suitability, there are a number of cases including many that Your Honor has written that describe what that means. But I do want to quote a couple of sentences from, just as an example a case called Barfly Enterprises, because it sort of incorporates all of the case law in terms of what do we mean by suitability. What does that concept mean? And what Barfly says is that, your role is to determine quote a proper location. And that is not statutorily defined. A proper location is quote any evidence -- you're to consider any evidence that shows adverse circumstances of location, any evidence. Further, that can involve an infinite variety of considerations related to the nature and operation of the business, but also quote its impact on the community within which it is to be located. Then the final point I'd make about suitability is -- well, two points. Barfly says -- and it's relying on cases like Fast Stops. It's relying on cases like Kearney. It's relying on cases like Schudel. All of those are cited in our prehearing statement. Your Honor's very

familiar with them. But what Barflys says is, a liquor license or permit may be properly refused on the grounds that the location of the establishment would adversely affect the public interest. That's the question for, Your Honor. It's the public interest. It's not whether Steve Taneyhill is a good guy or a bad guy, whether this bar is a renowned institute or not. That is irrelevant to the question before the Court. And, you know, a number of courts, a number -- other members of this Court have looked to the CJS on intoxicating liquors. And its 48 C.J.S., Section 196. And the simple principal of law that a number of members of this Court have applied is simply that the grant or refusal of a liquor license or permit for a certain location or premises may depend on the particular circumstances on the ground, such as whether the location or the business would affect the public interest. So again, this is a question of the public interest. And it is I know a difficult matter because -- particularly when you have, you know, former city councilmen here saying, you know, you ought to be pro-business, we need a pro-

business decision. That is irrelevant. That is irrelevant. The question here is, should the public interest trump one very, very narrow special interest. That's the question for the Court. And so what the case law has typically relied on as evidence and factors that you could look to to make that determination, is a number of things. I don't think these are exhaustive. But it's many of the things you've heard. It is density, too many alcohol establishments in Five Points; crowds, thousands of people, according to the chief of police, get dumped onto the street; congregating and loitering. You've heard from multiple people about the lines and the crowds. You heard from SLED that oftentimes you can't even see the sidewalk. It is things like nuisance, vomiting, urination, noise, parking violations. All of those things you've heard examples of. And to be candid, are not really in dispute.

And then there's the public safety aspect of this. You heard testimony from the Department of Transportation that Harden Street, which is the artery that runs right

through Five Points, is the most dangerous strip of road in the state of South Carolina for pedestrians and bicyclists. Traffic is a legitimate suitability consideration. Pedestrian safety and bicycle safety is a legitimate consideration for this Court. That road runs right along the front side of Group Therapy. The tenth most dangerous strip of road in the state of South Carolina is on Devine Street, which is not far from this location. So we have a public safety problem, in terms of traffic.

And perhaps most pressing -- well, I'd say two things are most pressing here. One is the impact that these bars in Five Points, including Group Therapy -- we heard a lot of testimony about the age of the people inside this bar. We heard from Mr. Taneyhill that there are periods of time where he actually restricts access to the bar to people with university IDS and military IDS, so we know there are young people in this bar. And we know from the Columbia Police Department that there are underage violations occurring in the bar, notwithstanding the fact that they have

this scanner. And so that should raise huge questions about how we're still having underage violations in a bar that has the same detection technology as SLED and the Columbia Police Department? That raises a huge question.

Raises a huge question why Mr. Taneyhill was unable to get us close circuit footage of his facility for discovery in this case. I've questions about why, when he turned over a thumb drive to SLED telling them this is our effort to comply with the search warrant, there was five seconds of tape on there. And you heard SLED -- the SLED agent explain it was useless, there was nothing on there. So there are some credibility problems here.

But there's also some important concessions. And Mr. Taneyhill invited, agrees, accepts the proposition that we need more police in Five Points. Now, I personally have a problem with that. I think that, you know, we have a huge, huge force down there. There's a -- you've heard from Chief Holbrook this morning. His department doesn't have anymore resources to send down to Five Points. And perhaps more importantly, there are other

parts of this city that are in need of the resources that he has. But he cannot redeploy them to those other parts, because he has sometimes hundreds and sometimes thousands of young people on the streets late at night highly intoxicated. It invites predatory conduct, people looking to prey off those young people, and he's got to have those officers down in Five Points to help with that. We heard specific examples about Greene Street right outside Group Therapy's door. So this is a problem that is both specific and particular to Group Therapy and it is also a larger problem in the place where Group Therapy is located. And that is what suitability is all about. It's about the impact of this bar on the community.

And, you know, I -- on one side of this dispute is an individual business owner. The other side of this dispute is neighbors from all three adjacent neighborhoods around Five Points, the police department that patrols their community and the largest university in the state of South Carolina, all of whom are here asking you to do the right thing and give

these words about what it means to have a suitable location. Those words are suppose to have real meaning. That is suppose to be a meaningful standard. It is something separate and independent from the idea that Mr. Taneyhill did or didn't comply with any particular requirement. That goes to his suitability to receive and application. There's a totally separate section of the statute that allows you and the Department to raise those issues and consider those issues. But the suitability issue that we are raising requires you to balance the community's interest against this one very narrow special interest.

And so, I'd just finish by saying, you know, I think you're hearing a pitch, a plea, a invitation on the part of Mr. Sellers to say to the Court, well, we'll live by any condition you're willing to impose on us. You can load us up with criteria and that will somehow ensure that we are a good actor, ensure that we're not contributing to the problem down in Five Points. I think there's a couple of problems with that. One is I think Your Honor

should consider whether, based on the inability of Group Therapy to produce certain evidence about what's going on in the bar, Mr. Taneyhill's evasive, indirect, deflecting testimony, you had to intervene a couple of times to point out that he had not answered the question, do you really expect that some condition or criteria that you impose is going to be followed or are we're just going to be back here in a year or two years.

The second point is, even if you load them up with restrictions and criteria, it will not solve the problem. The long-term strategy in Five Points needs to be a return to order, reducing the density and concentration of bars, particularly bars that law enforcement has identified as a problem and as a place where nuisance and other public safety problems flow out of. And so the appropriate remedy here, under than suitability analysis, is to deny the permit and license. That would be the correct thing to do in terms of the weight of the evidence, some of which they've stipulated to in terms of the pandemonium in Five Points; in terms of the Columbia Police Department's

ability to handle more bars. The appropriate remedy is to deny the license and permit. And so we'd ask that you give this standard that does give you broad discretion to understand the facts, to find the fact, to apply the law. But it would not be correct to find that this suitability standard is a purely meaningless standard. It has real significance. It has been grounds to deny dozens, based on my review of the case law, I presume hundreds of applicants all over this state for reasons -- problems far less severe than what we're seeing in Five Points. And so we think it is the appropriate remedy here. There is no condition that you could impose on Group Therapy that would assure the safety of this community and we ask that you deny the permit and license.

THE COURT: Thank you.

MR. KENNEY: Thank you, Your Honor.

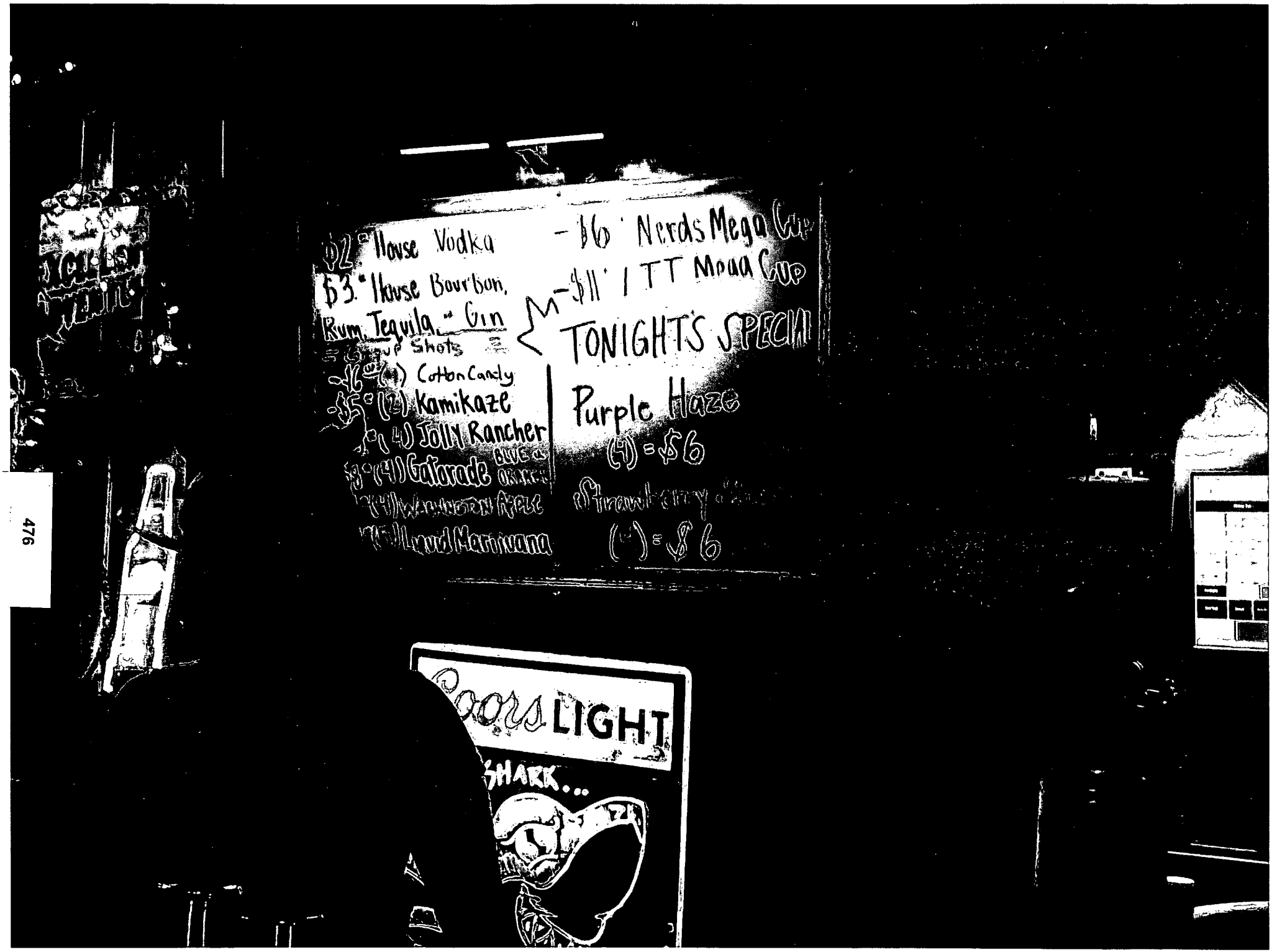
THE COURT: And I think all of the parties are aware that I won't be making a ruling from the bench today. But I'm going to give some very serious deliberations to the evidence that I've heard in this case prior to issuing a ruling. And I

hope that I'll be able to do that within the next 30 days or so.

MR. KENNEY: Yes, Your Honor.

THE COURT: Thank you all for coming.

(There being nothing further, the hearing concluded at 3:27 p.m. on Wednesday, February 12th, 2020.)


$2 House Vodka
$3 House Bourbon, Rum, Tequila & Gin
Shots
(1) Cotton Candy
(2) Kamikaze
(4) Jolly Rancher
(4) Gatorade
Liquid Marijuana
$6 Nerds Mega Cup
$11 / TT Mega Cup
TONIGHT'S SPECIAL
Purple Haze
(4) = $6
Strawberry
(4) = $6
Coors LIGHT
SHARK...

STEVES Sunday Report 2

Group Therapy - Columbia, SC

Taneyhill, Steve

Period From : 04/16/2018 To : 04/16/2019

Printed on 4/16/2019 - 4:50 PM

		Returns	0	0.00				Gross Receipts	1,007,787.57
Net Sales	1,007,115.25	Voids	5,916	-29,446.33				Charged Receipts	389,902.69
+Service Charge	145,220.33	Credit Total		0.00					
+Tax Collected	0.00	Change Grand Ttl		1,182,351.91	Carried Over	0	0.00	Service Charges	7,133.20
=Total Revenue	1,152,335.58	Rounding Total		0.00	+Checks Begun	129,085	1,152,905.58	+Charged Tips	138,087.13
		Grand Total		4,119,642.06	-Checks Paid	129,116	1,152,905.58	+Cash Tips Decl	18,362.49
Item Discount	0.00	Training Total		0.00	=Outstanding	-31	0.00	+Indirect Tips Decl	0.00
+Subtotal Discount	0.00	Mgr Voids	5,828	-27,338.00				=Total Tips 16.33%	164,582.82
=Total Discounts	0.00	Error Corrects	6,162	28,021.00				Tips Paid	138,087.13
		Cancel	6,857	37,805.13				Tips Due	7,133.20

Order Type	Net Sales	% of Ttl	Guests	% of Ttl	Avg/Guest	Checks	% of Ttl	Avg/Chk	Tables	% of Ttl	Avg/Tbl	Turn Time
2 - BAR	-7.00	0.00%	0	0.00%	0.00	1	0.00%	-7.00	0	0.00%	0.00	0.00
1 - DINE IN	1,007,122.25	100.00%	0	0.00%	0.00	129,115	100.00%	7.80	0	0.00%	0.00	0.00

477

EXHIBIT Intervinor Z 2/11/20 NB

FENCLO 800-631-6989

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Page 1

GROUP_000490

STEVES Sunday Report 2

Group Therapy - Columbia, SC

Taneyhill, Steve

Period From : 04/16/2018 To : 04/16/2019

Printed on 4/16/2019 - 4:50 PM

Total	1,007,115.25	0	0.00	129,116	7.80	0	0.00	

101 - System Tracking

Food	25,158	113,622.25
Liquor	186,403	874,069.50
Beer	65,860	204,660.50
Wine	39	205.00
N/A Beverage	3,043	8,081.00
Retail	722	5,114.00
Miscellaneous	191	1,383.00
Total Sales		1,007,115.25
Gift Card Redeem	20	298.00
Gift Card Sold	14	570.00
Gift Card Add Value	0	0.00

Kitchen Disc	0	0.00
Open$ Disc	0	0.00
Open% Disc	0	0.00
Total Discounts		0.00
Living Social	0	0.00
Non Revenue	0	0.00
House Charge	0	0.00
Manager Comp	0	0.00
Bar Comp	0	0.00
Food Comp	0	0.00
	0	0.00
	0	0.00

Visa	31,648	432,684.64
MC	7,649	118,301.71
Amex	753	15,738.32
Discover	386	5,661.80
Total Credit Cards		570,387.47
Cash	88,328	582,222.11
-Paid Out	0	0.00
-Charge Tips	36,498	138,087.13
-Svc Charges	3,567	7,133.20
	0	0.00
Total Cash Due		437,001.78

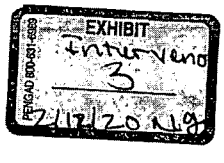
478

CITY OF COLUMBIA ARRESTS (TOTAL NUMBER OF CHARGES) - 2014 TO 2019

2014	800 BLK HARDEN ST	2100 BLK GREENE ST	2107 GREENE ST	TOTALS
BEGGING	1	1		2
DISORDERLY CONDUCT/PUBLIC DISORDERLY CONDUCT	13	1	1	15
DRUNKENNESS	15	3	1	19
DUI/DRIVING UNDER THE INFLUENCE - 1ST OFF		1		1
DUI/DRIVING UNDER THE INFLUENCE - 2ND OFF		1		1
DUS 1ST		1		1
DUS 3RD	1			1
EXPIRED VEHICLE TAG	1			1
EXPUNGED	1			1
FAILURE TO PAY CAFÉ BILL	1			1
FAILURE TO STOP ON POLICE COMMAND	2			2
LARCENY	1			1
LENDING/USING A DRIVERS LICENSE UNLAWFULLY	2			2
OPEN CONTAINER IN VEHICLE	1			1
PEDESTRIAN UNLAWFULLY IN ROADWAY	2			2
POSSESSION OF ALCOHOL BY PERSON UNDER 21	2			2
POSSESSION OF BEER BY PERSON UNDER 21	3			3
POSSESSION OF DRUG PARAPHERNALIA	1			1
POSSESSION OF LIQUOR BY PERSON UNDER 21	1			1
POSSESSION/CONSUMPTION OF ALCOHOL IN PUBLIC	1	2		3
PWID MARIJUANA	1			1
PWID MARIJUANA W/IN PROXIMITY OF SCHOOL	1			1
RESISTING ARREST	5			5
SERVICE OF A BENCH WARRANT	1			1
SIMPLE POSSESSION OF MARIJUANA		3		3
TRAFFIC/RECKLESS DRIVING			1	1
TRAFFIC/USE ANOTHER'S/ALTER LIC, ID CARD	4			4
UNLAWFUL ALTERATION OF DRIVERS LICENSE	1			1
UNLAWFUL URINATION	1			1
TOTALS	63	13	3	79

** Data pulled from RMS and is subject to changes and/or additions

** 2100 Blk of Greene St totals Do Not include 2107 Greene St totals



CITY OF COLUMBIA ARRESTS (TOTAL NUMBER OF CHARGES) - 2014 TO 2019

2015	800 BLK HARDEN ST	2100 BLK GREENE ST	2107 GREENE ST	TOTALS
BEGGING	3			3
CRIMINAL DOMESTIC VIOLENCE		1		1
DISORDERLY CONDUCT/PUBLIC DISORDERLY CONDUCT	8	2	1	11
DRUNKENNESS	2			2
DUI/DRIVING UNDER INFLUENCE - 1ST OFFENSE	1			1
DUS 1ST	1			1
FAILURE TO PAY CAFÉ BILL	1			1
FAILURE TO STOP ON POLICE COMMAND			1	1
LITTERING	1			1
LOITERING		1		1
PEDESTRIAN UNLAWFULLY IN ROADWAY	1			1
POSSESSION OF ALCOHOL BY PERSON UNDER 21	7	1		8
POSSESSION/CONSUMPTION OF ALCOHOL IN PUBLIC	4	1		5
POSSESSION/CONSUMPTION OF BEER BY PERSON UNDER 21	1			1
RESISTING ARREST	3			3
SERVICE OF A BENCH WARRANT	2			2
SHOPLIFTING	1			1
SIMPLE POSS OF MARIJUANA	2			2
TRAFFIC/FAIL TO MAINTAIN INSURANCE	1			1
TRAFFIC/UNLAWFUL TURNING	1			1
TRAFFIC/USE ANOTHER'S/ALTER LIC, ID CARD	4		1	5
TRESPASSING	1			1
UNLAWFUL ALTERATION OF DRIVERS LICENSE	5	1		6
UNLAWFUL URINATION	1			1
VANDALISM	1		1	2
TOTALS	52	7	4	63

** Data pulled from RMS and is subject to changes and/or additions

** 2100 Blk of Greene St totals Do Not include 2107 Greene St totals

480

CITY OF COLUMBIA ARRESTS (TOTAL NUMBER OF CHARGES) - 2014 TO 2019

2016	800 BLK HARDEN ST	2100 BLK GREENE ST	2107 GREENE ST	TOTALS
DISORDERLY CONDUCT/PUBLIC DISORDERLY CONDUCT	6	5		11
DRUNKENNESS	1			1
FAILURE TO STOP ON POLICE COMMAND	1			1
LARCENY	1			1
OPEN CONTAINER IN VEHICLE		1		1
PEDESTRIAN UNLAWFULLY IN ROADWAY	2			2
POSSESSION OF BEER BY PERSON UNDER 21	1			1
POSSESSION OF LIQUOR BY PERSON UNDER 21	2			2
RESISTING ARREST	3			3
SIMPLE ASSAULT	1			1
UNLAWFUL ALTERATION OF DRIVERS LICENSE	1			1
UNLAWFUL USE OF DRIVERS LICENSE	1			1
TOTALS	20	6	0	26

** Data pulled from RMS and is subject to changes and/or additions

** 2100 Blk of Greene St totals Do Not include 2107 Greene St totals

481

CITY OF COLUMBIA ARRESTS (TOTAL NUMBER OF CHARGES) - 2014 TO 2019

2017	800 BLK HARDEN ST	2100 BLK GREENE ST	2107 GREENE ST	TOTALS
POINTING & PRESENTING			1	1
POSSESSION OF ALCOHOL BY PERSON UNDER 21	1			1
SHOPLIFTING	1			1
TRAFFIC/USE ANOTHER'S/ALTER LIC, ID CARD	1			1
UNLAWFUL ALTERATION OF DRIVERS LICENSE	1			1
TOTALS	4	0	1	5

** Data pulled from RMS and is subject to changes and/or additions

** 2100 Blk of Greene St totals Do Not include 2107 Greene St totals

482

CITY OF COLUMBIA ARRESTS (TOTAL NUMBER OF CHARGES) - 2014 TO 2019

2018	800 BLK HARDEN ST	2100 BLK GREENE ST	2107 GREENE ST	TOTALS
AUTOBREAKING	1			1
DISORDERLY CONDUCT/PUBLIC DISORDERLY CONDUCT	7	4	3	14
FAILURE TO PAY CAFÉ BILL			1	1
FAILURE TO STOP ON POLICE COMMAND	1		1	2
GIVING FALSE INFO TO POLICE	1			1
MANF/DIST - ICE,CRANK,CRACK COCAINE - 1ST OFFENSE			1	1
PEDESTRIAN UNLAWFULLY IN ROADWAY	1		1	2
POSSESSION OF ALCOHOL BY PERSON UNDER 21	5	1		6
POSSESSION OF BEER BY PERSON UNDER 21	2	1	1	4
POSSESSION OF LIQUOR BY PERSON UNDER 21	1		2	3
POSSESSION/CONSUMPTION OF ALCOHOL IN PUBLIC	2			2
RESISTING ARREST	3	2		5
SALE OF BEER/WINE TO A MINOR	1			1
SERVICE OF A BENCH WARRANT		1		1
SIMPLE ASSAULT	2	2		4
SIMPLE POSSESSION OF CRACK	1			1
SIMPLE POSSESSION OF MARIJUANA	2			2
TRAFFIC/USE ANOTHER'S/ALT LIC, ID CARD	9	2	6	17
UNLAWFUL ALTERATION OF LICENSE	3			3
UNLAWFUL CARRY OF A PISTOL		2		2
VANDALISM		1		1
TOTALS	42	16	16	74

**,Data pulled from RMS and is subject to changes and/or additions

** 2100 Blk of Greene St totals Do Not include 2107 Greene St totals

483

CITY OF COLUMBIA ARRESTS (TOTAL NUMBER OF CHARGES) - 2014 TO 2019

2019	800 BLK HARDEN ST	2100 BLK GREENE ST	2107 GREENE ST	TOTALS
DISORDERLY CONDUCT/PUBLIC DISORDERLY CONDUCT	12	8	3	23
DRUNKENNESS	4	1	1	6
DUI/DRIVING UNDER INFLUENCE - 1ST OFFENSE	2			2
EXPIRED TAG	1			1
FAILURE TO STOP ON POLICE COMMAND	1			1
FOLLOWING VEHICLE TO CLOSE	1			1
FTC FRAUD/UNLAWFUL USE OF CREDIT/DEBIT CARD	1			1
GIVING FALSE INFORMATION TO POLICE	1			1
LARCENY/ SIMPLE OR PETIT	1			1
LOUD & UNNECESSARY NOISE		1		1
OBSTRUCTING TRAFFIC	1			1
PEDESTRIAN UNLAWFULLY IN ROADWAY	2	4		6
POINTING & PRESENTING	1			1
POSSESSION OF ALCOHOL BY PERSON UNDER 21	4	1	2	7
POSSESSION OF BEER BY PERSON UNDER 21	2		2	4
POSSESSION OF COCAINE (POWDER)	1		1	2
POSSESSION/CONSUMPTION OF ALCOHOL IN PUBLIC	2			2
PWID SCHEDULE II CONTROLLED SUBSTANCE	1			1
RESISTING ARREST	3	4	2	9
SERVICE OF A BENCH WARRANT	1			1
SIMPLE ASSAULT	3			3
SIMPLE POSSESSION OF MARIJUANA	6	1		7
SUSPENDED VEHICLE TAG	1			1
TRAFFIC/USE OF ANOTHER'S/ALT LIC, ID CARD	7		7	14
TRESPASSING		1		1
UNLAWFUL ALTERATION TO LICENSE	1			1
UNLAWFUL CARRYING OF A PISTOL	2	2		4
VANDALISM	1	2		3
TOTALS	63	25	18	106

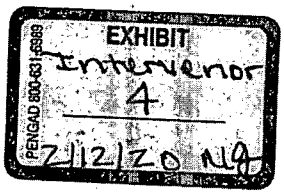
** Data pulled from RMS and is subject to changes and/or additions.

** 2100 Blk of Greene St totals Do Not include 2107 Greene St totals

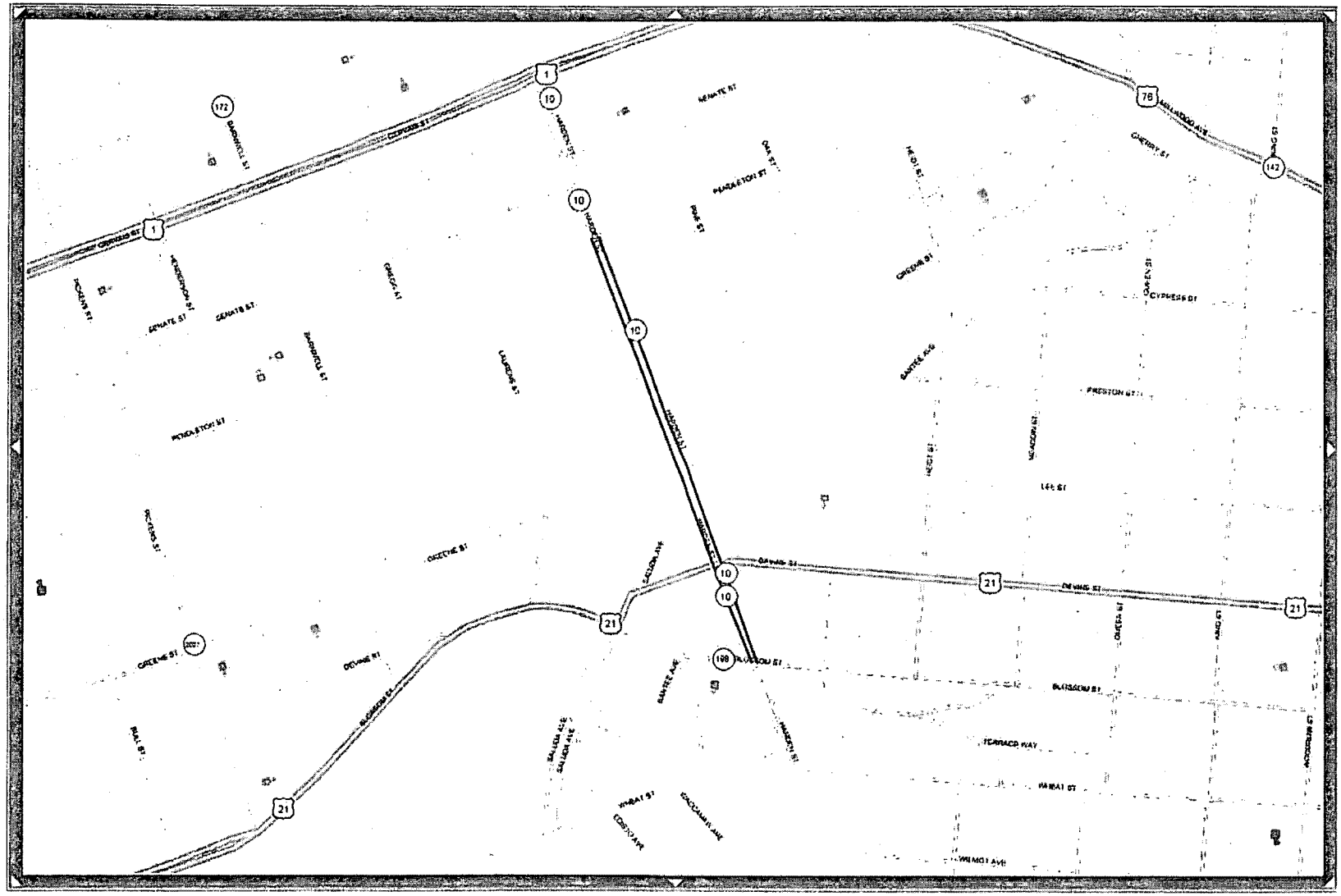
484

Non-motorized User Safety Project List

Ranking	County	Route	Begin MP	End MP	Corridor Length (miles)	Total Bike / Ped Crashes	Total Bike / Ped Crashes Per Mile
1	Richland	S-10	0	0.44	0.44	12	27.3
2	Charleston	S-107	0	1.42	1.42	31	21.8
3	Charleston	S-104	0	1.89	1.89	35	18.5
4	Charleston	S-404	0	1.48	1.48	22	14.9
5	Horry	S-215	0.541	2.351	1.81	25	13.8
6	Charleston	S-106	0	1.07	1.07	12	11.2
7	Dorchester	S-62	0	1.651	1.651	15	9.1
8	Horry	S-241	0	1.543	1.543	13	8.4
9	Charleston	S-75	0	2.269	2.269	19	8.4
10	Richland	US 21	0	2.422	2.42	16	6.6
Total Mileage					**16**		



S-10 (Harden Street) MP 0 to 0.44
Richland County



SCDOT Road Safety Assessment Program Process

INTRODUCTION

Road Safety Assessments (RSAs) are identified as an effective strategy to identify potential safety improvements for many of the state's SHSP emphasis areas, such as intersection and roadway departure crashes. SCDOT's Highway Safety Improvement Program (HSIP) provides a funding mechanism and data driven process to identify the best engineering countermeasures for the prevailing crashes at a location. The identification of safety problems within candidate segments and the development of countermeasures to address observed safety issues are critical components to the overall success of the HSIP program. HSIP funds have been allocated to improve the candidate RSA segments with the most injuries and deaths from crashes. This document describes the RSA process.

RSA DESCRIPTION AND BACKGROUND

A road safety assessment is defined as a formal examination of an existing or a future highway or traffic project in which a team of independent and multidisciplinary examiners report on the segment's safety performance. The overall objective of the RSA is to identify potential roadway safety issues for roadway users and to consider measures to eliminate or mitigate the safety deficiencies. The process can be best applied to roadway segments of 1 to 3 miles in length and is used on rural as well as urban roads.

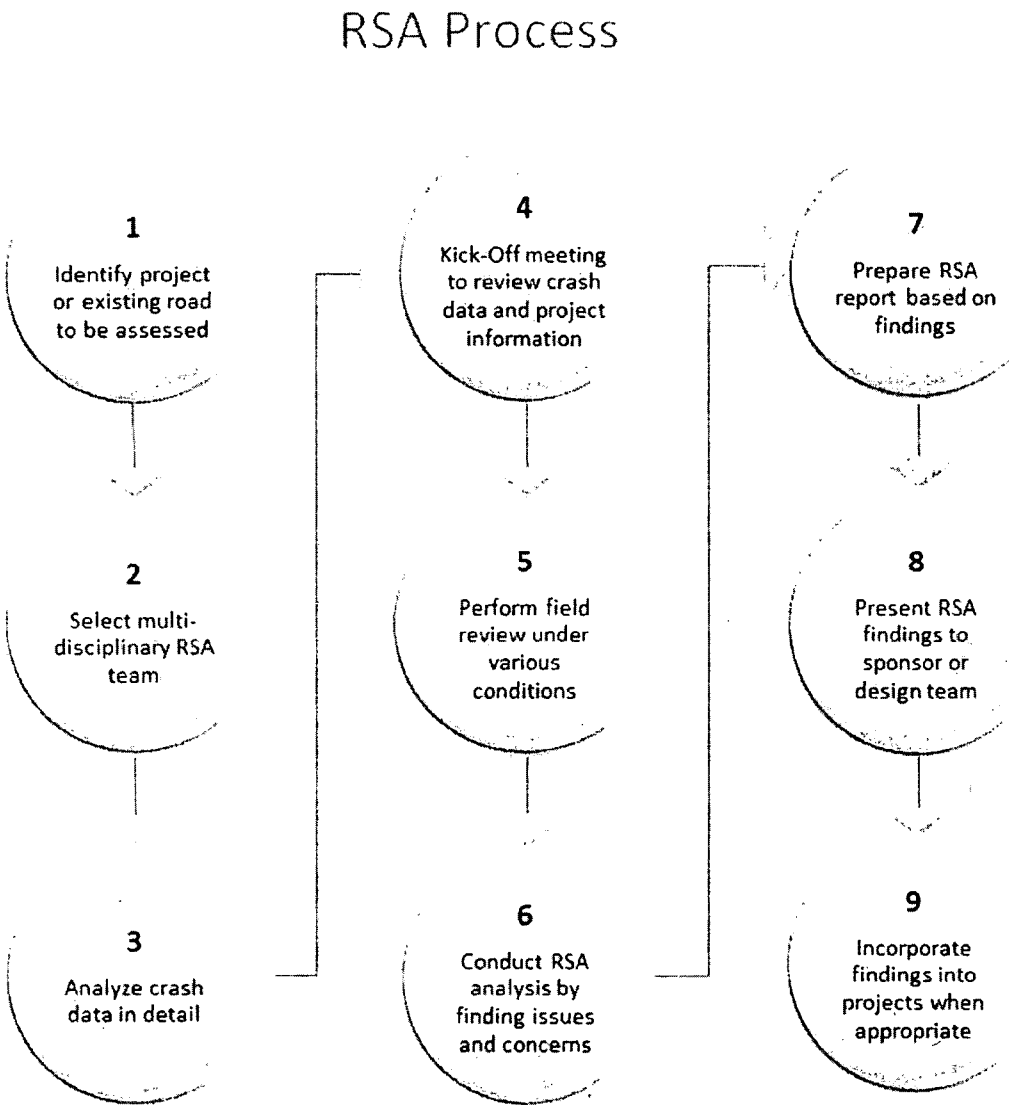
SCDOT's focus will be conducting RSAs on existing roadways, typically 1 to 3 miles in length with locations selected as described in EDM ??. The reviews will consider the roadway and traffic control elements in the context of the multiple human, vehicle and roadway causes for the crashes that have occurred and the events leading up to, during and after the collision.

RSA PROCESS

The RSA process occurs after potential segments have been screened to determine the priority locations by the SCDOT Highway Safety Office. The safety office staff will be expected to play a major role in the assessment of safety and operations of the corridor. Highway Safety staff will also be responsible for conducting the crash data analysis and reviewing the RSA to allocate funding to the proposed safety improvement projects that are eligible.

Figure 1 identifies the nine major steps of the process used by SCDOT to conduct the RSA.

Figure 1.


RSA Process
1
Identify project or existing road to be assessed
2
Select multi-disciplinary RSA team
3
Analyze crash data in detail
4
Kick-Off meeting to review crash data and project information
5
Perform field review under various conditions
6
Conduct RSA analysis by finding issues and concerns
7
Prepare RSA report based on findings
8
Present RSA findings to sponsor or design team
9
Incorporate findings into projects when appropriate

SCDOT Safety Office Annual Investment Plan

Emphasis Area: Roadway Departure	$70M Emphasis Area Allocation
Rural Road Safety Program	*$50M*
Interstate Safety Program	*$11M*
Rumble Strip Installation Program	*$9M*
Emphasis Area: Intersections & Other High Risk Locations	**$22M Emphasis Area Allocation**
Intersection Safety Program	*$13M*
Railroad Safety Program	*$4M*
Road Safety Assessments Program	*$5M*
Safety Enforcement / Partnership Initiatives	
• *Safety Improvement Teams (SIT)*	*included in project costs*
• *Target Zero Enforcement Teams (TZT)*	*previously allocated*
Emphasis Area: Non-motorized Users	**$5M Emphasis Area Allocation**
Pedestrian & Bicycle Safety Program	*$5M*
Safety Data Research & Analytics	**$2M**
Total Annual Funding	**$99M**

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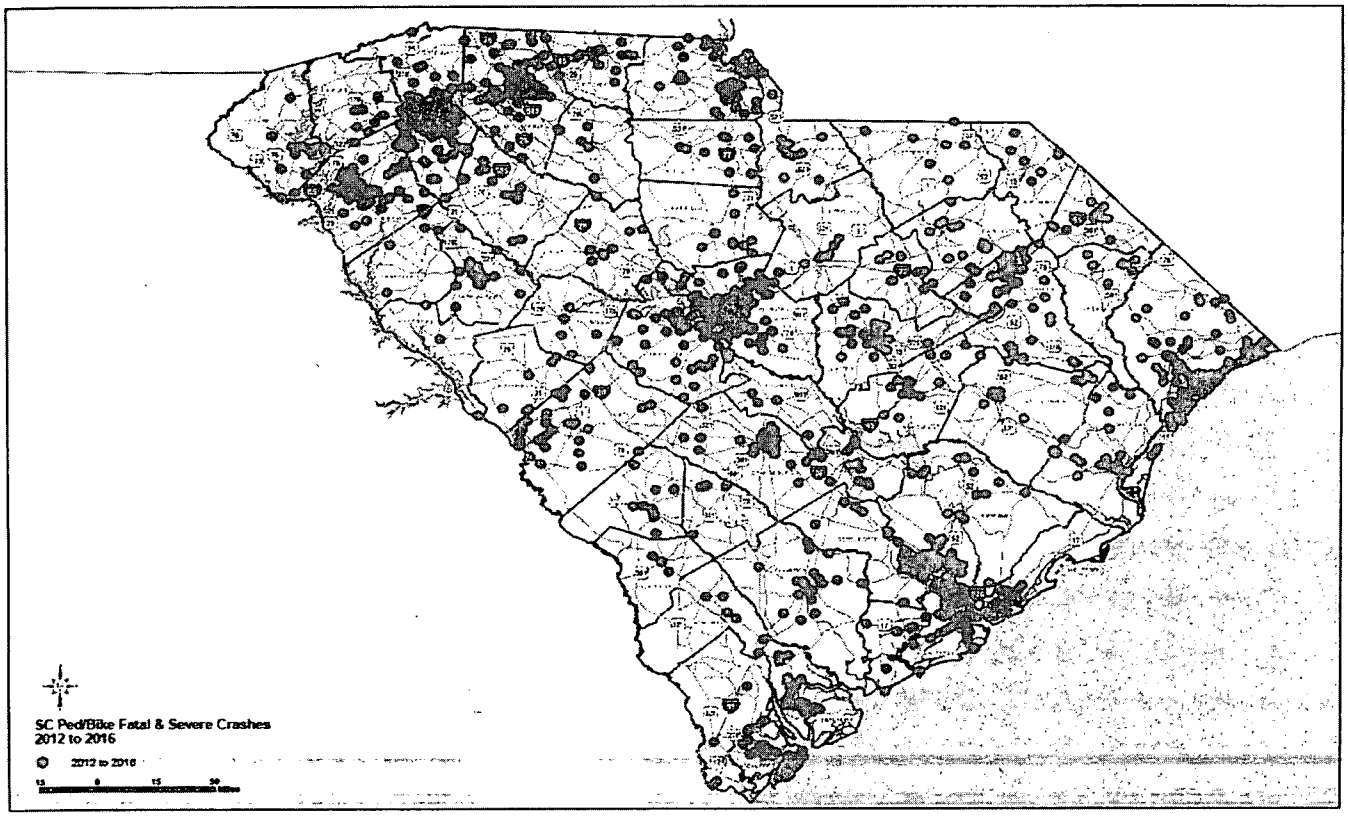
489

Non-motorized User Safety Program

Fatal and Serious Injury Crashes 2012-2016



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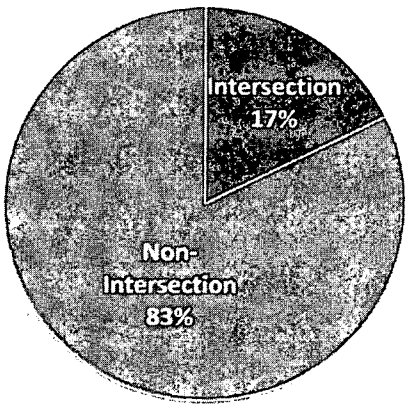
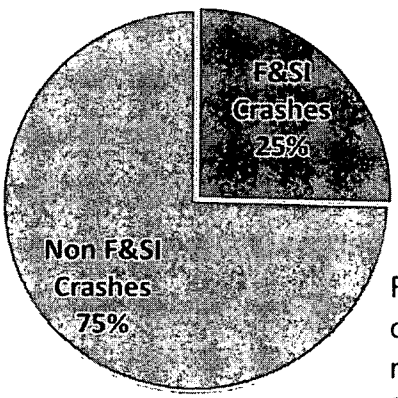
Non-motorized User Safety Program

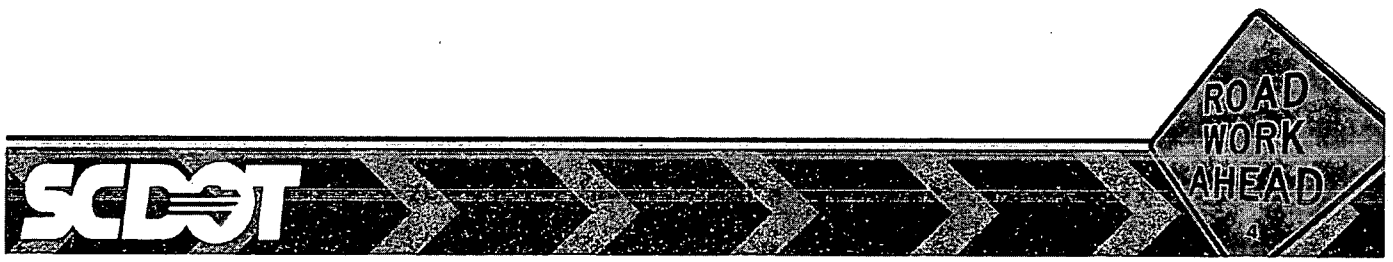
Non-motorized User Crashes by Location



Non-motorized User Crashes by Severity



For all road users, only 3% of crashes result in Fatal or Severe Injury Crash



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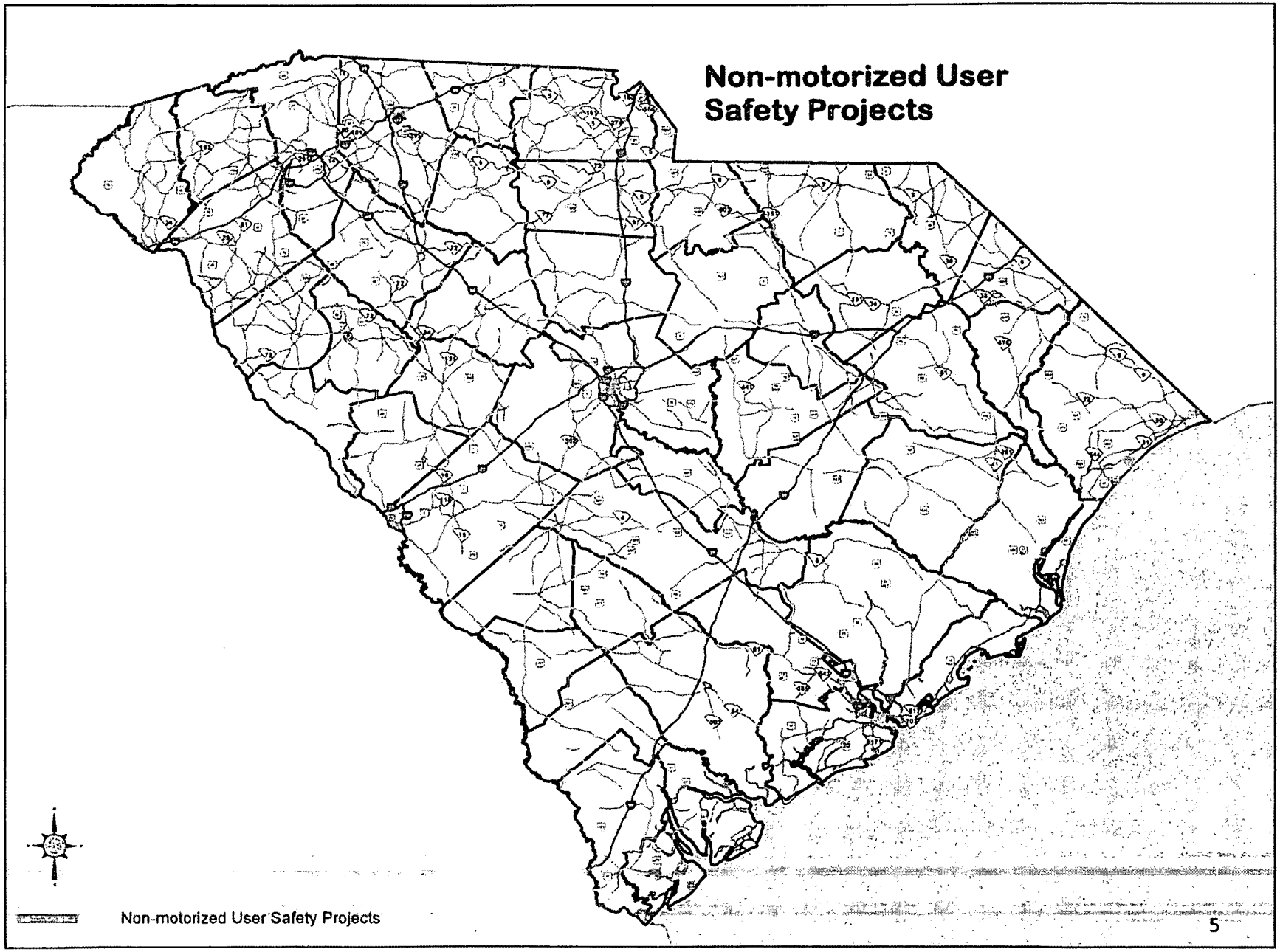
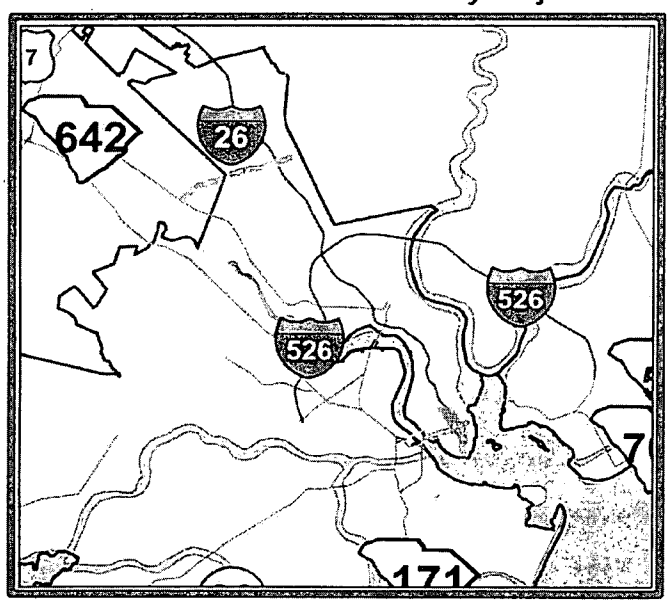
491


Non-motorized User Safety Projects
Non-motorized User Safety Projects
5

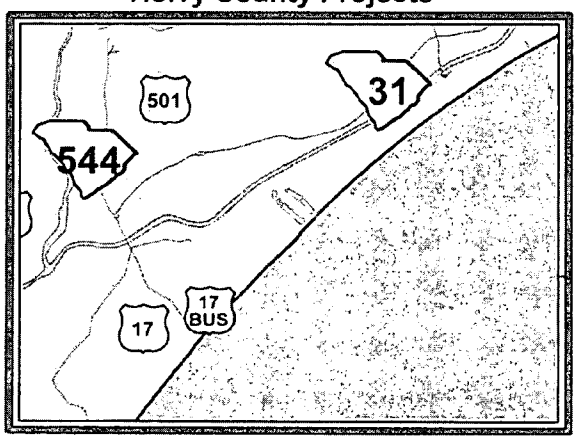
Non-motorized User Safety Projects

Charleston/Dorchester County Projects

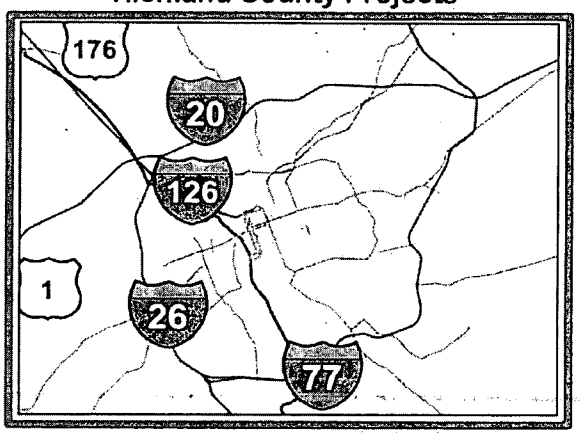


Non-motorized User Safety Projects

Horry County Projects



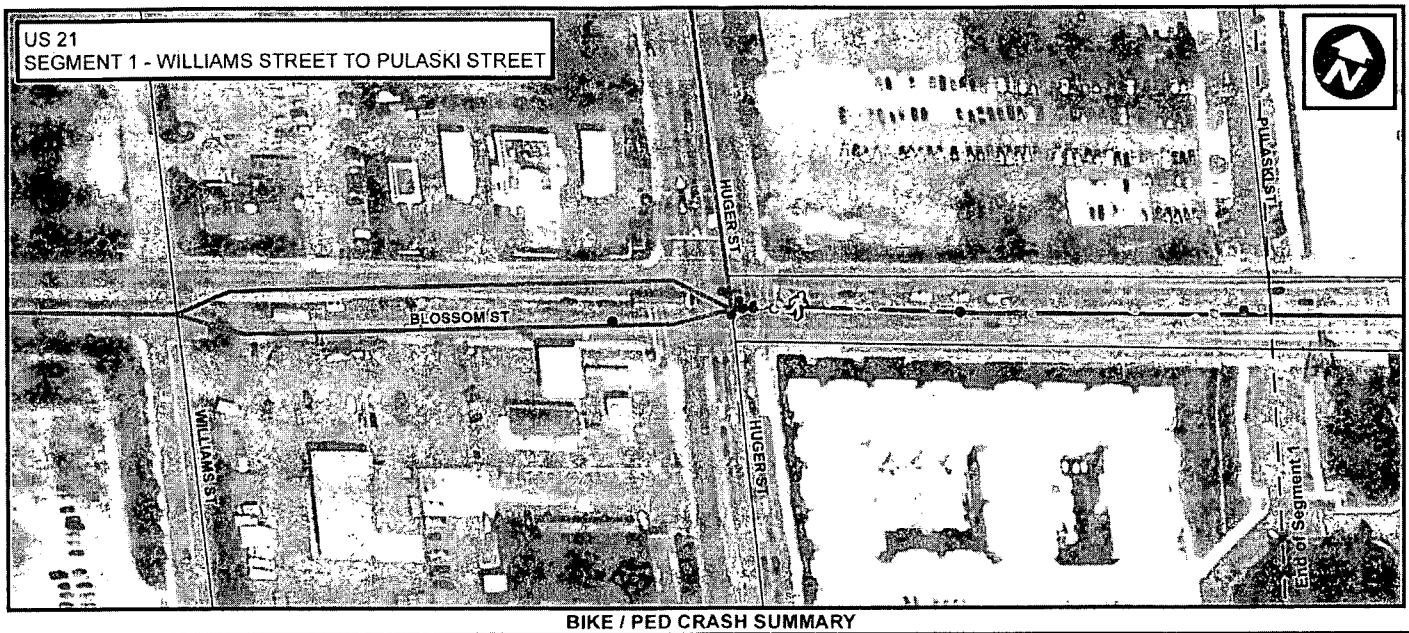
Richland County Projects



6

INTERVENORS_SCDOT_000009

493



BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 1 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 1	WET = 0 DRY = 1	PDO = 0 INJURY = 1 FATAL = 0	

TOTAL CRASH SUMMARY

Kimley»Horn	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	ANGLE CRASH = 11 NOT WITH VEHICLE = 2 REAR END = 23 SIDESWIPE = 3 OTHER / UNKNOWN = 1	NIGHT = 16 DAY = 24	WET = 9 DRY = 31	PDO = 31 INJURY = 9 FATAL = 0	SEGMENT 1 SCALE: 1" = 100' SHEET 2 OF 16

INTERVENORS_SCDOT_000010

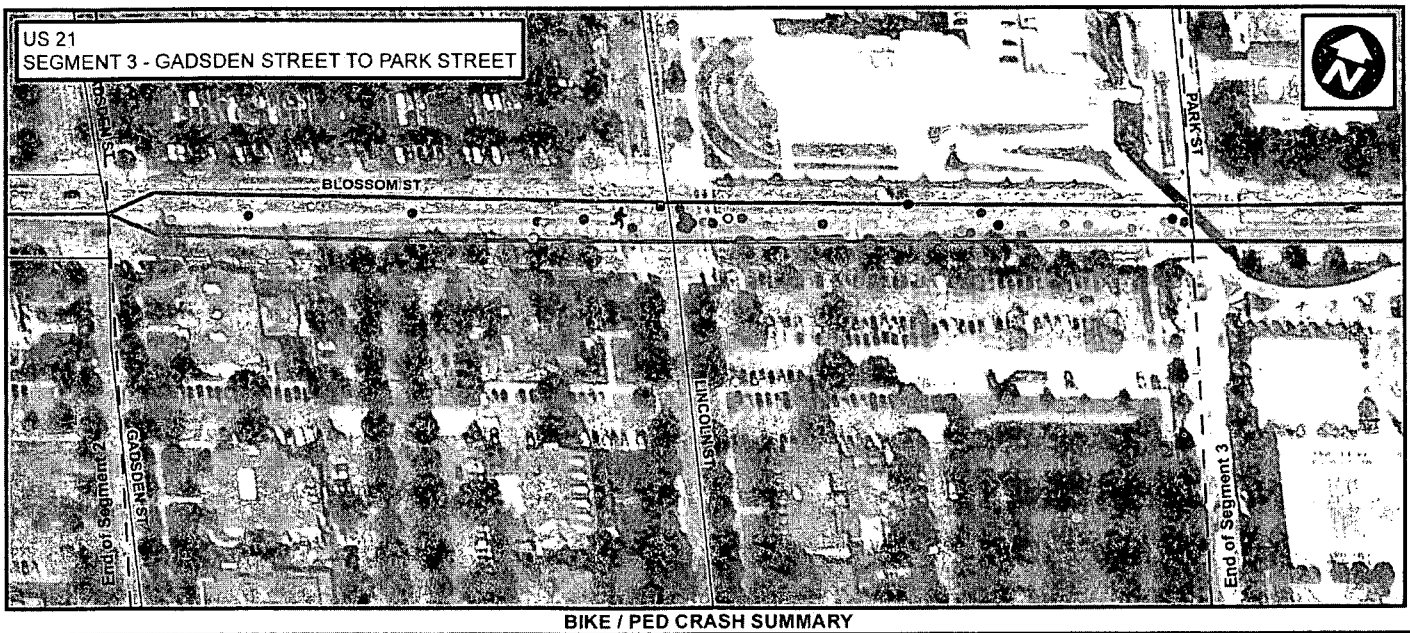
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 0 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 0	WET = 0 DRY = 0	PDO = 0 INJURY = 0 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 4 NOT WITH VEHICLE = 0 REAR END = 14 SIDESWIPE = 3 OTHER / UNKNOWN = 0	NIGHT = 7 DAY = 14	WET = 3 DRY = 18	PDO = 16 INJURY = 5 FATAL = 0	SEGMENT 2 SCALE: 1" = 100' SHEET 3 OF 16

INTERVENORS_SCDOT_000011



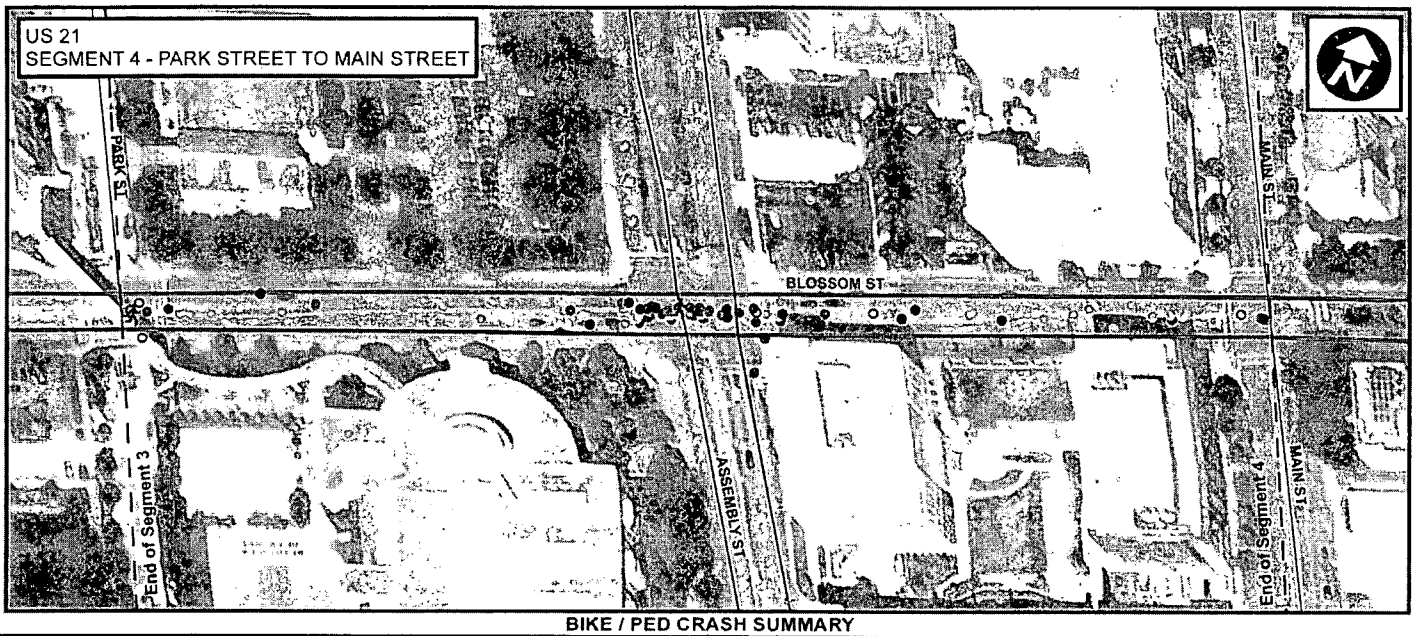
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 1 PEDESTRIAN, INJURY = 0 PEDESTRIAN, FATAL = 0	NIGHT = 1 DAY = 0	WET = 0 DRY = 1	PDO = 1 INJURY = 0 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 20 NOT WITH VEHICLE = 4 REAR END = 20 SIDESWIPE = 4 OTHER / UNKNOWN = 1	NIGHT = 12 DAY = 37	WET = 7 DRY = 42	PDO = 40 INJURY = 9 FATAL = 0	SEGMENT 3 SCALE: 1" = 100' SHEET 4 OF 16

INTERVENORS_SCDOT_000012



BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 2 PEDESTRIAN, INJURY = 0 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 2	WET = 0 DRY = 2	PDO = 2 INJURY = 0 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 28 NOT WITH VEHICLE = 10 REAR END = 55 SIDESWIPE = 18 OTHER / UNKNOWN = 6	NIGHT = 36 DAY = 81	WET = 18 DRY = 99	PDO = 101 INJURY = 16 FATAL = 0	SEGMENT 4 SCALE: 1" = 100' SHEET 5 OF 16

INTERVENORS_SCDOT_000013

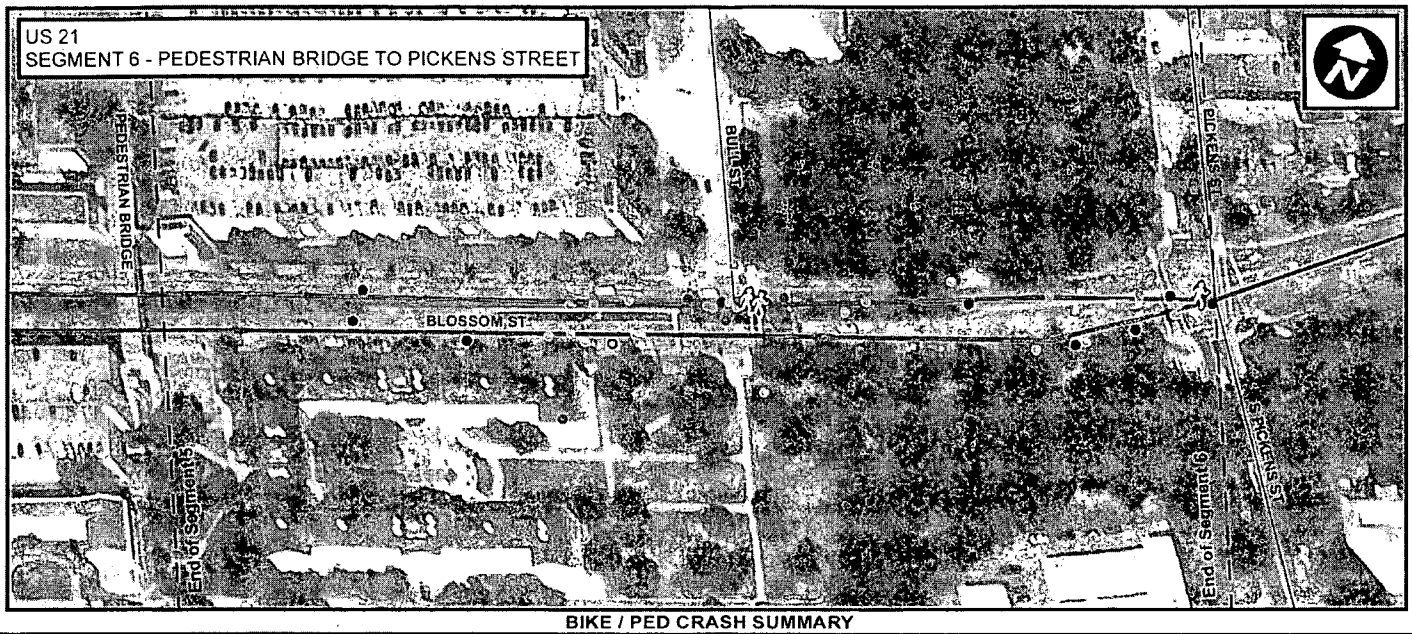
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 0 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 0	WET = 0 DRY = 0	PDO = 0 INJURY = 0 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 44 NOT WITH VEHICLE = 2 REAR END = 63 SIDESWIPE = 9 OTHER / UNKNOWN = 2	NIGHT = 37 DAY = 83	WET = 21 DRY = 99	PDO = 107 INJURY = 13 FATAL = 0	SEGMENT 5 SCALE: 1" = 100' SHEET 6 OF 16

INTERVENORS_SCDOT_000014



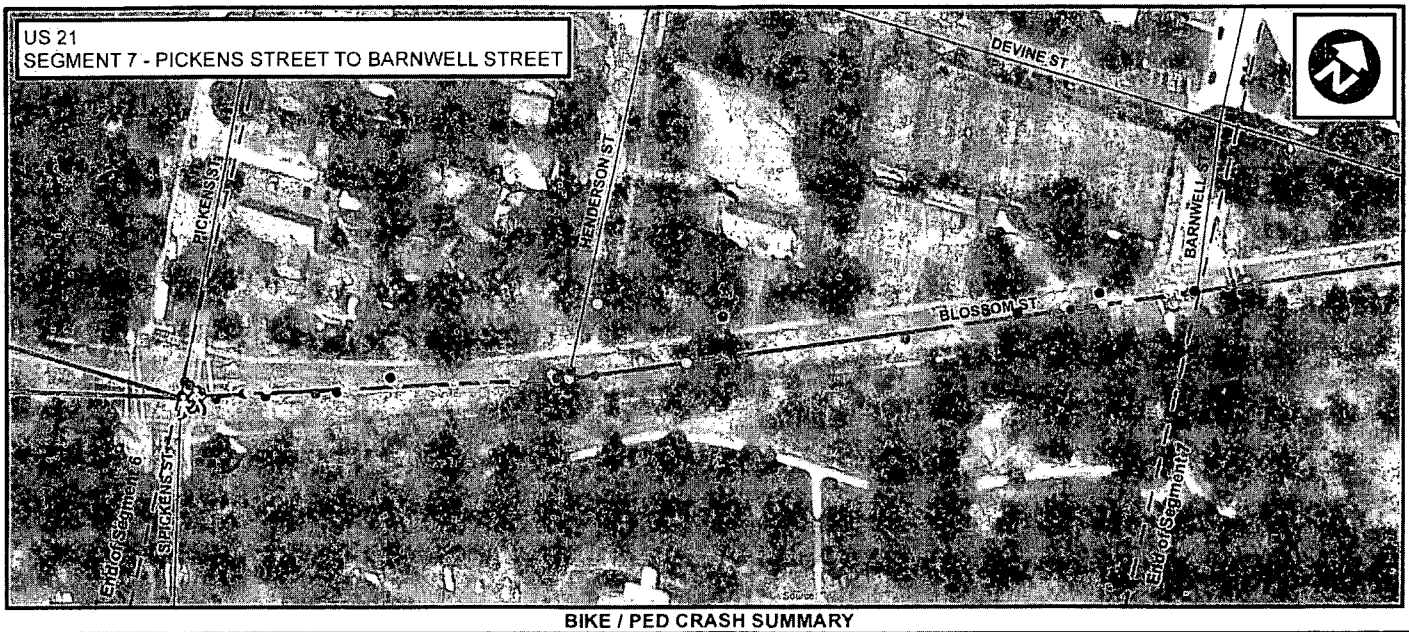
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 3 PEDESTRIAN, FATAL = 0	NIGHT = 1 DAY = 2	WET = 3 DRY = 0	PDO = 0 INJURY = 3 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 10 NOT WITH VEHICLE = 4 REAR END = 30 SIDESWIPE = 9 OTHER / UNKNOWN = 2	NIGHT = 16 DAY = 39	WET = 14 DRY = 41	PDO = 49 INJURY = 6 FATAL = 0	SEGMENT 6 SCALE: 1" = 100' SHEET 7 OF 16

INTERVENORS_SCDOT_000015



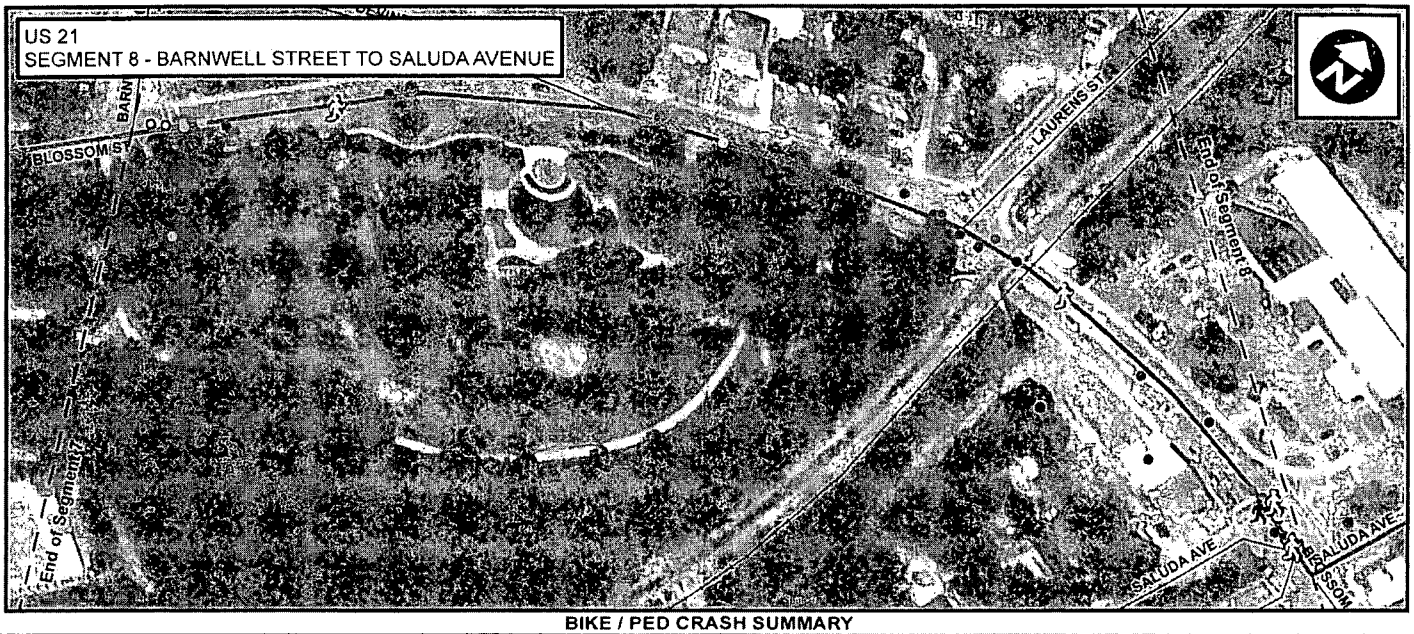
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 2 PEDESTRIAN, FATAL = 0	NIGHT = 2 DAY = 0	WET = 0 DRY = 2	PDO = 0 INJURY = 2 FATAL = 0	

TOTAL CRASH SUMMARY

Kimley»Horn	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	ANGLE CRASH = 18 NOT WITH VEHICLE = 5 REAR END = 33 SIDESWIPE = 8 OTHER / UNKNOWN = 0	NIGHT = 19 DAY = 45	WET = 10 DRY = 54	PDO = 55 INJURY = 8 FATAL = 1	SEGMENT 7 SCALE: 1" = 100' SHEET 8 OF 16

INTERVENORS_SCDOT_000016



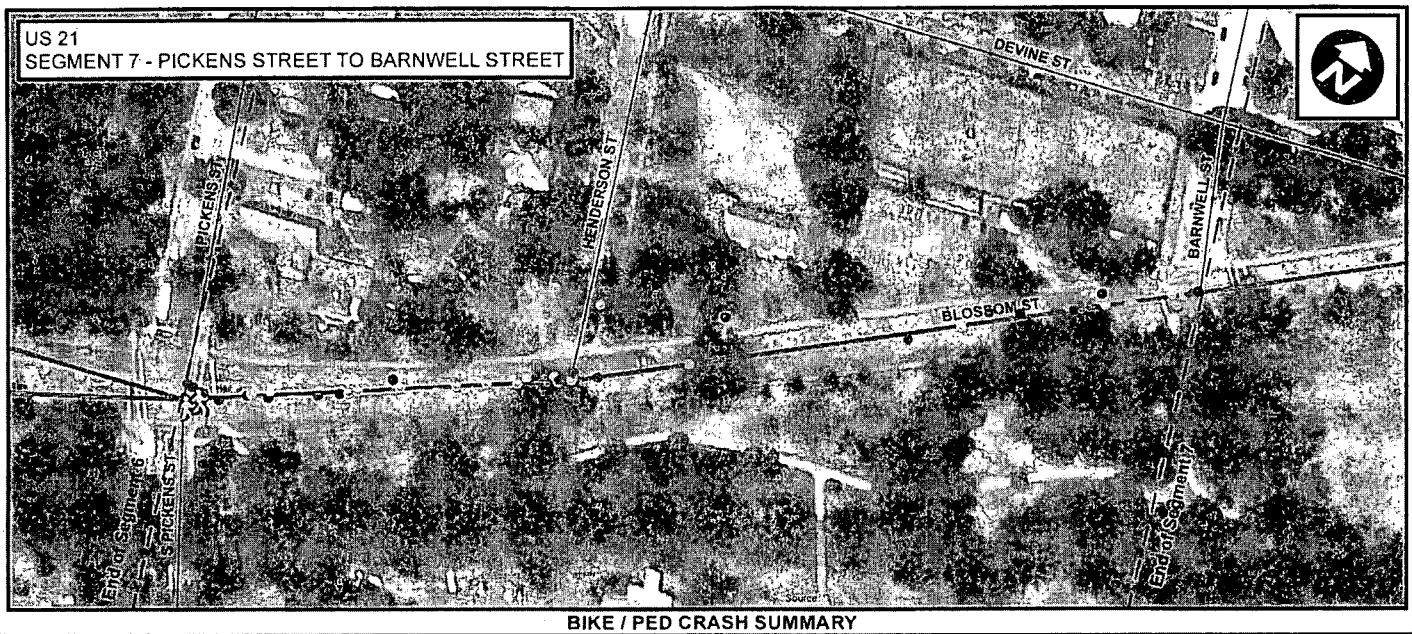
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 1 PEDESTRIAN, INJURY = 4 PEDESTRIAN, FATAL = 0	NIGHT = 4 DAY = 1	WET = 0 DRY = 5	PDO = 1 INJURY = 4 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 23 NOT WITH VEHICLE = 8 REAR END = 13 SIDESWIPE = 7 OTHER / UNKNOWN = 4	NIGHT = 16 DAY = 39	WET = 4 DRY = 51	PDO = 44 INJURY = 11 FATAL = 0	SEGMENT 8 SCALE: 1" = 100' SHEET 9 OF 16

INTERVENORS_SCDOT_000017



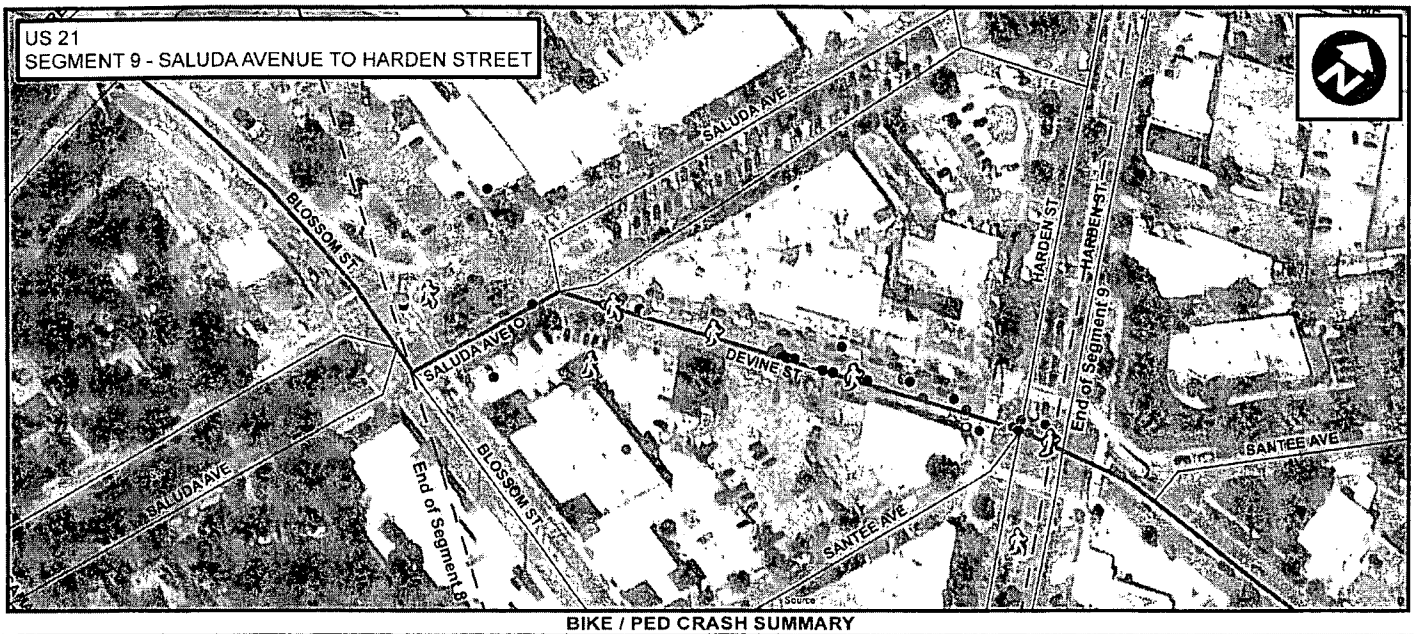
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 2 PEDESTRIAN, FATAL = 0	NIGHT = 2 DAY = 0	WET = 0 DRY = 2	PDO = 0 INJURY = 2 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 18 NOT WITH VEHICLE = 5 REAR END = 33 SIDESWIPE = 8 OTHER / UNKNOWN = 0	NIGHT = 19 DAY = 45	WET = 10 DRY = 54	PDO = 55 INJURY = 8 FATAL = 1	SEGMENT 7 SCALE: 1" = 100' SHEET 8 OF 16

INTERVENORS_SCDOT_000018



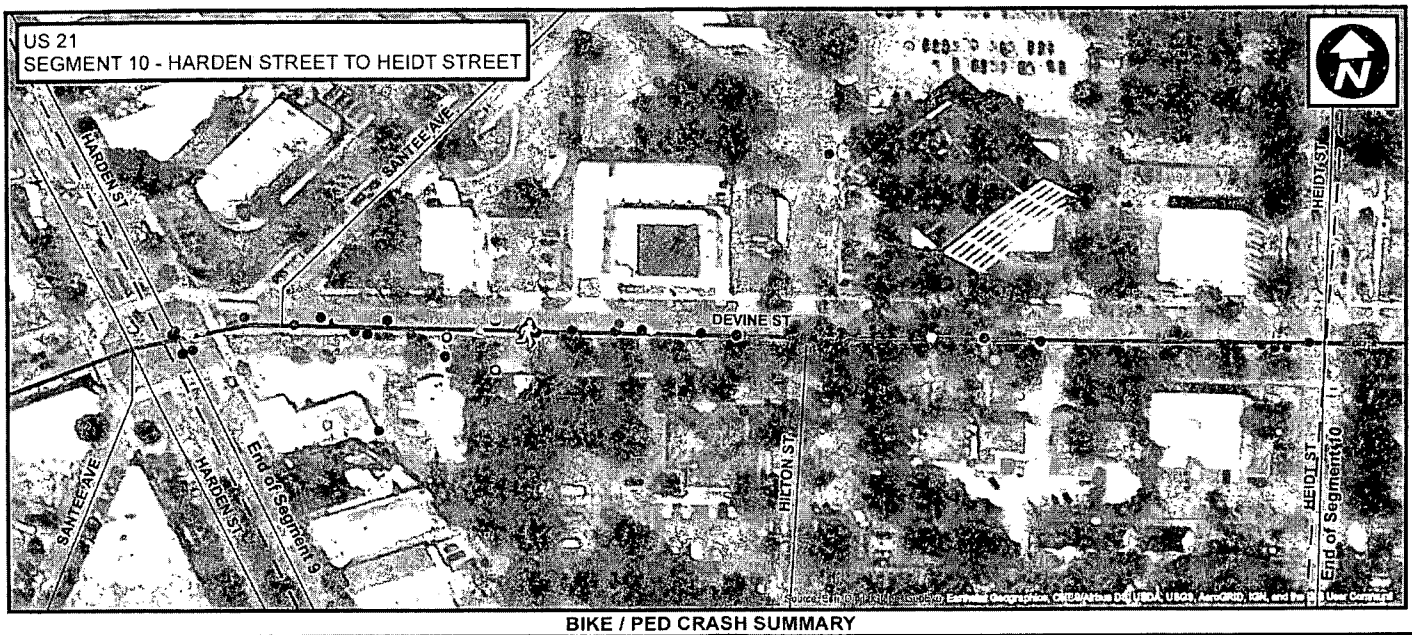
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 7 PEDESTRIAN, FATAL = 0	NIGHT = 5 DAY = 2	WET = 2 DRY = 5	PDO = 0 INJURY = 7 FATAL = 0	

TOTAL CRASH SUMMARY

Kimley»Horn	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	ANGLE CRASH = 20 NOT WITH VEHICLE = 7 REAR END = 21 SIDESWIPE = 16 OTHER / UNKNOWN = 3	NIGHT = 29 DAY = 38	WET = 8 DRY = 59	PDO = 58 INJURY = 9 FATAL = 0	SEGMENT 9 SCALE: 1" = 100' SHEET 10 OF 16

INTERVENORS_SCDOT_000019



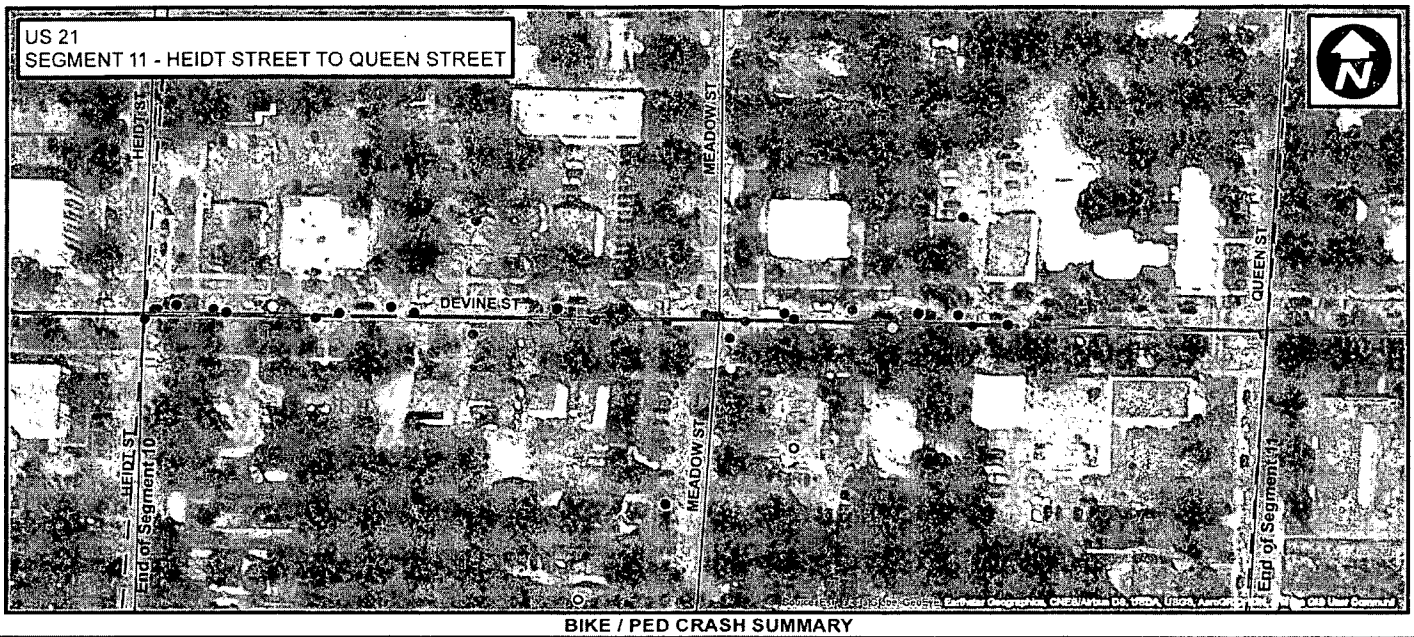
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 1 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 1	WET = 0 DRY = 1	PDO = 0 INJURY = 1 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 33 NOT WITH VEHICLE = 2 REAR END = 20 SIDESWIPE = 15 OTHER / UNKNOWN = 3	NIGHT = 26 DAY = 47	WET = 12 DRY = 61	PDO = 62 INJURY = 11 FATAL = 0	SEGMENT 10 SCALE: 1" = 100' SHEET 11 OF 16

INTERVENORS_SCDOT_000020



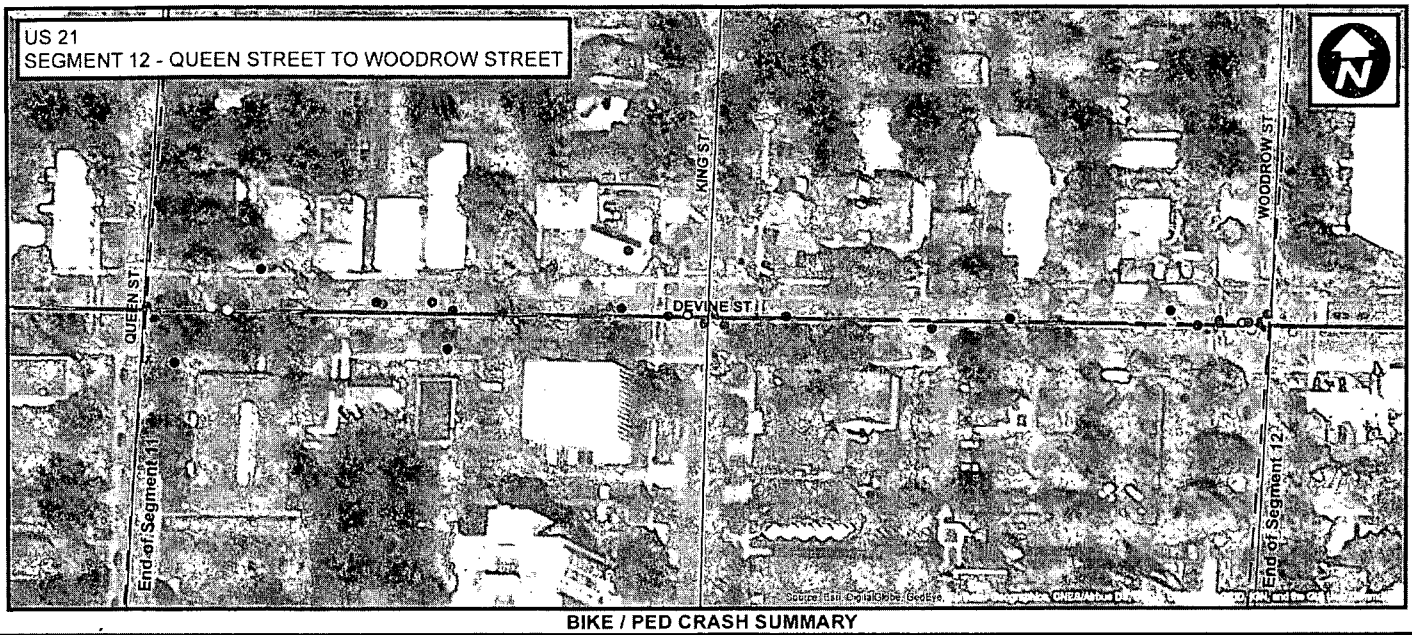
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 0 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 0	WET = 0 DRY = 0	PDO = 0 INJURY = 0 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 20 NOT WITH VEHICLE = 0 REAR END = 9 SIDESWIPE = 17 OTHER / UNKNOWN = 2	NIGHT = 9 DAY = 39	WET = 8 DRY = 40	PDO = 40 INJURY = 8 FATAL = 0	SEGMENT 11 SCALE: 1" = 100' SHEET 12 OF 16

INTERVENORS_SCDOT_000021



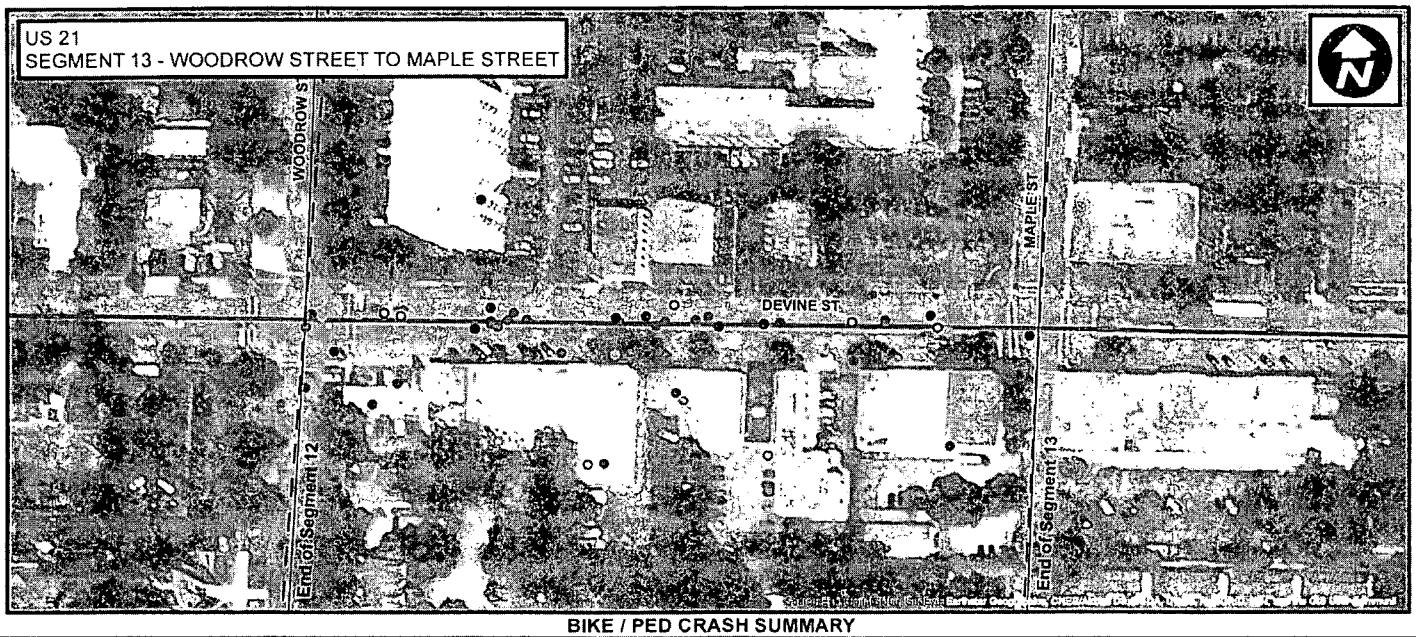
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 0 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 0	WET = 0 DRY = 0	PDO = 0 INJURY = 0 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 25 NOT WITH VEHICLE = 1 REAR END = 14 SIDESWIPE = 10 OTHER / UNKNOWN = 2	NIGHT = 3 DAY = 49	WET = 5 DRY = 47	PDO = 41 INJURY = 9 FATAL = 0	SEGMENT 12 SCALE: 1" = 100' SHEET 13 OF 16

INTERVENORS_SCDOT_000022



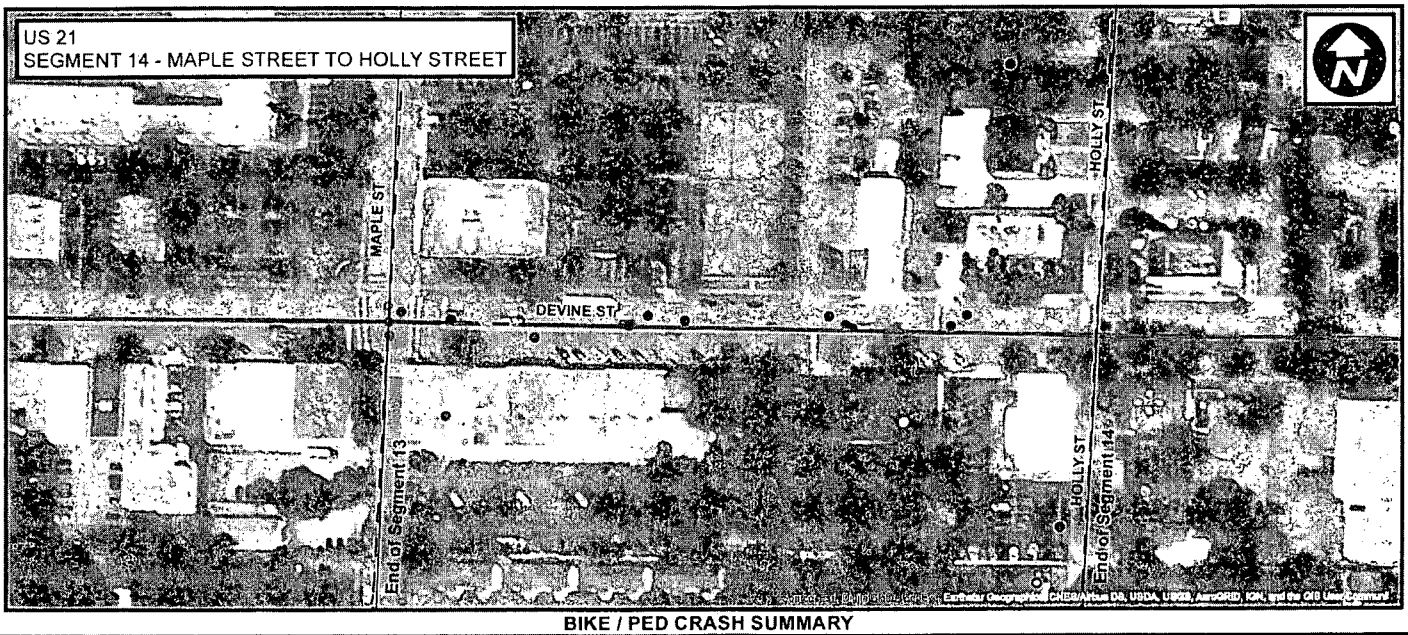
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 0 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 0	WET = 0 DRY = 0	PDO = 0 INJURY = 0 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 33 NOT WITH VEHICLE = 1 REAR END = 10 SIDESWIPE = 8 OTHER / UNKNOWN = 7	NIGHT = 19 DAY = 40	WET = 5 DRY = 54	PDO = 51 INJURY = 8 FATAL = 0	SEGMENT 13 SCALE: 1" = 100' SHEET 14 OF 16

INTERVENORS_SCDOT_000023



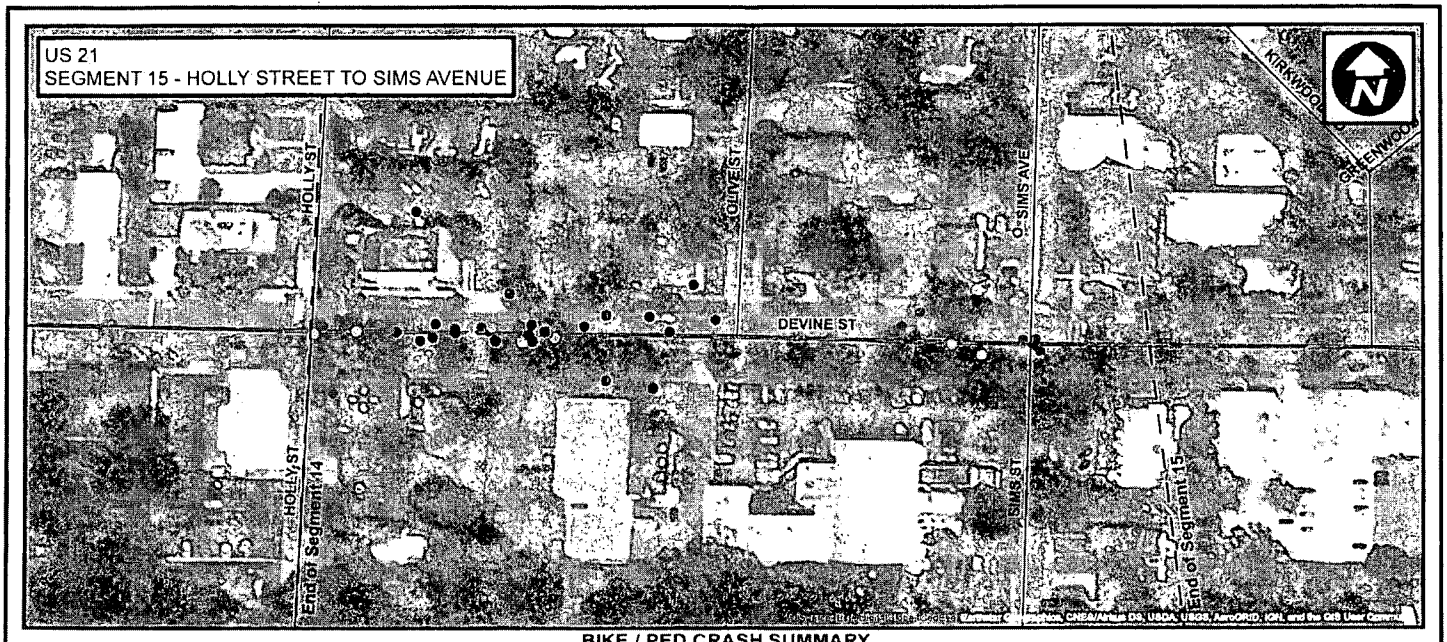
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 0 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 0	WET = 0 DRY = 0	PDO = 0 INJURY = 0 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 12 NOT WITH VEHICLE = 1 REAR END = 10 SIDESWIPE = 7 OTHER / UNKNOWN = 1	NIGHT = 9 DAY = 22	WET = 4 DRY = 27	PDO = 26 INJURY = 5 FATAL = 0	SEGMENT 14 SCALE: 1" = 100' SHEET 15 OF 16

INTERVENORS_SCDOT_000024



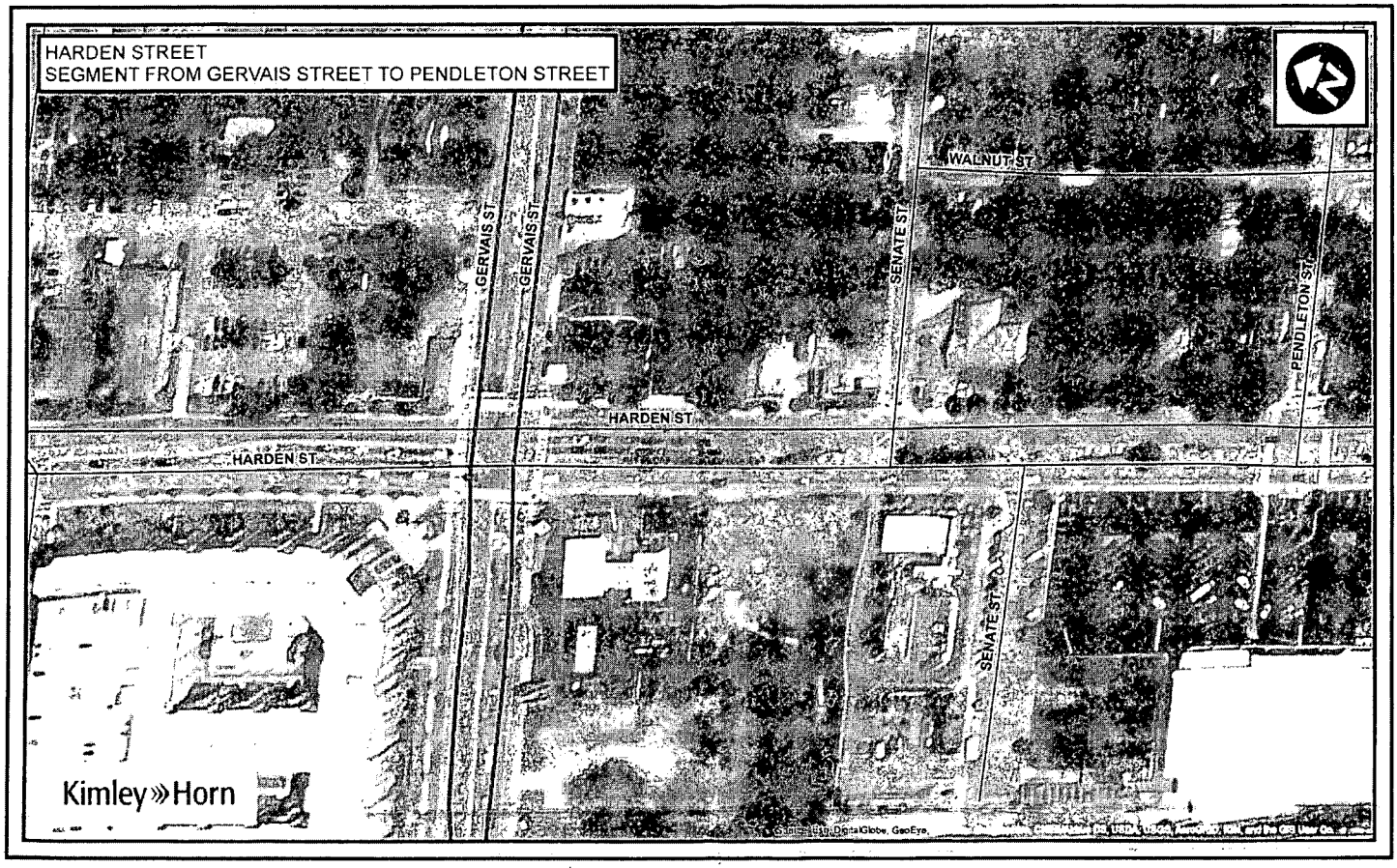
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 0 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 0 PEDESTRIAN, INJURY = 0 PEDESTRIAN, FATAL = 0	NIGHT = 0 DAY = 0	WET = 0 DRY = 0	PDO = 0 INJURY = 0 FATAL = 0	

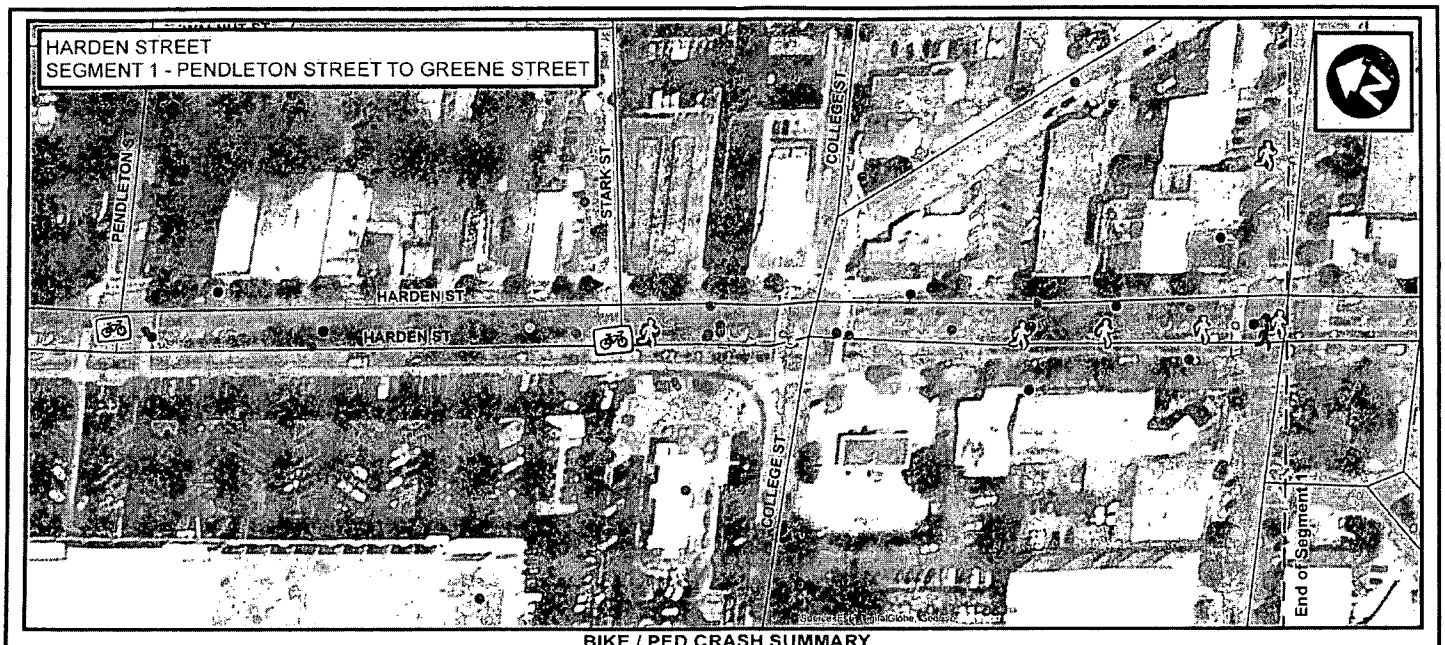
TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 16 NOT WITH VEHICLE = 0 REAR END = 11 SIDESWIPE = 22 OTHER / UNKNOWN = 1	NIGHT = 9 DAY = 41	WET = 6 DRY = 44	PDO = 48 INJURY = 2 FATAL = 0	SEGMENT 15 SCALE: 1" = 100' SHEET 16 OF 16

INTERVENORS_SCDOT_000025



INTERVENORS_SCDOT_000026



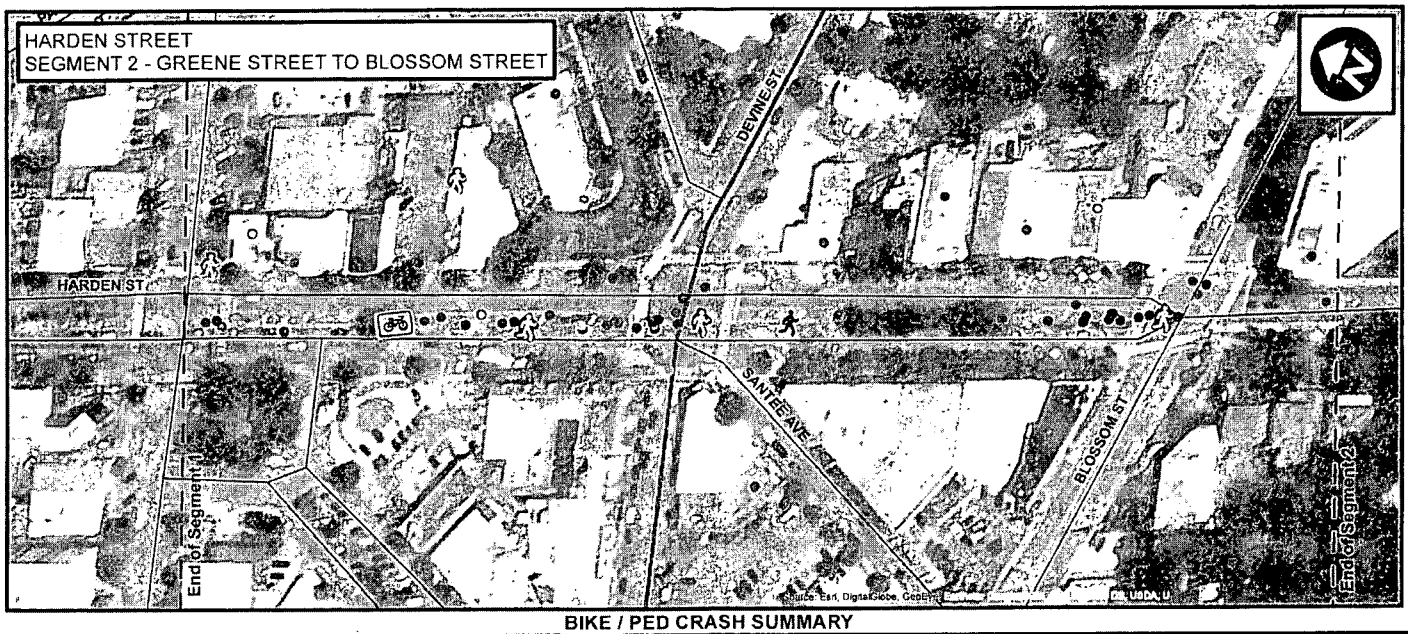
BIKE / PED CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 1 BICYCLE, INJURY = 1 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 1 PEDESTRIAN, INJURY = 6 PEDESTRIAN, FATAL = 0	NIGHT = 6 DAY = 3	WET = 3 DRY = 6	PDO = 2 INJURY = 7 FATAL = 0	

TOTAL CRASH SUMMARY

	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
Kimley»Horn	ANGLE CRASH = 32 NOT WITH VEHICLE = 7 REAR END = 21 SIDESWIPE = 11 BACKED INTO = 1 OTHER / UNKNOWN = 1	NIGHT = 30 DAY = 43	WET = 11 DRY = 62	PDO = 58 INJURY = 15 FATAL = 0	SEGMENT 1 SCALE: 1" = 100' SHEET 2 OF 3

INTERVENORS_SCDOT_000027



BIKE / PED CRASH SUMMARY

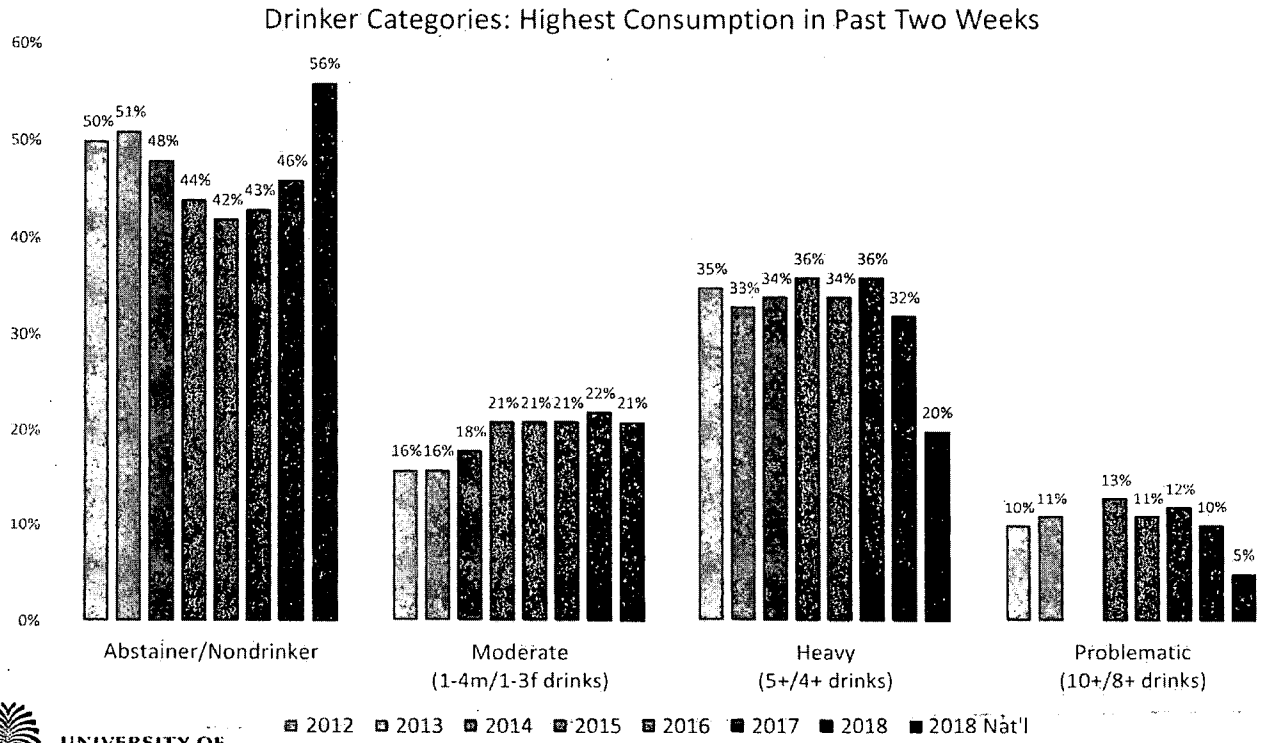
	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	BICYCLE, PDO = 0 BICYCLE, INJURY = 1 BICYCLE, FATAL = 0 PEDESTRIAN, PDO = 1 PEDESTRIAN, INJURY = 5 PEDESTRIAN, FATAL = 0	NIGHT = 4 DAY = 3	WET = 2 DRY = 5	PDO = 1 INJURY = 6 FATAL = 0	

TOTAL CRASH SUMMARY

Kimley»Horn	CRASH TYPE	LIGHT CONDITIONS	SURFACE CONDITIONS	SEVERITY	
	ANGLE CRASH = 28 NOT WITH VEHICLE = 10 REAR END = 25 SIDESWIPE = 19 BACKED INTO = 12 OTHER / UNKNOWN = 5	NIGHT = 47 DAY = 52	WET = 14 DRY = 85	PDO = 87 INJURY = 12 FATAL = 0	SEGMENT 2 SCALE: 1" = 100' SHEET 3 OF 3

INTERVENORS_SCDOT_000028

High Risk Drinking by First Year Students, 2012-2018



Abstainer/Non-Drinker: 0 drinks. Moderate: 1-4 drinks for men, 1-3 drinks for women.
Heavy: 5+ drinks for men, 4+ drinks for women. Problematic: 10+ drinks for men, 8+ drinks for women.
Source: Alcohol Edu Survey #3

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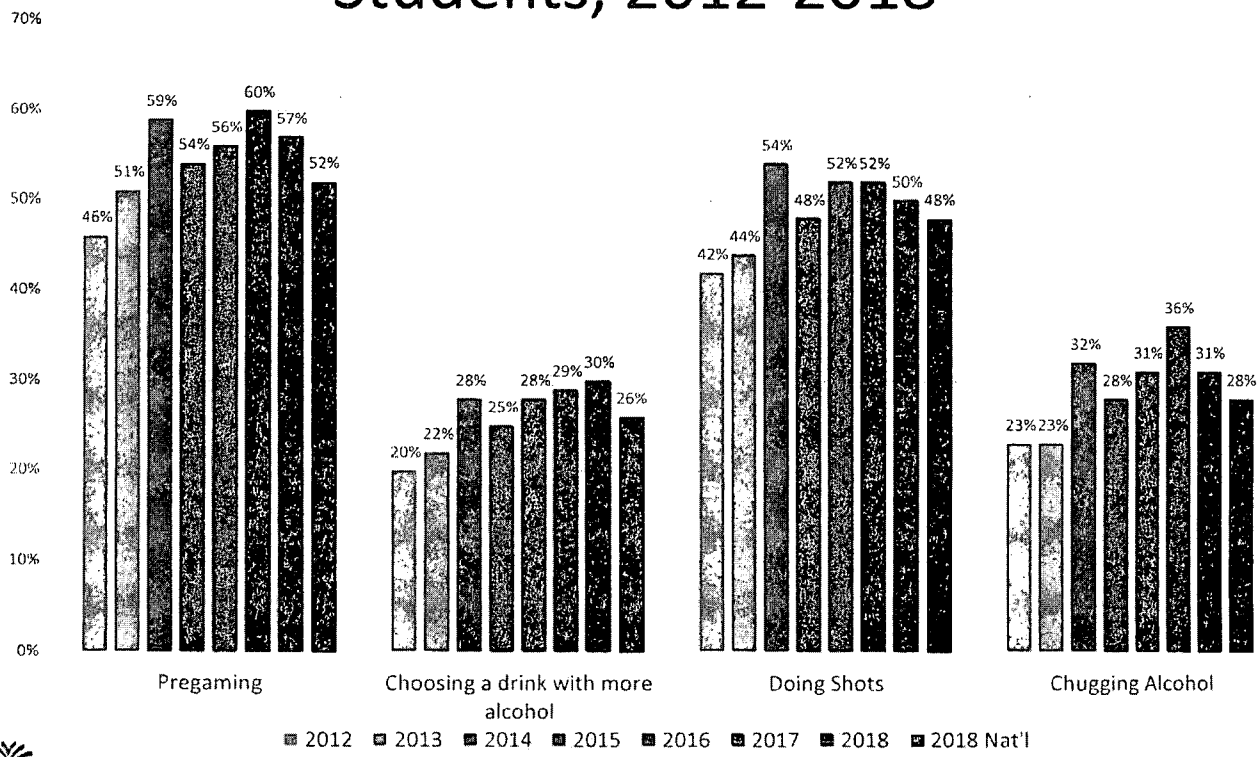
513

High Risk Drinking Behaviors by First Year Students, 2012-2018



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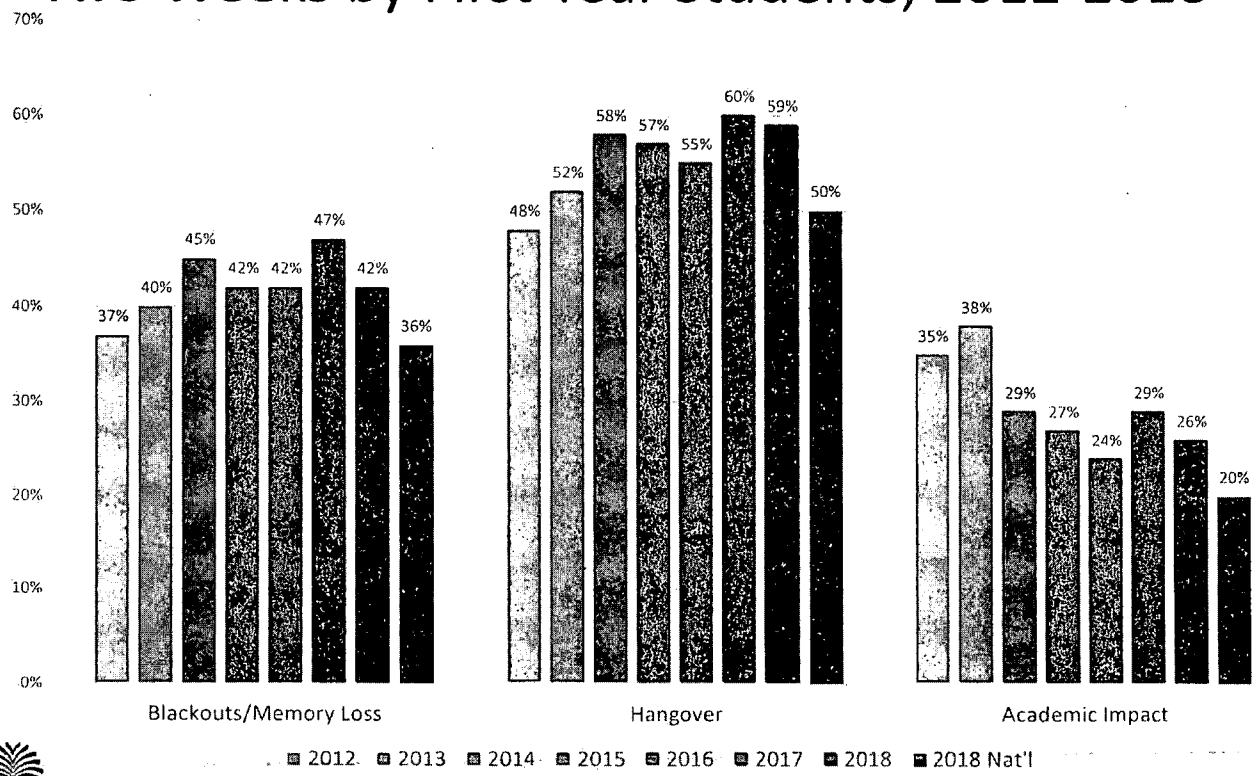
Percentages represent responses of 5-7 on 7 point Likert scale, 1=Never.
Source: Alcohol Edu Survey #3

514

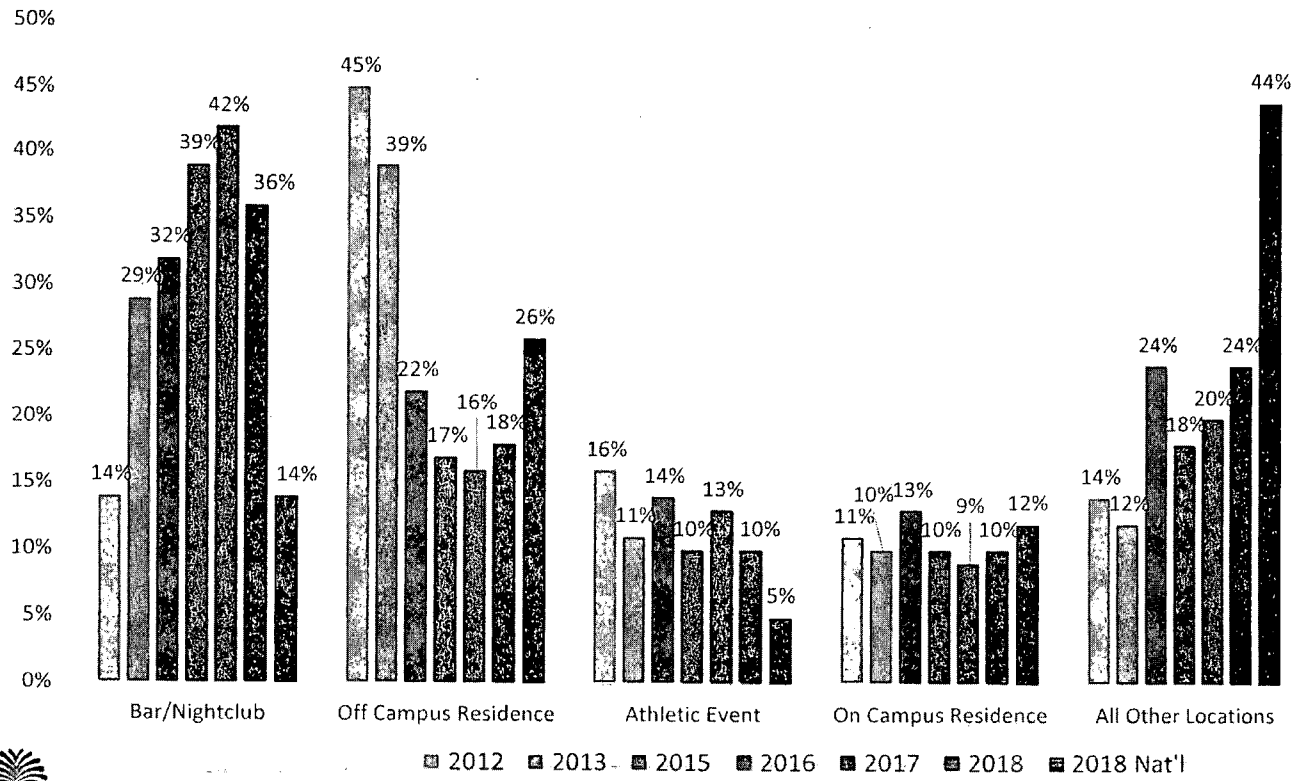
Consequences from Drinking Experienced in the Past Two Weeks by First Year Students, 2012-2018



UNIVERSITY OF SOUTH CAROLINA

Percentages represent responses of 2-7 on 7 point Likert scale, 1=Never.
Source: Alcohol Edu Survey #3

Where First Year Students Drink, 2012-2018



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All Other Locations includes Fraternity/Sorority House, My Own Home (not listed), Outdoor setting, Restaurant, Car, and None of These.

Source: Alcohol Edu Survey #3 (October), question not asked in 2014

516

517

Group Therapy

Congratulations!

You have successfully completed the ServSafe Alcohol® Responsible Alcohol Service Training and Certification Program. This is your official ServSafe Alcohol Certification Card and provides confirmation that you have studied, and are knowledgeable about, how to serve alcohol responsibly.

Thank you for participating in the ServSafe Alcohol program. Responsible alcohol service begins with the choices you make, and ServSafe Alcohol training will help you make the right decision when the moment arises.

By completing the ServSafe Alcohol program, you show your dedication to safe and responsible alcohol service. The ServSafe Alcohol program and the National Restaurant Association are dedicated to helping you continue to raise the bar on alcohol safety.

To learn more about our full suite of responsible alcohol service training products, contact your State Restaurant Association, your distributor, or visit us at ServSafe.com.

We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Senior Vice President, National Restaurant Association Solutions

ID # 13012979

CARD # 13906130

ServSafe
National Restaurant Association

ServSafe Alcohol® CERTIFICATE

CEDRIC JOHNSON

NAME

7/31/2016

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.

This certificate confirms completion of the ServSafe Alcohol® responsible alcohol service program.

Sherman Brown
Senior Vice President, National Restaurant Association Solutions

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141029D1 v.14.02

In Alaska you must laminate your card for it to be valid.

NOTE: You can access your score and certification information anytime at ServSafe.com with the class number provided on this form.

If you have any questions regarding your certification please contact the National Restaurant Association Service Center at ServiceCenter@restaurant.org or 800.765.2122, ext. 6703.

PETITIONER'S EXHIBIT

PENGAD 800-631-6989

2/11/2016

NATIONAL RESTAURANT ASSOCIATION
175 West Jackson Boulevard
Suite 1500
Chicago, IL 60604-2814
1.800.SERVSAFE
312.715.1010 in the Chicago area
ServSafe.com

Certified Food Protection Manager
Certified Food Safety Manager
Certified Professional in Food Safety
Certified Food Protection Professional
Certified Food Safety Professional

Congratulations!

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We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Senior Vice President, National Restaurant Association Solutions

ID # 13001139

CARD # 13894706

ServSafe
National Restaurant Association

ServSafe Alcohol® CERTIFICATE

BAILEY CLARK

NAME

7/9/2016

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.

This certificate confirms completion of the **ServSafe Alcohol®** responsible alcohol service program.

Sherman Brown

Senior Vice President, National Restaurant Association Solutions

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M102901 v.MCP

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In Alaska you must laminate your card for it to be valid.

NATIONAL RESTAURANT ASSOCIATION SOLUTIONS
175 W. Jackson Boulevard
Suite 1500
Chicago, IL 60604-2814
1.800.SERVSAFE
1.312.341.1740 (Fax)
ServSafe.com

Congratulations!

You have successfully completed the ServSafe Training and Certificate Program. This is your official ServSafe Alcohol Certificate Card and provides confirmation that you have studied, and are knowledgeable about, how to serve alcohol responsibly.

Thank you for participating in the ServSafe Alcohol program. Responsible alcohol service begins with the choices you make, and ServSafe Alcohol training will help you make the right decision when the moment arises.

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We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

ID # 15850331

CARD # 16598770

ServSafe

National Restaurant Association

ServSafe Alcohol® CERTIFICATE

VINCENT KORNICKEY

NAME

6/22/2016

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.

This certificate confirms completion of the **ServSafe Alcohol®** responsible alcohol service program.

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

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171108D1 e1/11

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NOTE: You can access your score and certification information anytime at ServSafe.com.

If you have any questions regarding your certification please contact the National Restaurant Association Service Center at ServiceCenter@restaurant.org or 800.765.2122 ext.6703.

NATIONAL RESTAURANT ASSOCIATION

ServSafe.com

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To learn more about our full suite of responsible alcohol service training products, contact your State Restaurant Association, your distributor or visit us at ServSafe.com.

We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

ID # [redacted]

CARD # [redacted]

ServSafe

National Restaurant Association

ServSafe Alcohol® CERTIFICATE

HALEY WILLIAMSON

NAME

10/8/2018

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.

This certificate confirms completion of the **ServSafe Alcohol®** responsible alcohol service program.

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

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17710801 v.1711

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If you have any questions regarding your certification please contact the National Restaurant Association Service Center at ServiceCenter@restaurant.org or 800.765.2122 ext. 5703.

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NATIONAL RESTAURANT ASSOCIATION

ServSafe.com

Congratulations!

You have successfully completed the ServSafe Alcohol program.

Earning your ServSafe Alcohol® certificate

Certificate Card and provides confirmation that you have studied and are knowledgeable about how to serve alcohol responsibly.

Thank you for participating in the ServSafe Alcohol program. Responsible alcohol service begins with the choices you make, and ServSafe Alcohol training will help you make the right decision when the moment arises.

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We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

ID # 15819827

CARD # 16806803

ServSafe

ServSafe Alcohol® CERTIFICATE

JORDAN COWLES

NAME

6/25/2018

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.

NOTE: You can access your score and certification information anytime at

If you have any questions regarding your certification please contact the National Restaurant Association Service Center at

This certificate confirms completion of the **ServSafe Alcohol®** responsible alcohol service program.

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

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NATIONAL RESTAURANT ASSOCIATION

ServSafe.com

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We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

ID # 15838310

CARD # 18745258

ServSafe

ServSafe Alcohol® CERTIFICATE

JACLYN MEYERS

NAME

8/2/2018

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.

This certificate confirms completion of the **ServSafe Alcohol®** responsible alcohol service program.

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

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In Alaska you must laminate your card for it to be valid.

NOTE: You can access your score and certification information anytime at

If you have any questions regarding your certification please contact the National Restaurant Association Service Center at

or

Congratulations!

You have successfully completed the ServSafe Alcohol training and certification program. This certificate and the wallet card are proof of your certification.

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We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

ID # 15853409

CARD # 16750276

ServSafe

ServSafe Alcohol® CERTIFICATE

ASHLYN BLACK

NAME

8/3/2018

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.

This certificate confirms completion of the **ServSafe Alcohol®** responsible alcohol service program.

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

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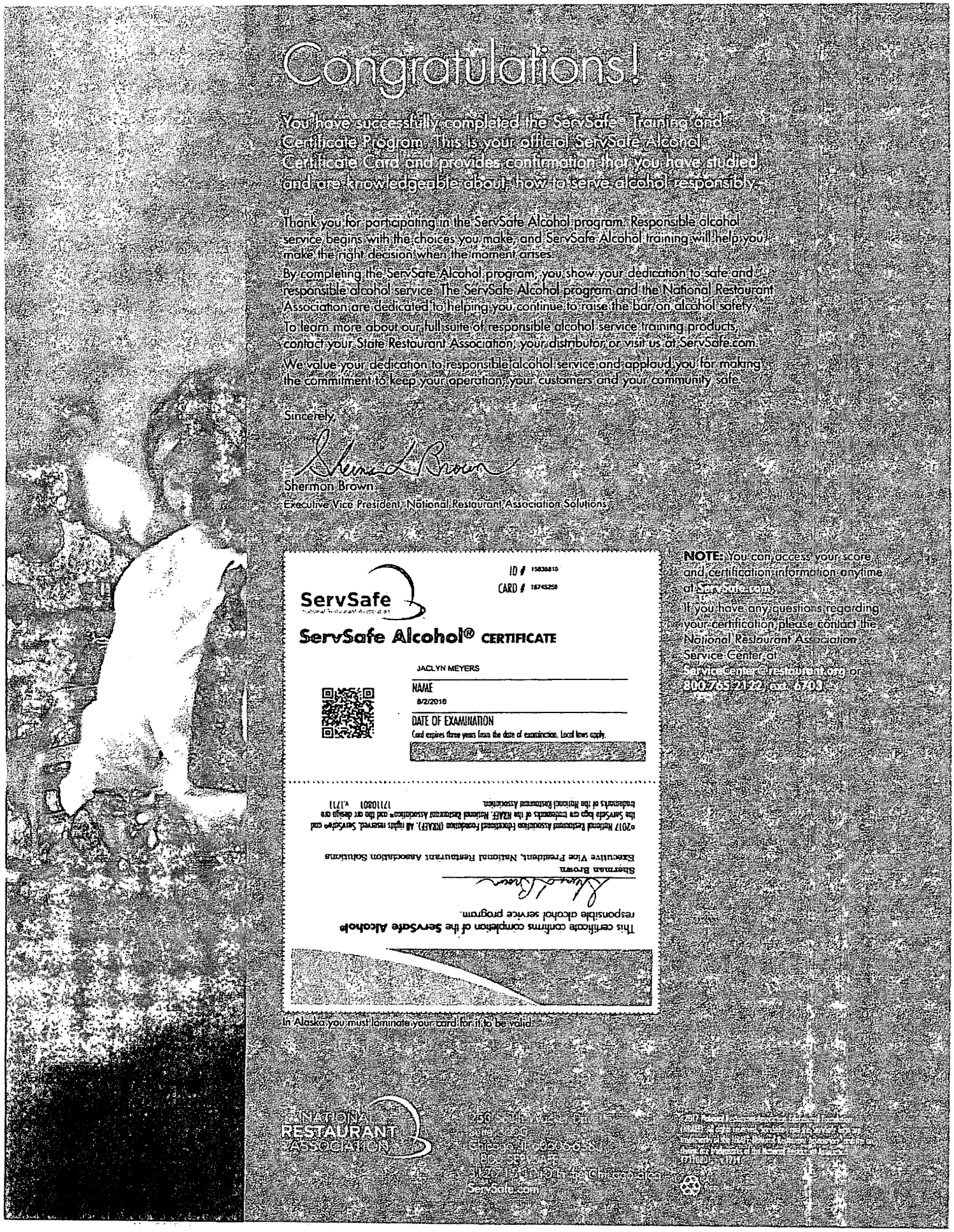
In Alaska you must laminate your card for it to be valid.

NATIONAL RESTAURANT ASSOCIATION

800.SERVSAFE

ServSafe.com



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We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

ID # 15838810

CARD # 15745258

ServSafe

ServSafe Alcohol® CERTIFICATE

JACLYN MEYERS

NAME

8/2/2018

DATE OF EXAMINATION

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Sherman Brown

Executive Vice President, National Restaurant Association Solutions

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1711080I A1713

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NOTE: You can access your score and certification information anytime at ServSafe.com. If you have any questions regarding your certification please contact the National Restaurant Association Service Center at ServSafe@restaurant.org or 800.765.2122 ext. 6703.

NATIONAL RESTAURANT ASSOCIATION

250 S. Wacker Dr., Suite 1400
Chicago, IL 60606-5834
800.765.2122 | ServSafe.com

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We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

ID # 15845747

CARD # 16557464

ServSafe

ServSafe Alcohol® CERTIFICATE

AISLING BATCHELDER

NAME

6/21/2018

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.

NOTE: You can access your score and certification information anytime at

If you have any questions regarding your certification please contact the National Restaurant Association Service Center at

or

In Alaska you must laminate your card for it to be valid.

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Sherman Brown
Executive Vice President, National Restaurant Association Solutions

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We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

ID # 15844992

CARD # 15003081

ServSafe

ServSafe Alcohol® CERTIFICATE

DEMETRIS CORBIN

NAME

6/22/2018

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.

This certificate confirms completion of the **ServSafe Alcohol®** responsible alcohol service program.

Sherman Brown

Executive Vice President, National Restaurant Association Solutions

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NATIONAL RESTAURANT ASSOCIATION

ServSafe.com

ALCOHOL

CASE COVER SHEET

SUPERVISOR REVIEW CK CHD

DATE 9/30/19

☐ OPENING DATE _____
☐ CLOSING DATE _____
☐ RE-OPEN DATE _____
☐ RE-CLOSE DATE _____
☑ PROGRESS DATE 9/16/19

☐ ACTIVE
☐ ADJUDICATED
☐ UNFOUNDED
☐ EXCEPT. CLEARED

SLED CASE: 54-19-1228
CROSS REF NO.: 54-19-0351
COUNTY NO: 40
CHARACTER: 04 / 40 /
CHARACTER DETAIL: Permitting a criminal act (marijuana on premise)

K. Jordan

REPORTING AGENT OTHER AGENT

LOCATION Group Therapy
LOCATION ADDRESS 2107 Greene St. Columbia SC
SUBJECT Torrickory Outing
SUBJECT TICKET NO. K. Dorman 4102P0137460
SEIZURE TICKET NO.:

NARRATIVE:

VIOLATION REPORT

LICENSE: Eighteen Ink LLC
LICENSE ADDRESS: 2107 Greene St. Columbia, SC 29205
PREMISE ADDRESS: 315 Brookside Dr. Union SC 29379
LICENSE NO: 320736726 LOP
BUS. PUB
BUSINESS NAME: Group Therapy
PREMISE: Permitting a Criminal Act (Smoking Marijuana on Premise)
STATUTE: 61-4-580(5)
DATE: 9/15/19
TIME: 12:47
REGULATION:
ATT. NO.: -6
ASSISTING OFFICERS: K. Dorman, T. Tortorella
SUBPOENAS ISSUED: 4102P0137466 (K. Dorman)
AGENT: K. Jordan
NO.: 1046
SIGNATURE OF LICENSEE OR OPERATOR: X Tristan Cadwell
DATE:
TIME:
CASE NO.: 54-19-1228

RESPONDENT'S EXHIBIT 6 21126 NR

PENCAD 800-631-6989

South Carolina
Law Enforcement Division

P.O. Box 21398
Columbia, South Carolina
29221-1398

Henry D. McMaster, Governor
Mark A. Keel, Chief

Tel: (803) 737-9000

September 16, 2019

INVESTIGATIVE REPORT

TO: SLED Case File # 54-19-1228

FROM: Special Agent Kirkland Jordan KJ

SUBJECT: Eighteen Ink LLC
D.B.A – Group Therapy
2107 Greene St.
Columbia, SC 29205
PBW/PBL/LOP – 320736726

COUNTY: Richland

On Sunday, September 15, 2019, Special Agent (SA) Jordan, Special Agent (SA) Dorman and Special Agent (SA) Tortorello with the South Carolina Law Enforcement Division (SLED) conducted an inspection at Group Therapy, located at the above address in Richland County. As a result of this inspection, SA Jordan issued one administrative violation for permitting a criminal act and SA Dorman issued one courtesy summons for simple possession of marijuana.

On Sunday, September 15, 2019, at approximately 12:47 am, SA Jordan, SA Dorman and SA Tortorello conducted an alcohol inspection at Group Therapy. During the course of this inspection, SA Jordan, SA Dorman and SA Tortorello walked into the back storage room in the business. SA Jordan noted an odor of marijuana. SA Dorman noticed a door to a back office that had a pin code lock on it. The door had a sign on it that stated "employees only". SA Dorman tried to open the door, but the door was locked. SA Dorman knocked on the door and a white male opened it. Inside the back office was a

strong odor of marijuana. There were four individuals sitting down in the room, two white males, a black female and a black male. SA Dorman saw an open backpack with a grinder in plain view. SA Dorman got consent to search the backpack from its owner, a black male identified as Torrickory Outing. Mr. Outing admitted to having some marijuana in the grinder that was located in his backpack.

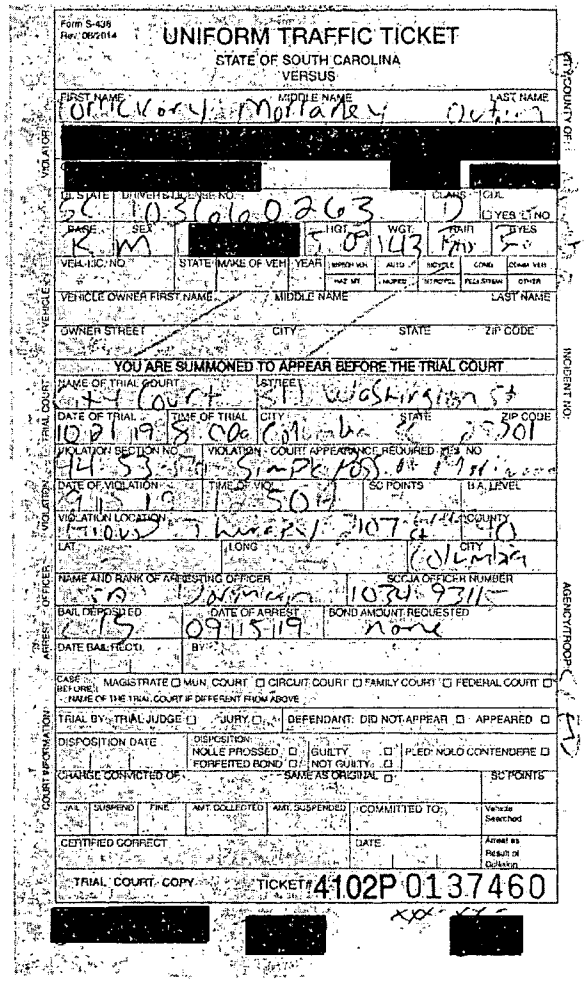
SA Jordan spoke with the manager, identified as Fabian Codwic, and notified him of the situation. SA Jordan asked Mr. Codwic if any of the people in the back room worked for the bar. Mr. Codwic stated that none of them are employed by the bar. SA Jordan asked why the individuals were in a locked office in a back room of the building that stated it was for employees only. Mr. Codwic pointed out that the door leading to the back room was missing the door handle so anyone could get back there. Mr. Outing stated to SA Jordan that he knew someone that used to work there and that he knew how to get in. SA Dorman explained to Mr. Codwic that the bar is responsible for what happens on their property. SA Dorman asked Mr. Codwic how long the bar has had that code on the door. Mr. Codwic stated that the code on the door was broken. SA Dorman informed him that the door was locked when he tried to open it. Mr. Codwic stated that the door gets caught up and does not close all the way. SA Jordan advised Mr. Codwic that an administrative violation would be issued for a violation of South Carolina Code of Laws, section 61-4-580(5), permitting a criminal act.

Due to the facts stated above, one administrative violation was issued to Group Therapy for violating South Carolina Code of Laws, section 61-4-580(5), permitting a criminal act. SA Jordan advised Mr. Codwic that the Department of Revenue would be in contact with the licensee in reference to a violation assessment.

Additionally, SA Dorman issued Mr. Outing Uniform Traffic Ticket No. 4102P0137460; charging him with violating S.C. Code of Laws, section 44-53-370, simple possession of marijuana.

Kirkland Jordan

SA Kirkland Jordan



Form S-436 Rev. 08/2014

UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA

VERSUS

FIRST NAME: Cornelius MIDDLE NAME: Montarey LAST NAME: Outing

[redacted]

D. STATE: SC DRIVER'S LICENSE NO.: 103610263 CLASS: D CDL: ☐ YES ☐ NO

RACE: K SEX: M [redacted] HGT: 5'0" WGT: 143 HAIR: Blk EYES: Br

VEH. I.D.C. NO. | STATE | MAKE OF VEH. | YEAR | BODY STYLE: MOTOR VEH. / AUTO / MOBILE / COMB. / SEMI-TRL / HAZ MT. / TRAILER / MOTORCYCLE / FLEX STREAM / OTHER

VEHICLE OWNER FIRST NAME | MIDDLE NAME | LAST NAME

OWNER STREET | CITY | STATE | ZIP CODE

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT: City Court STREET: 1737 Washington St

DATE OF TRIAL: 10/21/19 TIME OF TRIAL: 8:00a CITY: Columbia STATE: SC ZIP CODE: 29201

VIOLATION SECTION NO.: 14-53-75 VIOLATION - COURT APPEARANCE REQUIRED: YES NO: Simple Poss. of Marijuana

DATE OF VIOLATION: 9/15/19 TIME OF VIO.: 1250A SC POINTS: B.A. LEVEL:

VIOLATION LOCATION: I-10 WB / Huger St / 107 mi mkr 10 COUNTY:

LAT: LONG: CITY: Columbia

NAME AND RANK OF ARRESTING OFFICER: CPL D. Newman SCHP OFFICER NUMBER: 1032 9311

BAIL DEPOSITED: 615 DATE OF ARREST: 09/15/19 BOND AMOUNT REQUESTED: None

DATE BAIL RECD: BY:

CASE TO BE HEARD: ☐ MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐ NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE

TRIAL BY: TRIAL JUDGE ☐ JURY ☐ DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

DISPOSITION DATE | DISPOSITION: NOLLE PROSSED ☐ FORFEITED BOND ☐ GUILTY ☐ NOT GUILTY ☐ PLED: NOLO CONTENDERE ☐

CHARGE CONVICTED OF: SAME AS ORIGINAL ☐ SC POINTS

JAIL | SUSPEND | FINE | AMT. COLLECTED | AMT. SUSPENDED | COMMITTED TO: | Vehicle Searched

CERTIFIED CORRECT | DATE | Arrest as Result of Collision

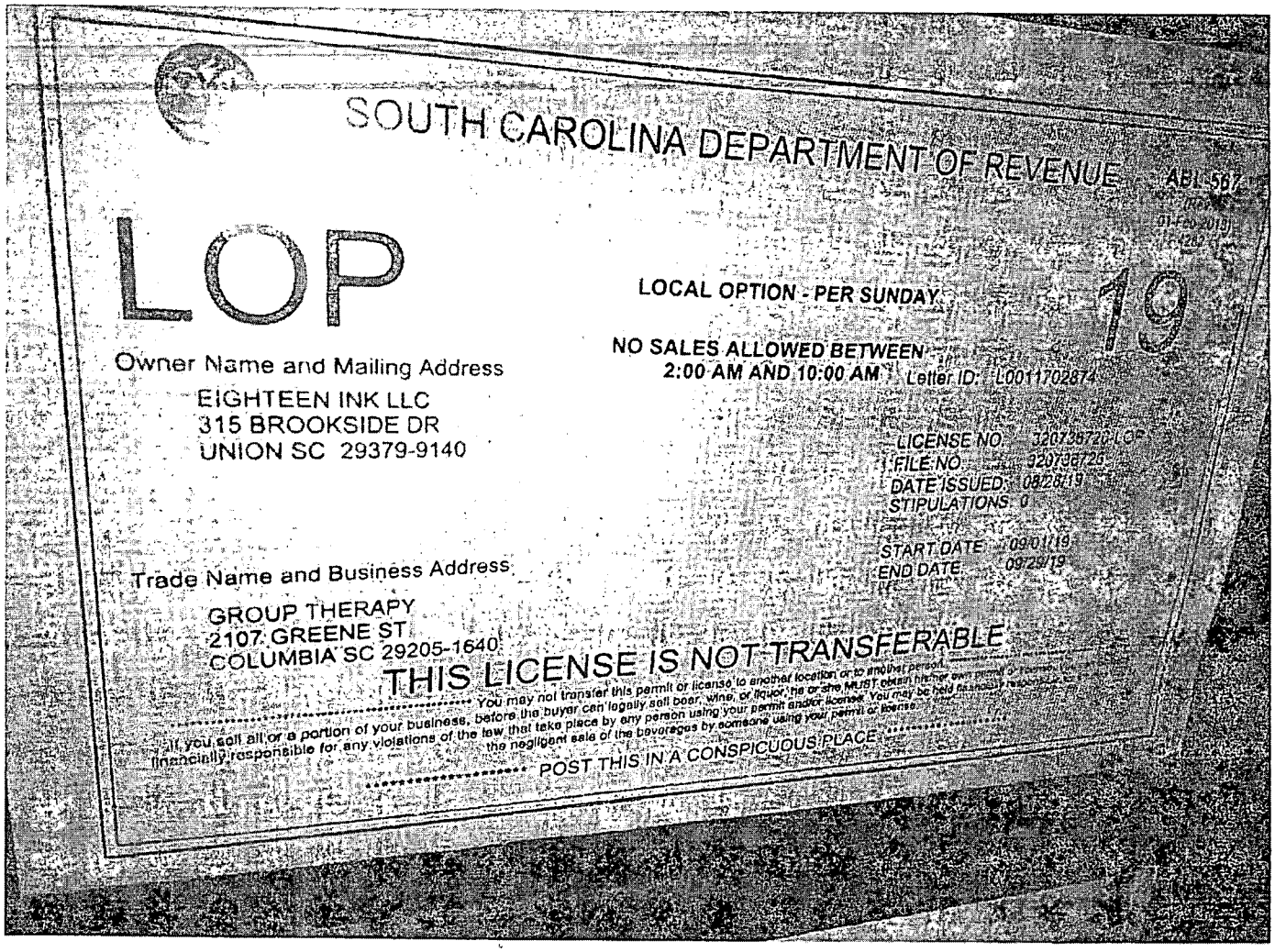
TRIAL COURT COPY TICKET # 4102P 0137460

[redacted]

533

534

9/15/19



SOUTH CAROLINA DEPARTMENT OF REVENUE

ABL-587

LOP

LOCAL OPTION - PER SUNDAY

19

NO SALES ALLOWED BETWEEN
2:00 AM AND 10:00 AM

Letter ID: L0011702874

Owner Name and Mailing Address

EIGHTEEN INK LLC
315 BROOKSIDE DR
UNION SC 29379-9140

LICENSE NO: 32073872-LOP
FILE NO: 32073872S
DATE ISSUED: 08/28/19
STIPULATIONS: 0

START DATE 09/01/19
END DATE 09/29/19

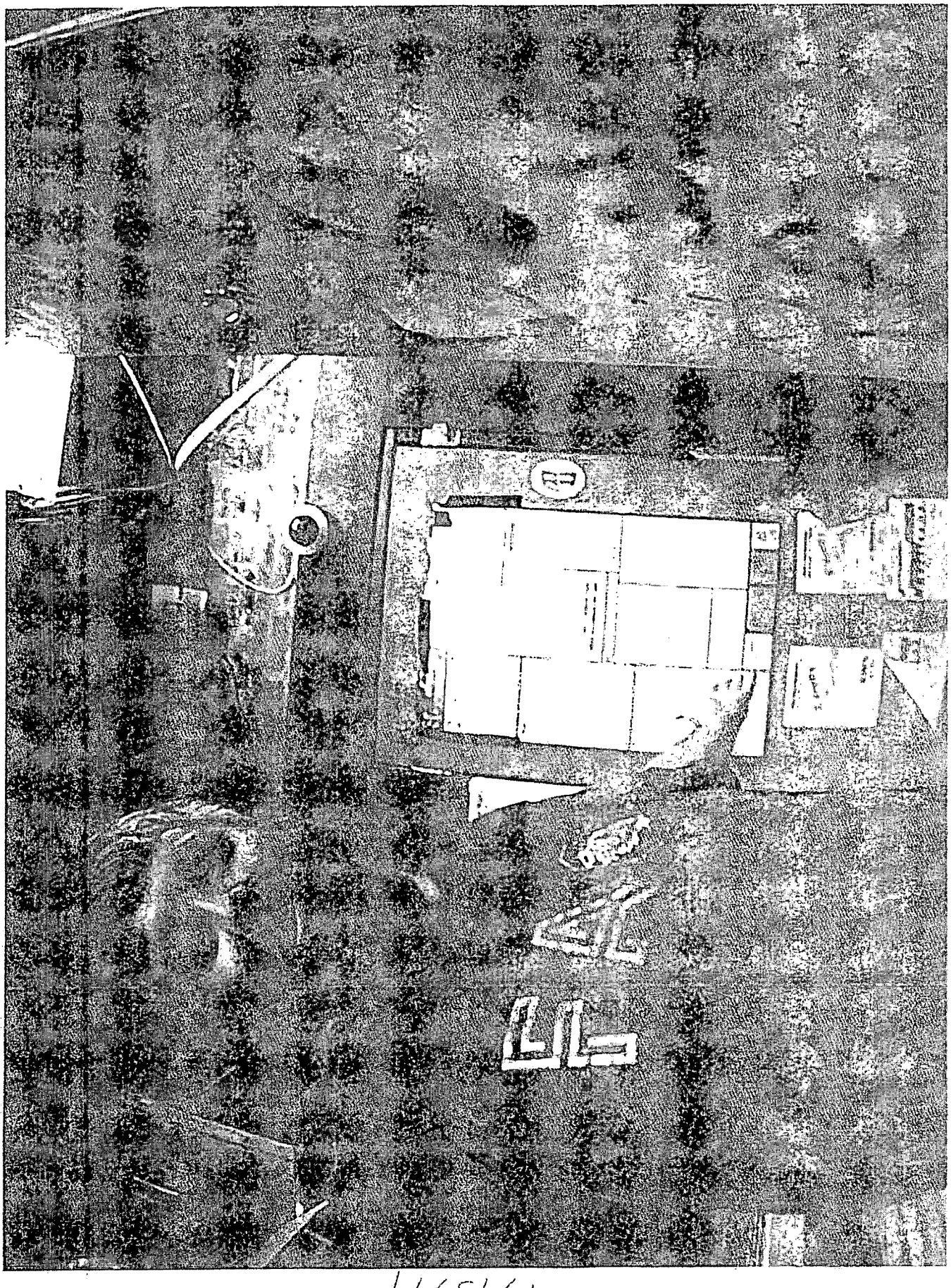
Trade Name and Business Address

GROUP THERAPY
2107 GREENE ST
COLUMBIA SC 29205-1640

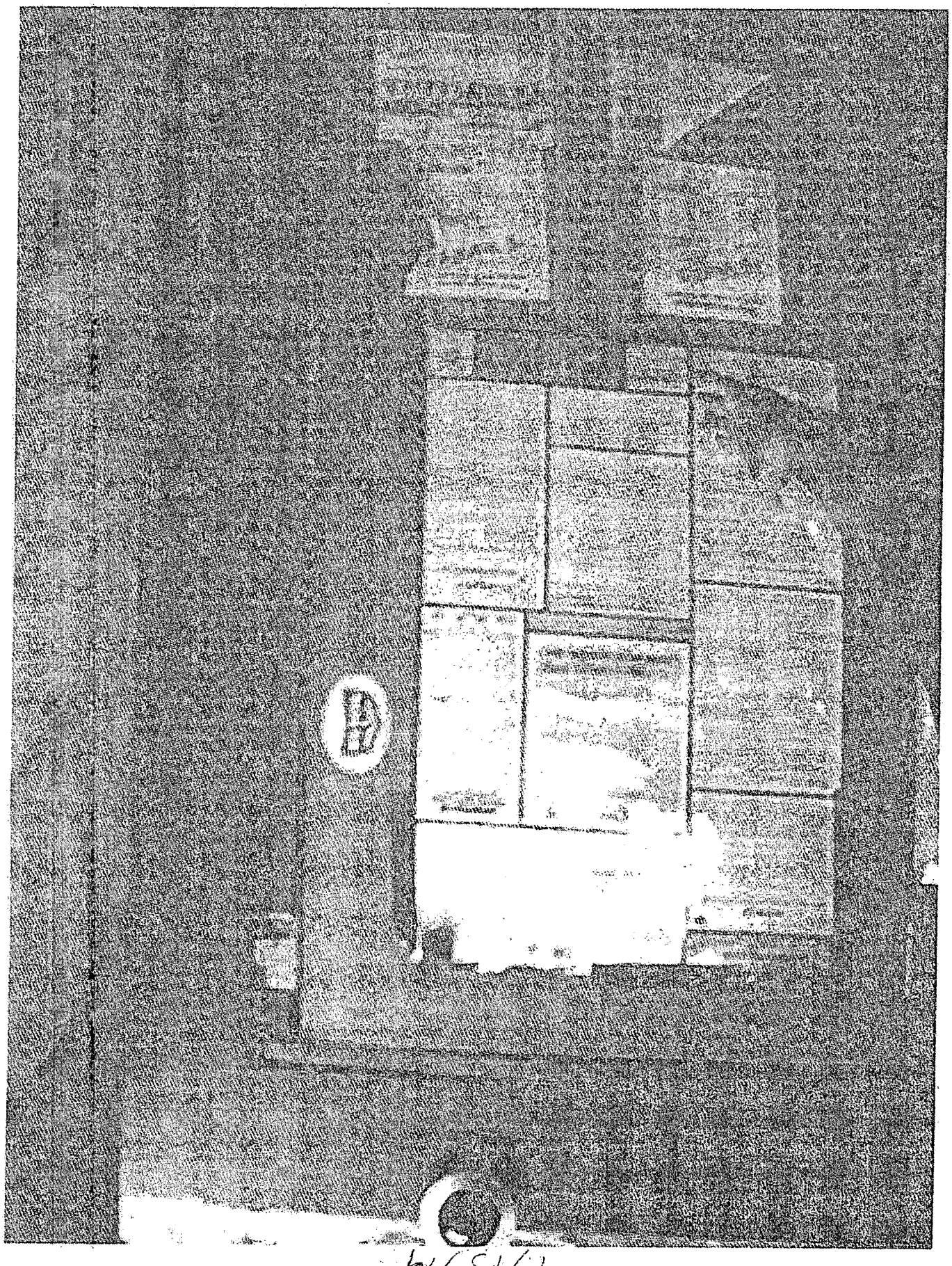
THIS LICENSE IS NOT TRANSFERABLE

You may not transfer this permit or license to another location or to another person.
If you sell all or a portion of your business, before the buyer can legally sell beer, wine, or liquor, he or she MUST obtain his/her own permit or license.
You may be held financially responsible for any violations of the law that take place by any person using your permit and/or license.
the negligent sale of the beverages by someone using your permit or license.

POST THIS IN A CONSPICUOUS PLACE



b1/51/b



b1/51/b

9/15/19

SLED AEU SEIZURE REPORT

SLED CASE NUMBER 54-19-1229 CASE AGENT Dorman

SUMMONS NUMBER: 410217013460

DATE OF SEIZURE 09-15-19 TIME 1:15am

1. Registered owner(s) and name of operator, address in control of property at time of seizure:
Torrickary Outing
2107 Greene St. Columbia

If licensed DBA:

AI # _____ LIC # _____

2. Description of property seized: one Silver round grinder containing a small amount of green leafy substance, and orange vial with an odor similar to marijuana emitting

3. Current location (storage) of the property seized: with Agent

4. Chain of Custody

Relinquished by	Received by	Date
		9-19-19
	SLED Evid. Custo	9-16-19

5. Case disposed on: _____ (date)

6. Evidence destroyed on: _____/_____ (date) (time) Place: _____

_____ (witness) _____ (witness)

7. Evidence given to The Department of Revenue on _____ (date)

ATTACH A COPY OF SEARCH WARRANT
revised 7-2-98

NUMBER: 30918 -A

White: Violator's Copy Green: Headquarter's Copy Yellow: Agent's Copy Pink: Warehouse's Copy Gold: Transfer's Copy

INSPECTION CASE # 54-19-0351
CASE # 54-19-1228
STAT CODE

TIME 12:47 am
DATE 9/15/19
COUNTY # 40
AGENT # K. Jordan 1046

ALCOHOL
INSPECTION REPORT

LOCATION NAME Group Therapy
ADDRESS 2107 Greene St. Columbia SC
LICENSEE NAME Eighteen Ink LLC

TYPE OF BUSINESS

- ☐ Convenience Store / Gas Station
- ☐ Restaurant
- ☑ Bar / Tavern
- ☐ ABC
- ☐ Other
- ☐ General Merchandise
- ☐ Grocery
- Convenience Store
- ☐ Drug Store

LICENSE # PBW/PLB/LOP 320736726 LICENSE #
LICENSE # RETAIL LICENSE #
SALE COMPLETED YES ☐ NO YOUTH'S AGE ASKED YES ☐ NO ☐
YOUTH'S ID REQUESTED YES ☐ NO ☐

CLERK'S NAME Torrickory Outing CLERK'S SEX ( ) M ( ) F
CLERK'S RACE ( ) Black ( ) White ( ) Hispanic ( ) Other
SUMMONS TICKET # K. Dorman 4102P0137460 AMOUNT OF FINE $

COMMENTS
Inspection- Violation given for permitting a criminal act (smoking marijuana on premise)

SCDOR's Exhibit 7

(USB drive containing a video of DVD - Body Camera Footage)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Ink, LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	Docket No.: 19-ALJ-17-0001-CC **INTERVENORS' MOTION TO REOPEN AND SUPPLEMENT RECORD WITH NEW EVIDENCE**

Intervenors Thomas R. Gottshall, April C. Lucas, and Michael Drennan hereby move the Court under Rule 29 of the Administrative Law Court and Rules 52 and 59 of the South Carolina Rules of Civil Procedure to reopen and supplement the record in this contested case petition by Petitioner Eighteen Ink, LLC, d/b/a Group Therapy (Group Therapy) seeking renewal of an on-premises beer-and-wine permit and liquor-by-the-drink license.

The Court held an evidentiary hearing on February 11 and 12, 2020 and took the matter under advisement. On the early morning of Saturday, February 29, 2020, agents with the South Carolina State Law Enforcement Division (SLED) responded to a fight inside Group Therapy. While those agents were attempting to restore peace inside the location, gunfire erupted outside the location, causing SLED to abandon the fight and respond to the shots fired. This competent, probative evidence—detailed in the affidavits and body camera footage attached to this motion—speaks directly to the suitability of the proposed location for continued permitting and licensure, and the Court should reopen the trial record for the limited purpose of considering it.

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STANDARD OF REVIEW

The decision whether to reopen a trial record for the purpose of taking additional testimony is a matter of discretion. Wright v. Strickland, 306 S.C. 187, 188, 410 S.E.2d 596, 597 (Ct. App. 1991). While the Court has not entered judgment in this case, Rule 52 permits a court to amend factual findings or make additional findings and then amend its judgment accordingly. See Rule 52(b), SCRCP. Likewise, Rule 59 permits "[o]n a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Rule 59(a), SCRCP. Typically, motions based on newly discovered evidence consider whether the new evidence (1) will change the result, (2) was discovered since trial, (3) could not have been discovered prior to trial, (4) is material to the issues, and (5) is not merely cumulative or impeaching. See Jamison v. Ford Motor Co., 373 S.C. 248, 272, 644 S.E.2d 755, 767–68 (Ct. App. 2007).

RELEVANT FACTUAL BACKGROUND

During the contested case hearing, the Court heard testimony from SLED Special Agent (S/A) Kirkland Jordan. If permitted to testify further, S/A Jordan would testify that on Saturday, February 29, 2020 at approximately 1:44 a.m., she was on patrol in Five Points near the fountain when two individuals approached and stated there was a fight while gesturing toward Group Therapy. See Aff. K. Jordan ¶ 4 (**Exhibit A**). Upon arriving on the scene, several groups of individuals were fighting in the middle of Greene Street. Id. ¶ 5. S/A Jordan recognized one of the individuals attempting to break up the fight as Group Therapy's manager Fabian Ludwig. Id. S/A Jordan and other SLED agents followed a group of individuals as the walked toward the front door to Group Therapy. Id. ¶ 6. Several of those individuals pushed their way inside Group Therapy,

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MAR 06 2020
SC ADMIN LAW COURT

whereupon she made her way inside and proceed to break up a large fight taking place next to the bar. Id. ¶¶ 7–8. While attempting to stop the fight, someone shouted that shots were fired outside the bar, causing S/A Jordan and the other SLED agents to leave Group Therapy and pursue the shots to the corner of Greene Street and Pavillion Avenue, which is in sight of Group Therapy. Id. ¶¶ 8–10. A witness stated the shots were fired from a black Nissan. Id. ¶ 11. No arrests were made because, by the time agents returned to Group Therapy, the individuals responsible for fighting had left the scene. Id. ¶ 12. S/A Joran was informed by Ludwig that the fight started inside Group Therapy and the individuals were kicked out and then proceeded to fight in the street. Id. ¶ 13. S/A Jordan and her colleague—S/A James Tallon, III, who also responded to the scene—both recorded body camera footage of the incident that accurately depicts the events described here. Id. ¶ 14; Aff. J. Tallon, III, ¶ 10 (attached as **Exhibit B**).

ARGUMENT

This motion should be granted, and the Court should reopen the trial record for the limited purpose of taking additional testimony from S/A Jordan and S/A Tallon. Each agent's body camera footage is attached to their respective affidavits. That footage depicts an extremely dangerous incident involving a large number of individuals fighting, pushing, shouting in a threatening manner, and ignoring the instruction of law enforcement. While it is unknown whether the shots fired are directly connected to the fight that erupted, SLED had not even regained control of Group Therapy before agents were forced to respond to an even more serious threat outside. This incident, and others like it, places the responding agents and the public in extreme danger notwithstanding the significant commitment of police resources that were used to respond to this one incident. This is further evidence that Group Therapy is a clear and present danger to public safety in Five Points.

If permitted to continue operating, it is only a matter of time before someone is killed in an incident just like this one.

One of the issues raised in this litigation is the suitability (or lack thereof) of the location for continued permitting and licensure. "In determining whether a location is suitable, it is proper for this tribunal to consider any evidence that shows adverse circumstances of location[,]" which allows a court to weigh "an infinite variety of considerations related to the nature and operation of the business and its impact on the community within which it is to be located." Barfly Enterprises, LLC v. S.C. Dept. Rev., No. 13-ALJ-17-0452-CC, 2013 WL 6620406, at *5 (Dec. 10, 2013) (citing Kearney v. Allen, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985), Palmer v. S.C. ABC Comm'n, 282 S.C. 246, 249, 317 S.E.2d 476, 478 (Ct. App. 1984), and Schudel v. S.C. ABC Comm'n, 276 S.C. 138, 276 S.E.2d 308 (1981)). One such valid consideration is the location's propensity to disturb the peace of the community and burden law enforcement. See, e.g., Palmer, 282 S.C. at 250, 317 S.E.2d at 478 (denying permit due to location's "close proximity to a place ..., which has in the past been a source of constant law enforcement problems and a place where young people congregate and loiter."); Schudel, 276 S.C. at 140–41, 276 S.E.2d at 309 (denying license based on prior disturbances, proximity to children, and objections by law enforcement, church, and residents even though "no formal complaints had been filed against his previous establishment"); Terry v. Pratt, 258 S.C. 177, 185, 187 S.E.2d 884, 888 (1972) (inadequate police protection rendered location unsuitable); Barfly Enterprises, 2013 WL at *4 (location was a nuisance, danger to the community, and strained law enforcement resources).

This newly discovered evidence speaks both to the atmosphere in Five Points generally, and Group Therapy's role in contributing to that disorder, specifically. Moreover, while the Court

has heard testimony from local law enforcement concerning the burden this establishment places on police services, this incident is particularly probative for two reasons.

First, recall that the bar never complied with discovery requiring the production of video surveillance that would show what actually occurs late at night inside Group Therapy. Likewise, it repeatedly objected to the admission of police records memorializing the nature of various calls for service, claiming Intervenors should instead parade dozens of law enforcement officers into court to offer firsthand accounts (even though the objected to records were merely offered to show the nature of the burden placed on law enforcement). Nevertheless, Columbia Police Department (CPD) data and witness testimony detailed 11 fights and civil disturbances (among other calls for service) tied directly to Group Therapy during just a one-year period. See Hr.'g Tr. 250–51; but see id. at 168–69 (Taneyhill claiming he was surprised to learn CPD tied 11 fights and civil disturbances to his bar during a one-year period) & 207 (claiming he has never seen a fight inside his bar but "I have been told of some, yes."). The new evidence offered here shows the Court precisely what those incidents look like (and the threat they pose to public safety) in precisely the manner Group Therapy repeatedly complained was the only way such evidence could be admitted—through testimony of a first responder.

Second, recall that Group Therapy urged the Court to grant its petition but impose some condition(s) to assuage concerns that it was contributing to the lawless atmosphere in Five Points. See Hr.'g Tr. 438–39 ("So, Your Honor, we would ask that you rule that they can keep their license and whatever restrictions, limitations, whatever enhancements Your Honor so chooses, Mr. Taneyhill is willing to do that."). Intervenors argued that approach is folly because Group Therapy's record in this case demonstrates it cannot be trusted and, even if it could be trusted, granting the permit and license will not ease the public safety threat. See id. at 449–50 ("I think

there's a couple problems with that. One is ... based on the inability of Group Therapy to produce certain evidence about what's going on in the bar, Mr. Taneyhill's evasive, indirect, deflecting testimony, ... do you really expect that some condition or criteria that you impose is going to be followed.... The second point is, even if you load them up with restrictions and criteria, it will not solve the problem. ..."). That argument now appears prescient as Group Therapy could not even maintain civil order in its bar during the very brief period this matter has been pending for decision by the Court.

Finally, all factors typically considered when a court decides whether to allow newly discovered evidence weigh in favor of reopening the record here. First, while Intervenors submit the evidentiary record is overwhelming in their favor on the issue of suitability, the Court has not spoken on this issue and therefore this new evidence may very well change the Court's view and the result. Second and third, this evidence was discovered after trial and, having just occurred on February 29, could not have been offered at trial on February 11 and 12. Fourth, this evidence is material to the suitability inquiry. Finally, it is not cumulative, but a specific incident that is illustrative of the threat created by Group Therapy specifically and other bars like it in Five Points.

CONCLUSION

For these reasons, the Court should grant this motion, notice a hearing to take additional evidence, and order any further relief it deems just and proper.

[signature page follows]

Respectfully submitted,

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ATTORNEYS FOR INTERVENORS
GOTTSHALL, LUCAS, AND DRENNAN

March 6, 2020
Columbia, South Carolina.

Exhibit A

(Affidavit of Special Agent Kirkland Jordan)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Ink, LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	Docket No.: 19-ALJ-17-0001-CC **AFFIDAVIT OF KIRKLAND JORDAN**

PERSONALLY appeared before me is Kirkland Jordan who, being duly sworn, states:

1. I am of legal age and sound mind and offer this affidavit of my own free will at the request of the Intervenors in this action.

2. I am a special agent with the South Carolina Law Enforcement Division (SLED).

3. On Saturday, February 29, 2020 at approximately 1:44 a.m., I was working a uniformed alcohol enforcement assignment in the area known as Five-Points in Columbia, South Carolina (Richland County).

4. I was standing near the fountain in Five Points when two gentlemen approached and stated there was a fight while gesturing in the direction of Group Therapy.

5. Upon arriving on the scene, several groups of individuals were fighting in the middle of Greene Street. I recognized one of the individuals attempting to break up the fight as Group Therapy's manager Fabian Ludwig.

6. I, along with other SLED agents, followed a group of individuals as they started walking towards the front door to Group Therapy.

7. Several of the individuals pushed their way inside of Group Therapy.

8. I, along with other SLED agents, made my way inside and proceeded to break up a large fight taking place next to the bar.

9. While inside someone shouted that somebody was shooting outside.

10. I, along with other SLED agents, left Group Therapy and was directed to the corner of Greene Street and Pavillion Avenue, which is in sight of Group Therapy.

11. A witness stated that individuals in a black Nissan were responsible for the shooting and that they drove away down Pavillion Avenue.

12. No arrests were made because, by the time agents returned to Group Therapy, the individuals responsible for fighting had left the scene.

13. I spoke with Group Therapy's manager, Fabian Ludwig, about the incident and he stated that the fight started inside Group Therapy and the individuals were kicked out and then proceeded to fight in the street.

14. The body camera footage attached to this affidavit as **Exhibit 1** is a true and correct depiction of the events described above as taken from the body camera I was wearing. The footage is maintained by SLED in the ordinary course of business.

FURTHER AFFIANT SAYETH NAUGHT.

Kirkland Jordan

Sworn to and subscribed before me
5th day of March, 2020

(sign)

(print)

Notary Public for South Carolina

My commission expires 1-4-2022

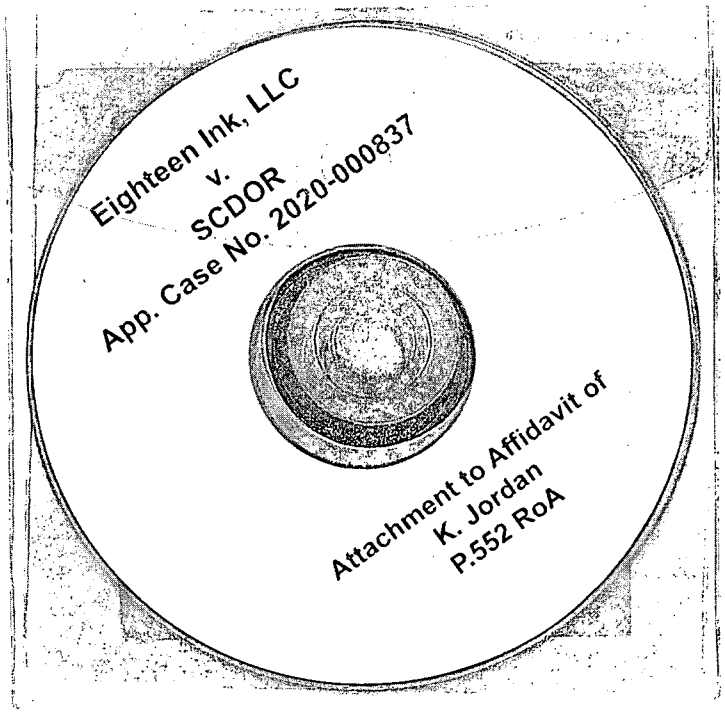

Eighteen Ink, LLC
v.
SCDOR
App. Case No. 2020-000837
Attachment to Affidavit of
K. Jordan
P.552 RoA

Exhibit B

(Affidavit of Special Agent James Tallon, III)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Ink, LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	Docket No.: 19-ALJ-17-0001-CC **AFFIDAVIT OF JAMES TALLON, III**

PERSONALLY appeared before me is James "Trey" Tallon, III who, being duly sworn, states:

1. I am of legal age and sound mind and offer this affidavit of my own free will at the request of the Intervenors in this action.

2. I am a special agent with the South Carolina Law Enforcement Division (SLED).

3. On Saturday, February 29, 2020 at approximately 1:44 a.m., I was working a uniformed alcohol enforcement assignment in the area known as Five-Points in Columbia, South Carolina (Richland County) and responded to a fight outside Group Therapy.

4. Upon arriving on the scene, several groups of individuals were fighting on the sidewalk in from of Group Therapy.

5. I, along with other SLED agents, followed a group of individuals as they started walking towards the front door to Group Therapy.

6. Several of the individuals pushed their way inside of Group Therapy.

7. I, along with other SLED agents, made my way inside and proceeded to break up a large fight taking place next to the bar.

8. While inside someone shouted that somebody was shooting outside.

9. I, along with other SLED agents, left Group Therapy and was directed to the corner of Greene Street and Pavillion Avenue, which is in sight of Group Therapy.

10. The body camera footage attached to this affidavit as **Exhibit 1** is a true and correct depiction of the events described above as taken from the body camera I was wearing. The footage is maintained by SLED in the ordinary course of business.

FURTHER AFFIANT SAYETH NAUGHT.

James Tallon, III

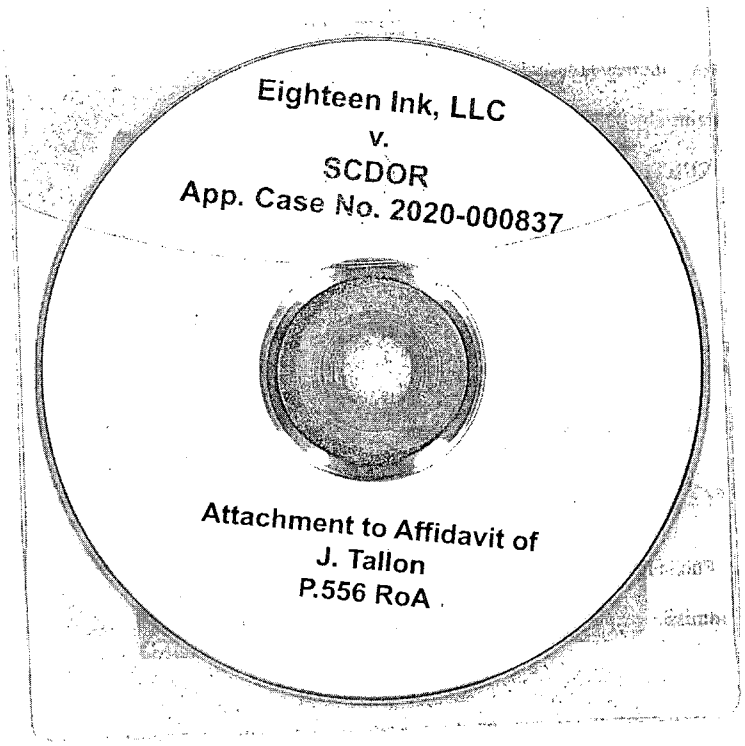
Sworn to and subscribed before me
5th day of March, 2020

Deborah W. Hamilton
(sign)

Deborah W. HAMILTON
(print)

Notary Public for South Carolina

My commission expires 12/5/2026



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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Ink, LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	Docket No.: 19-ALJ-17-0001-CC **INTERVENORS' PROFFER REGARDING EVIDENCE OF MEAL PREPARATION AND SERVICE**

Pursuant to the agreement of the parties and the Court during the contested case hearing in this matter, Intervenors Thomas R. Gottshall, April C. Lucas, and Michael Drennan respectfully submit this proffer as to excluded evidence relating to the preparation and service of meals (or lack thereof) by Petitioner Eighteen Ink, LLC, d/b/a Group Therapy (Group Therapy) in furtherance of Intervenors' contention that the bar is not constitutionally eligible for liquor licensure because it is not engaged primarily and substantially in the preparation and service of meals as required by Article VIII-A, § 1 of the South Carolina Constitution.

Intervenors believe the evidence would have shown the following:

1. During the two occasions Drennan visited Group Therapy (as discussed during his testimony), no one was eating a meal.
2. During the one occasion Gottshall accompanied Drennan to Group Therapy, he did not see anyone eating a meal either.

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3. Instead, on both occasions, there were large numbers of people consuming alcohol, milling around the bar, and dancing.

4. During the contested case hearing, Group Therapy owner Steve Taneyhill testified that he employs approximately 16 people—10 working security, six bartenders, and one cook.[1]

5. Had Intervenor's been permitted to ask, Taneyhill would have likely confirmed that he employs no dishwashers, waiters/waitresses, or hosts/hostesses.

6. Tammy Young, an ABL supervisor for Respondent South Carolina Department of Revenue (DOR), would testify that when the South Carolina Law Enforcement Division (SLED) conducts a license or re-license inspection, it uses a checklist to see whether certain statutory criteria are met (the checklist in this case is part of the DOR file), but neither SLED nor DOR make any inquiry to determine whether an establishment is, in fact, engaged in the preparation or service of meals or the extent of that engagement.

7. Consistent with this practice, no such inquiry was made as to Group Therapy.

8. During discovery, Group Therapy furnished two reports from its electronic point-of-sale (POS) system.

9. The first POS report (GROUP_000426) covers the period of December 1, 2018 to February 28, 2019 and purports to evidence:

    a. 6,406 transactions under the category of "Food", representing 13.5 percent of the bar's total sales (dollars attributed to food divided by total sales);

[1] This is based on counsel's recollection and notes. Intervenors obviously defer to the transcript on this point and crave reference to it.

b. 42,135 transactions under the category of "Liquor", representing 66.2 percent of the bar's total sales;

c. 13,478 transactions under the category of "Beer", representing 18.6 percent of the bar's total sales;

d. Total alcohol sales (liquor, beer, and wine together) representing 84.9 percent of total sales.

10. The second POS report (GROUP_000490–GROUP_000491), covers the period of April 16, 2018 to April 16, 2019 and purports to evidence:

a. 25,158 transactions under the category of "Food", representing 11.2 percent of the bar's total sales (dollars attributed to food divided by total sales);

b. 186,403 transactions under the category of "Liquor", representing 66.9 percent of the bar's total sales;

c. 65,860 transactions under the category of "Beer", representing 20.3 percent of the bar's total sales;

d. Total alcohol sales (liquor, beer, and wine together) representing 87.3 percent of total sales.

11. Taneyhill, testified during his deposition (and would presumably testify again) that these POS reports were generated on or near April 11 and April 16, 2019 (the dates they were "printed" according to the reports) to respond to Intervenors' discovery. See Taneyhill Dep. 9:14–22 & 20:14–25.[2]

12. However, Taneyhill testified he does not use these reports in his role as owner and manager. Id. at 10:14–21; 11:13–16 & 12:7–8.

[2] Taneyhill's deposition was filed with Intervenors' motion for discovery sanctions.

13. Instead, Taneyhill "keep[s] everything written[,]" meaning he uses a paper folder system with receipts to track his business's sales. See id. at 12:9–13:22. At least "some" of these records are stored at Group Therapy (id. at 13:2–4 & 13:20–14:7) but were never produced in discovery as requested.

14. Taneyhill testified that he "hope[d]" the POS reports are accurate, but conceded, "I guess I don't know that." Id. at 19:6–11.

15. Taneyhill and/or Young, would likely testify that Group Therapy submits monthly excise tax reports to DOR that purport to report the bar's gross monthly liquor sales.

16. Some of these DOR reports overlap with the time period covered by the POS report marked as GROUP_000426—December 2018 through February 2019.

17. Comparing Group Therapy's liquor sales as recorded by its POS system and reflected in GROUP_000426 to its DOR Liquor by the Drink Summary Reports (DOR 069–DOR 071)[3] for the same period, the bar underreported its gross liquor sales by almost $55,000 during this three-month period.

[signature page to follow]

[3] These records have been marked CONFIDENTIAL under the Court's Confidentiality Order. Accordingly, they will be produced in camera or under seal if necessary.

Respectfully submitted,

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ATTORNEYS FOR INTERVENORS
GOTTSHALL, LUCAS, AND DRENNAN

February 21, 2020
Columbia, South Carolina.

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DOR 069-071

(Records marked CONFIDENTIAL under the Court's Confidentiality order and produced in camera)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Ink, LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	Docket No.: 19-ALJ-17-0001-CC **INTERVENORS' MOTION TO EXCLUDE UNTIMELY DISCLOSED EVIDENCE**

Intervenors Thomas R. Gottshall, April C. Lucas, and Michael Drennan hereby move the Court under Rules 19(C) and 21 of the Administrative Law Court (ALC) Rules and Rules 26, 33, and 37 of the South Carolina Rules of Civil Procedure to exclude untimely disclosed witnesses identified by Petitioner Eighteen Ink, LLC, d/b/a Group Therapy (Group Therapy) for the first time in its amended prehearing statement filed on February 4, 2020.

Specifically, Intervenors served standard interrogatories on February 4, 2019, which included a request that Group Therapy (Interrogatory No. 1) give the names and addresses of persons known to the parties or counsel to be witnesses and (Interrogatory No. 4) provide a summary sufficient to inform the other party of the facts known or observed by each witness identified (or provide a copy of any written or recorded statement). On April 11, 2019, Group Therapy served written responses (**Exhibit A**) to Intervenors' interrogatories identifying three potential witnesses—Steve Taneyhill, Bryan Riley, and Jordan Thomas—and providing a summary of their testimony. Then, almost one year later on February 4, 2020, Group Therapy filed

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SC ADMIN LAW COURT

and served an amended prehearing statement (**Exhibit B**), identifying three previously undisclosed witnesses: Brian Glynn, Steve Cook, and Torrickery Outing.[1] However, Group Therapy has never amended its interrogatory responses or otherwise provided a summary of anticipated testimony from these witnesses.

Rule 26 of the South Carolina Rules of Civil Procedure provides that discovery requests under Rules 31, 33, 34, and 36 "shall be deemed to continue from the time of service until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers have been submitted, shall be promptly transmitted to the other party." Rule 26(e), SCRCP. Thus, "there is a continuing duty on the part of the party from whom information is sought to answer a standard interrogatory, such as the one requesting the party list any expert witnesses whom the party proposes to use as a witness at the trial of the case." Bensch v. Davidson, 354 S.C. 173, 182, 580 S.E.2d 128, 132 (2003). The consequences for failing to make a timely supplemental disclosure can include exclusion (see Rule 37(b)(2)(B) & (d) (authorizing a court to exclude undisclosed evidence)), and in weighing the appropriate sanction, a court should consider factors such as the nature of the discovery, the posture of the case, the willfulness or explanation for the failure to name the witness, the importance of the testimony, the degree of surprise, and the degree of prejudice. See Bensch, 354 S.C. at 182, 580 S.E.2d at 132–33; McNair v. Fairfield Cty., 379 S.C. 462, 467, 665 S.E.2d 830, 832–33 (Ct. App. 2008) (quoting Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999)).

The court should exclude Glynn and Cook from testifying as untimely disclosed witnesses because all considerations weight in favor of exclusion. Intervenors served their standard

[1] Group Therapy's decision to identify Mr. Outing appears to be in response to Intervenors' decision to identify him as a witness in their pretrial statement.

interrogatories more than a year ago and the parties have had ample time to prepare this matter. Notably, Intervenors have *no information* about these witnesses, how to contact them, or what they might say—information that must be disclosed in response to standard interrogatories and timely supplemented when new information arose. The timing of this limited disclosure—just seven (7) days before trial—is unfairly prejudicial. Group Therapy failed to provide any contact information that would allow Intervenors to contact these witnesses. Even if they received this information now, Intervenors would be unable to depose them because the belated disclosure left insufficient time under the rules to notice a deposition prior to trial. See Rule 30(b)(1), SCRCP (requiring 10 days' notice). Nor do Intervenors have time to marshal other evidence that might be needed to rebut whatever testimony these witnesses might offer. While Intervenors do not know when Group Therapy became aware of the need to call Glynn and Cook, disclosure just one week prior to trial is unfairly prejudicial to Intervenors and their right to prepare this case. "The parties' disclosure of information before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing." Bensch, 354 S.C. at 182, 580 S.E.2d at 132–33. Whether intended or not, the belated nature of this disclosure threatens to turn the final hearing into a trial by ambush. Thus, the only fair remedy is exclusion.

Intervenors offer two additional suggestions in support of granting this motion. First, the Supreme Court has cautioned against striking witnesses without evidence of willful disobedience or gross indifference by the offending party when striking the witness will effectively hand the aggrieved party a default judgment. See Orlando v. Boyd, 320 S.C. 509, 511, 466 S.E.2d 353, 355 (1996) (striking untimely disclosed physician was "too severe" because it left the offending party unable to contest a motion for summary judgment). That is *not* the case here. Group Therapy made a timely disclosure of Taneyhill, Riley, and Thomas—the bar's owner and two cooks. Thus,

excluding Glynn and Cook does not end this case, nor does it prevent Group Therapy from presenting evidence to meet its burden. Second, this is not the first time Group Therapy has failed to meet disclosure obligations in this case. Intervenors' motion for spoliation is fully briefed and pending before the Court. While the problems that gave rise to that motion need not be detailed again here, suffice it to say that this is another example of Group Therapy failing to timely meet disclosure obligations.

For these reasons, and any others that mighty be explained during the final hearing in this matter, Glynn and Cook should be excluded as untimely disclosed witnesses.

Respectfully submitted,

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Christopher P. Kenney (Bar No. 100147)
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cpk@harpootlianlaw.com

ATTORNEYS FOR INTERVENORS
GOTTSHALL, LUCAS, AND DRENNAN

February 10, 2020
Columbia, South Carolina.

EXHIBIT A

(Petitioner's Response to Intervenors' Interrogatories, April 11, 2019)

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APR 15 2019
Richard A. Harpootlian, P.A.
Calendared

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen, Ink, LLC d/b/a Group Therapy, Petitioner, v. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	Docket No.: 19-ALJ-17-0001-CC PETITIONER'S RESPONSE TO INTERVENORS INTERROGATORIES

COMES NOW the Petitioner, by and through its undersigned counsel of record and responds to Intervenors' Interrogatories, subject to supplementation, as follows:

RESPONSES TO INTERROGATORIES

(1) Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: The Petitioner identifies the following witnesses and states no written or recorded statements have been taken:

a. Steve Taneyhill;
b. Bryan Riley; and
c. Jordan Thomas.

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

RESPONSE: The Petitioner identifies all documents produced in response to the Intervenors' Request for production.

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

RESPONSE: None.

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

RESPONSE: The Petitioner states as follows:

a. Steve Taneyhill;

Mr. Taneyhill is a member of Eighteen, Ink, LLC d/b/a Group Therapy and will testify regarding the renewal application and its compliance with the South Carolina requirements, the business as a whole, the sale of food by Group Therapy, the menu, the kitchen, and the compliance program in place at Group Therapy and its efforts to combat attempted underage drinking.

b. Bryan Riley and Jordan Thomas

Mr. Riley and Mr. Thomas are cooks at Group Therapy and they will testify regarding the fact that the kitchen is open the entire time the business is open and will testify regarding the hot items they prepare.

Respectfully submitted,

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EXHIBIT B

(Petitioner's Amended Prehearing Statement, February 4, 2020)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen, Ink, LLC d/b/a Group Therapy, Petitioner, v. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	)	Docket No.: 19-ALJ-17-0001-CC **PETITIONER'S AMENDED PREHEARING STATEMENT**

TO: The Honorable Shirley C. Robinson, Presiding Judge

Pursuant to ALC Rule 14, and this Court's Order of March 21, 2019, the Respondent hereby submits its Prehearing Statement. Petitioner responds to the Court's Order as follows:

1. **The Nature of this Proceeding:**

   This is a contested case filed by the Petitioner, Eighteen, Ink, LLC d/b/a Group Therapy, following the Department of Revenue's denial of Petitioner's renewal applications for its on-premises beer and wine license and its liquor by the drink license.

2. **The Statutory provisions conferring subject matter jurisdiction to the Administrative Law Court and other applicable statutes and regulations:**

   a. S.C. Code Ann. § 12-60-10 (2014) et seq., specifically 12-60-460(2014); S.C. Code Ann. § 1-23-310 (Supp. 2014); and S.C. Code Ann. § 1-23-600 (Supp. 2014) confer subject matter jurisdiction to the Administrative Law Court in this matter; and
   b. S.C. Code Ann §§ 61-4-525, 61-6-1825, 61-6-20, 61-6-1610, 61-6-1825, along with S.C. Code Ann. Regs. §§ 7-201 and 7-401.3 are at issue in this controversy.

3. **The issues presented for determination, including any claims or defenses expected to be presented:**

a. Whether the licensed location is engaged primarily and substantially in the preparation and serving of meals that serves food to its customers in accordance with S.C. Code Ann §§ 61-6-20 (Supp 2018) and 61-6-1610;

b. Whether the licensed location meets all of the requirements for renewal of its on-premises beer and wine permit and continues to be a suitable location; and

c. Whether the licensed location meets all of the requirements for renewal of its restaurant liquor by the drink license and continues to be a suitable location.

d. Petitioner will show unto the Court that it meets all of the requirements for the renewal of its on-premises beer and wine license and its liquor by the drink license.

e. Petitioner expects that intervenors to argue that Petitioner is not bona fide engaged primarily and substantially in the preparation and serving of meals in accordance with S.C. Code Ann § 61-6-20 (Supp 2018), which would make it ineligible for liquor by the licensure under S.C. Code Ann § 61-6-1610.

4. **The action requested of the Court and a detailed statement of the law, which supports the requested action, including statutory and/or case citations:**

The Petitioner seeks an Order from the Court finding that it meets the requirements for renewal of its on-premises beer and wine license, along with its liquor by the drink license. This includes a finding that the business is engaged primarily and substantially in the preparation and serving of meals that serves food to its customers in accordance with S.C. Code Ann §§ 61-6-20 (Supp 2018) and 61-6-1610 and that the location is suitable.

The issues raised by Protestants/Intervenors were ruled upon by Judge Durden in a similar matter, Rooftop Bar, LLC d/b/a Rooftop Bar and Lounge v. South Carolina Department of Revenue, Docket No. 18-ALJ-17-0002-CC; 2018 WL 437121 (September 5, 2018).

5. **A brief summary of the facts to be presented at the hearing:**

a. On July 17, 2018, Petitioner submitted its renewals for its on-premises beer and wine license and liquor by the drink license for its location at 2107 Greene Street, Columbia, South Carolina;
b. Petitioner meets all the requirements for renewal of its on-premises beer and wine license;
c. Petitioner meets all the requirements for renewal of its on liquor by the drink license;
d. Specifically, Petitioner's location is suitable; and
e. Petitioner is a bona fide entity engaged primarily and substantially in the preparation and serving of meals that serves food to its customers, as it has a

Respectfully submitted,

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February 4, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Ink, LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	Docket No.: 19-ALJ-17-0001-CC **INTERVENORS' *FOURTH AMENDED* PREHEARING STATEMENT**

Pursuant to Rule 14 of the Administrative Law Court (ALC) Rules and the Court's March 21, 2019 Order, Intervenors Thomas R. Gottshall, April C. Lucas, and Michael Drennan respectfully submit the following prehearing statement:

1. Nature of the proceeding.

This is a contested case hearing on Petitioner Eighteen Ink, LLC, d/b/a Group Therapy's (Group Therapy's) application for renewal of a beer and wine permit and restaurant liquor by the drink license. Respondent South Carolina Department of Revenue (DOR) denied the permit and license based on the receipt of 15 valid public protests (including Intervenors' protests). See S.C. Code Ann. §§ 61-4-525 & 61-6-185 (2009).

SUPPLEMENTAL RESPONSE – December 18, 2019:

Thereafter, on September 26, 2019, DOR issued an amended agency information sheet that added Columbia Police Department (CPD) Chief W.H. Holbrook as having submitted a timely public protest objecting to the renewal based upon problems with (1) public intoxication near the

location, (2) calls for service at the location, (3) constant law enforcement problems at or near the location, and (4) congregating and loitering near the location. Chief Holbrook's protest urges the Court to deny the application because the lines, volume of patrons, and "significant amount of fights and civil disturbance calls" at the location are "a constant drain on law enforcement services on Thursday, Friday, and Saturday nights." See CPD Protest at 063.

On December 9, 2019, DOR filed an amended prehearing statement informing the Court that Group Therapy was cited by the South Carolina Law Enforcement Division (SLED) for permitting a criminal act on the premises in violation of South Carolina Code § 61-4-580(5), such that, pursuant to Revenue Procedure 13-2, DOR "now finds that the licensed location is not suitable for the renewal" of its permit or license.

2. Statutory provision(s) conferring subject matter jurisdiction and other applicable statutes and regulations.

The Court has subject matter jurisdiction pursuant to South Carolina Code § 61-2-260.

3. Issues to be presented, including expected claims or defenses.

Intervenors have raised two issues in objecting to Group Therapy's permit and license renewal: (1) Group Therapy is not engaged primarily and substantially in the preparation and service of meals as required by Article VIII-A, § 1 of the South Carolina Constitution and (2) the proposed location is not "suitable" for continued on-premises service and consumption of alcohol.

4. Action requested from the Court and statement of law supporting requested action.

The permit and license renewal should be denied for two reasons.

First, Group Therapy is a bar, not a restaurant. Under South Carolina law, there is no such thing as a bar that sells liquor by the drink. Licenses for the sale of liquor for on-premises consumption are only permitted to issue to businesses "which engage primarily and substantially

in the preparation and serving of meals[.]" S.C. CONST. art. VIII-A, § 1. The purpose of this constitutionalized regulation of liquor is "to prevent the return of the public saloon and barroom." Re: No. 5, Alcoholic Liquors, Op. No. 3277, 1972 S.C. Op. Att'y Gen. 79 (1972) (quotations omitted). Group Therapy is the modern iteration of the public saloon—a large open space where hordes of young people gather to drink inexpensive liquor to excess—and it causes all the public harms that Article VIII-A, § 1 was intended to prevent.

Here, the Court must decide whether Group Therapy is primarily and substantially engaged in the preparation and service of meals such that it qualifies for licensure. In Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Commission, 273 S.C. 782, 260 S.E.2d 452 (1979), the Court construed a statute with nearly identical language and held a bowling alley that derived just 10 percent of its revenue from the preparation and service of meals fell short of the primary and substantial requirement. See id. at 783–84; 260 S.E.2d at 453. In another matter, Intervenors have argued that the Constitution's primary-and-substantial standard imposes a qualitative and quantitative standard that should ask whether an enterprise is primarily in the business of preparing and serving meals and substantially engaged in doing so. Gross receipts from food and non-alcoholic beverages as a percentage of overall alcohol sales are necessarily part of that inquiry and, while the court have not adopted a bright-line threshold for food sales, Brunswick is instructive for the proposition that 10 percent is insufficient.

Second, the proposed location is not suitable for renewal because Group Therapy's continued operation in the Five Points entertainment district where it is located is already afflicted with alcohol-related harms. Generally, an ALC can consider the suitability of a proposed location before granting a permit or license. See S.C. Code Ann. §§ 61-4-520, 61-6-120 & -1820; see also Schudel v. S.C. ABC Comm'n, 276 S.C. 138, 276 S.E.2d 308 (1981). Thus, an applicant need not

be found to have acted lawlessly or immorally (although those are also grounds for denial); a license can be denied based solely on the unsuitability of the location. See, e.g., Schudel, 276 S.C. at 140–41, 276 S.E.2d at 309 (denying license based on prior disturbances, proximity to children, and objections by law enforcement, church, and residents even though "no formal complaints had been filed against his previous establishment"); Terry v. Pratt, 258 S.C. 177, 185, 187 S.E.2d 884, 888 (1972) (inadequate police protected rendered location unsuitable).

Thus, unlike criteria focused on the applicant, a suitability-of-location analysis requires an ALC to consider the public's interest based on the myriad of factors that might weigh on it. See 48 C.J.S. Intoxicating Liquors § 196 (Sept. 2016 update) (license may be refused on grounds location "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."). Accordingly, geography, traffic risks, nature of the business vis-à-vis the neighborhood, community impact, and strain on local law enforcement have all been cited as proper adverse considerations. See, e.g., Moore v. S.C. ABC Comm'n, 308 S.C. 160, 162, 417 S.E.2d 555, 557 (1992); Byers v. S.C. ABC Comm'n, 305 S.C. 243, 246, 407 S.E.2d 653, 655 (1991); Kearney v. Allen, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985); Schudel, 276 S.C. at 141–42, 276 S.E.2d at 309–10; Palmer v. S.C. ABC Comm'n, 282 S.C. 246, 249, 317 S.E.2d 476, 478 (Ct. App. 1984); 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 Private Club v. S.C. Dep't Rev., 08-ALJ-17-0054-CC, 2008 WL 2300384, at *3–4 (S.C. Admin. Law Ct. 2008).

These considerations are all present here. Because of Group Therapy, and other illegal enterprises like it, Five Points has become a place that large crowds of young people, many of

whom are underage, drink to excess, congregate and loiter on public sidewalks and streets, and disturb the peace and enjoyment of local neighbors. These late-night crowds present potential public safety threats that burden local law enforcement and have exacerbated an ongoing public health crisis among students at the University of South Carolina (USC) and their consumption of alcohol. These considerations render the proposed location unsuitable for the continued on-premises consumption of alcohol.

SUPPLEMENTAL RESPONSE – December 18, 2019:

As further grounds for denying a permit and license, Intervenors fully concur with DOR's position that Group Therapy's violation of § 61-4-580(5) is disqualifying.

5. Summary of fact to be presented at the hearing.

Please see discussion above. Further, Intervenors' expect the evidence will show Group Therapy is not primarily and substantially engaged in the preparation or service of meals, but that it is a late-night bar/club that derives the overwhelming amount of its revenue from the sale of alcohol, particularly cheap liquor. Intervenors' also expect the Court to find, as another member of this Court has found, that (1) 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; (2) these crowds of underage college students congregate, loiter, and use falsified identification to enter bars and drink to excess; (3) the Five Points district presents law enforcement challenges, and requires significant, additional law enforcement attention and resources due to the high concentration of young adults and students; (4) the high density of bars and availability of alcohol in Five Points promotes a culture of overconsumption and other high-risk drinking behaviors by students; (5) nearby residents view Five Points as an attractive nuisance

that results in public intoxication, public urination, property damage, late-night disturbances, and other crimes; and (6) that Five Points patrons are responsive for this nuisance behavior. See Five Points Roost, LLC v. S.C. Dep't Rev., 18-ALJ-17-0005-CC, 2018 WL 1724696 (S.C. ALC April 3, 2018) (Durden, J.) (denying permit and license); Rooftop Bar, LLC v. S.C. Dep't Rev., 18-ALJ-17-0002-CC, 2018 WL 4327121 (S.C. ALC Sept. 5, 2018) (Durden, J.) (granting permit and license subject to conditions, appeal pending). Based on this record, and perhaps other facts touching on the suitability of the location, the Court should conclude the location is unsuitable for continued on-premises alcohol service and consumption.

SUPPLEMENTAL RESPONSE – December 18, 2019:

Intervenors also expect the evidence will show that on September 15, 2019, four individuals were smoking marijuana in a locked, "employees only" area of the bar.

6. Summary of expected motions and appropriate authority in support.

Intervenors have moved the Court to compel Group Therapy to respond to certain discovery and the Court has set Petitioner's deadline to respond to the motion for on or before April 11. Today, Group Therapy's counsel contacted the undersigned to indicate those discovery responses and the requested documents are being provided. Upon receipt and review of those disclosures, Intervenors intend to withdraw the motion assuming no objections to disclosure are interposed in those responses.

Intervenors do not anticipate any additional pre-hearing motion practice at this time.

7. A list of proposed witnesses and exhibits.

Intervenors intend to call the following witnesses:

a. Thomas R. Gottshall;

b. April C. Lucas;

c. Michael Drennan;

d. Olufemi Olulenu;

e. Chief William Holbrook, Columbia Police Department (CPD);

f. Dean Marc Shook, USC; and

g. Leslie Wiser, Jr.

SUPPLEMENTAL RESPONSE – May 8, 2019: Intervenors intend to call the following witness:

h. Rob Perry, P.E.
Director, Traffic Engineering
SCDOT
955 Park Street, Room 501
Columbia, SC 29201

i. Deputy Chief Melron Kelly, CPD

Intervenors recently received notice that Chief Holbrook will be out of town due to a family commitment. Accordingly, Intervenors intend to call Deputy Chief Kelley appear instead.

SUPPLEMENTAL RESPONSE – December 18, 2019:

j. Special Agent Kirkland Jordan, SLED

k. Special Agent f/n/u Dorman, SLED

l. Fabian Ludwig, Group Therapy;

m. Steve Taneyhill, Group Therapy;

n. Torrickory Outing;

o. Three presently unknown individuals who were present in the employees only area where SLED discovered marijuana on September 15, 2019.

Intervenors may call the following witnesses should the need arise:

a. Henry "Tim" Thames;

b. Tammy Young, DOR;

c. James M. Daniel III;

d. Susalee Lamb;

e. William Lamb;

f. Patricia Wood;

g. William Hrushesky;

h. Karen Belser;

i. Polly Morrison;

j. Nancy White;

k. John Stucker;

l. Vivian Armstead;

m. Beth Richardson; and

n. Any witness identified by Group Therapy or the Department.

Intervenors may offer all or part of the following exhibits:

Ex. No.	Bates No.	Description
1.	INT_GROUP_000001–03	Group Therapy website
2.	INT_GROUP_000004–27	Group Therapy Twitter page
3.	INT_GROUP_000028–30	ColumbiaSCNightOut.com website
4.	INT_GROUP_000031–119	Group Therapy Facebook page
5.	INT_GROUP_000120–213	Group Therapy Five Points Facebook page
6.	INT_GROUP_000214–239	Group Therapy Instagram page
7.	INT_GROUP_000240–249	Group Therapy Yelp.com page
8.	USC_IMPACT_RPT 000001–34	AlcoholEDU 2016-2017 Impact Report
9.	USC_IMPACT_RPT 000034–67	AlcoholEDU 2016-2017 Impact Report
10.	WISER_000001–46	Time for Change, Oct 1, 2015
11–44.	INTERVENORS_000001–33	Photos, March 31, 2019
45–55.	INTERVENORS_000034–44	Videos, March 31, 2019
56–76.	INTERVENORS_000045–65	Photos, April 7, 2019
77–86.	INTERVENORS_000066–74	Video, April 7, 2019
87.	INTERVENORS_000075	Map: 42 On Premises ABL Outlets in Five Points: 23 Bars / 18 All Night
88.	SCDOR_FOIA_GROUP	DOR File in re: Group Therapy

	000001–249	
89.	001–059	DOR File

SUPPLEMENTAL RESPONSE – May 8, 2019:

Ex. No.	Bates No.	Description
90.	INTERVENORS_SCDOT 000001-000009	Traffic studies prepared by the SC Department of Public Transportation relating to motorist, bicycle or pedestrian safety

SUPPLEMENTAL RESPONSE – December 18, 2019:

Ex. No.	Bates No.	Description
91.	DOR_001	Liquor by the Drink Tax printout from SCDOR for Group Therapy
92.		SCDOR Gross Sales report for Group Therapy
93.	INTERVENORS 00076-90	Crime and Safety Efforts in Five Points Executive Summary
94.	INTERVENORS 000091-94	Drone footage of Five Points
95.	INTERVENORS 000098-103	Drone footage still shots of Five Points
96.	INTERVENORS 000104	Email from M. Drennan, Nov 3, 2019 re: videos of Five Points
97.	INTERVENORS 000105-107	Video footage of Five Points, Nov 3, 2019
98.		South Carolina Law Enforcement Division body cam footage, Dec 11, 2019

SUPPLEMENTAL RESPONSE – February 4, 2020:

Ex. No.	Bates No.	Description
99.	060-166	Columbia Police Department protest dated Sep 17, 2019 and attachments
100.		USC protest dated Dec 19, 2019
101.		SLED investigative report dated Sep 16, 2019 for inspection of Group Therapy on Sep 15, 2019

SUPPLEMENTAL RESPONSE – February 10, 2020:

Ex. No.	Bates No.	Description
102.		54 incident reports produced by the City of Columbia Police Department
103.		Columbia Police Department Five Points reported offenses, Jan 1, 2018 to Dec 17, 2019

104.		Columbia Police Department 2100 Block of Greene Street reported offenses, Jan 1, 2014 to Feb 1, 2020
105.		Columbia Police Department 800 Block of Harden Street reported offenses, Jan 1, 2014 to Feb 1, 2020
106.		City of Columbia arrests, 2014 to 2019
107.		City of Columbia arrests (total number of charges), 2014 to 2019
108.	INTERVENORS 000108-120	Video footage of Five Points, February 9, 2020

(end of supplement)

Intervenors also may offer documents produced by Group Therapy, the Department of Revenue, CPD, or USC. The Department is expected to produce tax records subject to the Court's Confidentiality Order and Group Therapy has promised documents in response to outstanding discovery. CPD and USC have received trial subpoenas requiring the production of documents at the final hearing.

Intervenors respectfully reserve the right to supplement this disclosure if an when additional information becomes available.

8. A statement regarding the necessity of discovery, if any.

Other than the discovery at issue in Intervenors' pending motion to compel, Intervenors do not require any further discovery prior to the final hearing.

9. Estimated time required for hearing.

Intervenors expect their case in chief to take approximately two days to present. Depending on the number of witnesses offered by Group Therapy and/or the Department, Intervenors expect this matter could be concluded in two or three days.

10. Dates the parties, counsel, or key witnesses are specifically unavailable during the next three months.

Counsel is unavailable due to other obligations on April 24 (hearing in District Court), May 23–24 (contested case hearing before this Court), and June 14 (mediation). Key witnesses are unavailable on April 15; May 3, and 9–13; June 17–26; and July 3–22.

Respectfully submitted,

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February 10, 2020
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen, Ink, LLC d/b/a Group Therapy, Petitioner, v. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	)	Docket No.: 19-ALJ-17-0001-CC

PETITIONER'S MOTION IN *LIMINE*

COMES NOW, the Petitioner, by and through its undersigned Counsel of Record and files this Motion in *Limine* to prevent intervenors from introducing any arguments or evidence regarding whether Petitioner is "engaged primarily and substantially in the preparation and serving of meals". Petitioner, Group Therapy has operated at its current location since 1978 making it the oldest establishment in Five Points. Intervenors seek to challenge whether Group Therapy is "engage[d] primarily and substantially in the preparation and serving of meals." The decision regarding whether the Petitioner is in compliance with this requirement is solely within the enforcement authority of SLED and the Department of Revenue and not Intervenors. Allowing the Intervenors to prosecute a statute exclusively within the enforcement authority of the Department of Revenue and SLED would violate the Court of Appeals holding in *S.C. Dep't of Revenue v. Sandalwood Social Club*, 399 S.C. 267 (S.C. App., 2012). In addition, the term "engage[d] primarily and substantially in the preparation and serving of meals" as used in the state constitution

was defined by the General Assembly in S.C. Code Ann. § 61-6-20(2) and does not include a percentage of sales component. As a result, the Petitioner's Motion in Limine should be granted and the Intervenors should be prohibited from making such arguments and introducing evidence on this issue.

I. THE INTERVENORS LACK THE AUTHORITY TO CHALLENGE WHETHER PETITIONER IS "ENGAGED PRIMARILY AND SUBSTANTIALLY IN THE PREPARATION AND SERVING OF MEALS" AND AS SUCH PETITIONER'S COMPLIANCE IS NOT AN ISSUE IN DISPUTE.

The Intervenors have advanced an argument that Petitioner is not "engaged primarily and substantially in the preparation and serving of meals." Intervenors' Third Amended Prehearing Statement at 2-6. As set forth herein, such a determination is solely within the enforcement authority of SLED and the Department of Revenue.

Section 61-2-20 vests "[t]he functions, duties, and powers set forth in this title are vested in the department[1] and the division[2]. The department must administer the provisions of this title, and the division must enforce the provisions of this title." No private right of action related to enforcement of alcohol laws. *See S.C. Dep't of Revenue v. Sandalwood Social Club*, 399 S.C. 267, 280 (S.C. App., 2012) ("only DOR may bring violations under its regulations, and no private right exists to bring a claim against a business under DOR's regulatory scheme."). The Department of Revenue has determined that Petitioner met the statutory requirement of being "engaged primarily and substantially in the preparation and serving of meals." The Intervenors are attempting to impose their own interpretation of the law in place of this determination properly made by

[1] "Department" means the Department of Revenue. S.C. Code Ann. § 61-2-10.

[2] "Division" means the South Carolina Law Enforce Division ("SLED"). S.C. Code Ann. § 61-2-10.

Department of Revenue. Intervenors attempt to usurp the statutory authority delegated to the Department of Revenue and SLED by the General Assembly is inappropriate and unauthorized.

This interpretation is consistent with the Court's holding in *Sandalwood.* In *Sandalwood,* the Court made clear "DOR is charged with the responsibility of administering and enforcing the laws and regulations governing the manufacture and sale of alcoholic beverages, including beer, wine, and alcoholic liquors." *Sandalwood,* 399 S.C. at 278. The Court continued "only DOR may bring violations under its regulations, and no private right exists to bring a claim against a business under DOR's regulatory scheme." *Id.* at 280. The Court concluded "the allowance of what amounted to a private citizen bringing a claim under DOR's regulatory scheme was an error of law." *Id.* at 281.

The Court's holding in *Sandalwood* applies to this case as well. As this is a renewal case with the Petitioner already holding a license, whether Petitioner is in compliance with §§ 61-6-20, 61-6-1610, and 61-6-1820 is an enforcement issue to be investigated by SLED and prosecuted by the Department of Revenue in accord with § 61-2-20. Consistent with their enforcement authority, the Department of Revenue issued South Carolina Revenue Procedure #13-2, which sets forth that failure to be "primarily and substantially engaged in the preparation and serving of meals" is a violation of the license holder's license. The penalty set forth by the Department of Revenue for such a violation is revocation. In accordance with § 61-2-20, the only entity authorized to investigate whether a violation has occurred is SLED and only the Department of Revenue may prosecute any violation. If the Court were to allow the Intervenors to prosecute their claim that Petitioner is not "engaged primarily and substantially in the preparation and serving of meals" it would be allowing a private citizen to bring a claim under the DOR's regulatory scheme. As the Court in *Sandalwood* made clear, allowing Intervenors to make such an argument is not authorized.

As a result, Intervenors' should be prohibited from arguing or introducing any evidence as to whether Petitioner is "engaged primarily and substantially in the preparation and serving of meals".

II. THE GENERAL ASSEMBLY'S DEFINITION OF THE CONSTITUTIONAL REQUIREMENT DOES NOT INCLUDE A PERCENTAGE OF SALE REQUIREMENT.

Assuming arguendo, that Intervenor can prosecute[3] whether Petitioner is "engaged primarily and substantially in the preparation and serving of meals," Petitioner's sales are not a properly contested issue before this Court. The Intervenors in this matter seek to introduce argument regarding whether Petitioner percentage of sales is sufficient to be "engaged primarily and substantially in the preparation and serving of meals." Intervenors' Third Amended Prehearing Statement at 2-6. The Intervenors cite to *Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Commission*, 273 S.C. 782, 260 S.E.2d 452 (1979) in support of its argument that the percentage of food sales is and issue before the Court. *Id.* In *Brunswick*, the Supreme Court held that food sales of 10% did not equate to being engaged primarily and substantially in the preparation and serving of meals.

Brunswick was decided in 1979 long before the General Assembly passed S.C. Code Ann. § 61-6-20(2), which codified a definition for the constitutional requirement found in S.C. Const. art. VIII-A § 1. Article VIII-A vests the General Assembly with the right to regulate the sale of alcoholic liquors within the State. With the authority granted by Article VIII-A, the General Assembly passed S.C. Code Ann. § 61-6-20(2) and specifically defined what it meant to "engage primarily and substantially in the preparation and serving of meals." Section 61-6-20(2) provides:

> "Bona fide engaged primarily and substantially in the preparation and serving of meals" means a business that provides facilities for

[3] As set forth in section I above, Petitioner disputes that Intervenors can present such arguments.

> 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).

This definition adopted by the General Assembly abrogated the minimum food sales percentage established by the Court's holding in *Brunswick*. In *Lindsay v. Nat'l Old Line Ins. Co.*, the Court held

> The construction of a statute is a judicial function and responsibility. Subject to the constitutional limitations, the legislature has plenary power to amend a statute. *Boatwright v. McElmurray*, 247 S.C. 199, 146 S.E.2d. 716. However, a judicial interpretating of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will on be effective from the date of its enactment ... .

262 S.C. 621, 628-29, 207 S.E.2d. 75, 78 (1974). The same is true here. Prior to legislative enactment, *Brunswick* defined what it meant to "engage primarily and substantially in the preparation and serving of meals." However, once the General assembly enacted S.C. Code Ann. § 61-6-20(2), the Court's interpretation was no longer applicable going forward and the definition found in S.C. Code Ann. § 61-6-20(2) controls. As a result, the Petitioner's compliance with S.C. Code Ann. § 61-6-20(2) would be the only issue before the Court.

Should the Court allow Intervenors to challenge whether Petitioner is "engage[d] primarily and substantially in the preparation and serving of meals," the Court's answer is guided by the statutory definition of the term found in S.C. Code Ann. § 61-6-20(2), which does not include a percentage of sales analysis. There, Intervenors should be prohibited from making any argument or introducing any evidence regarding Petitioner's percentage of food sales.

III. CONCLUSION

The decision regarding whether the Petitioner is in compliance with S.C. Code Ann. §§ 61-6-20, 61-6-1610, and 61-6-1820 is solely within the enforcement authority of SLED and prosecutorial authority of the Department of Revenue with review of those decisions made by this Honorable Court. The Court of Appeals decision in *Sandalwood* makes clear that an intervenor cannot advance such claims. In addition, the term "engage[d] primarily and substantially in the preparation and serving of meals" as used in the state constitution was defined by the General Assembly in S.C. Code Ann. § 61-6-20(2) and does not include a percentage of sales component. As such, Petitioner's Motion in Limine should be granted and Petitioner respectfully requests that this Honorable Court issue an Order *in Limine*:

1) Preventing the Intervenors from submitting any evidence or testimony attempting to show the Petitioner does not meet the statutory definition of bona fide primarily and substantially engaged in the preparation and serving of food, including any discussion of food sales percentages;
2) Preventing Intervenors from making any arguments, which are clearly in the sole authority of the Department of Revenue; and
3) That this Order applies to all Protestants regardless of whether or not they choose to become parties to the case.

Respectfully submitted this 6th day of February, 2020,

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen, Ink, LLC d/b/a Group Therapy, Petitioner, v. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	)	Docket No.: 19-ALJ-17-0001-CC **PETITIONER'S AMENDED PREHEARING STATEMENT**

TO: The Honorable Shirley C. Robinson, Presiding Judge

Pursuant to ALC Rule 14, and this Court's Order of March 21, 2019, the Respondent hereby submits its Prehearing Statement. Petitioner responds to the Court's Order as follows:

1. **The Nature of this Proceeding:**

   This is a contested case filed by the Petitioner, Eighteen, Ink, LLC d/b/a Group Therapy, following the Department of Revenue's denial of Petitioner's renewal applications for its on-premises beer and wine license and its liquor by the drink license.

2. **The Statutory provisions conferring subject matter jurisdiction to the Administrative Law Court and other applicable statutes and regulations:**

   a. S.C. Code Ann. § 12-60-10 (2014) et seq., specifically 12-60-460(2014); S.C. Code Ann. § 1-23-310 (Supp. 2014); and S.C. Code Ann. § 1-23-600 (Supp. 2014) confer subject matter jurisdiction to the Administrative Law Court in this matter; and
   b. S.C. Code Ann §§ 61-4-525, 61-6-1825, 61-6-20, 61-6-1610, 61-6-1825, along with S.C. Code Ann. Regs. §§ 7-201 and 7-401.3 are at issue in this controversy.

3. **The issues presented for determination, including any claims or defenses expected to be presented:**

a. Whether the licensed location is engaged primarily and substantially in the preparation and serving of meals that serves food to its customers in accordance with S.C. Code Ann §§ 61-6-20 (Supp 2018) and 61-6-1610;

b. Whether the licensed location meets all of the requirements for renewal of its on-premises beer and wine permit and continues to be a suitable location; and

c. Whether the licensed location meets all of the requirements for renewal of its restaurant liquor by the drink license and continues to be a suitable location.

d. Petitioner will show unto the Court that it meets all of the requirements for the renewal of its on-premises beer and wine license and its liquor by the drink license.

e. Petitioner expects that intervenors to argue that Petitioner is not bona fide engaged primarily and substantially in the preparation and serving of meals in accordance with S.C. Code Ann § 61-6-20 (Supp 2018), which would make it ineligible for liquor by the licensure under S.C. Code Ann § 61-6-1610.

4. The action requested of the Court and a detailed statement of the law, which supports the requested action, including statutory and/or case citations:

The Petitioner seeks an Order from the Court finding that it meets the requirements for renewal of its on-premises beer and wine license, along with its liquor by the drink license. This includes a finding that the business is engaged primarily and substantially in the preparation and serving of meals that serves food to its customers in accordance with S.C. Code Ann §§ 61-6-20 (Supp 2018) and 61-6-1610 and that the location is suitable.

The issues raised by Protestants/Intervenors were ruled upon by Judge Durden in a similar matter, Rooftop Bar, LLC d/b/a Rooftop Bar and Lounge v. South Carolina Department of Revenue, Docket No. 18-ALJ-17-0002-CC; 2018 WL 437121 (September 5, 2018).

5. A brief summary of the facts to be presented at the hearing:

a. On July 17, 2018, Petitioner submitted its renewals for its on-premises beer and wine license and liquor by the drink license for its location at 2107 Greene Street, Columbia, South Carolina;
b. Petitioner meets all the requirements for renewal of its on-premises beer and wine license;
c. Petitioner meets all the requirements for renewal of its on liquor by the drink license;
d. Specifically, Petitioner's location is suitable; and
e. Petitioner is a bona fide entity engaged primarily and substantially in the preparation and serving of meals that serves food to its customers, as it has a

kitchen with a cook that serves hot meals during the entire time the business is open, has a menu, has at least 40 seats with tables and has a grade A from DHEC.

6. **A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:**

Petitioner plans to file Motions in Limine during the prior to trial of this matter.

7. **A list of proposed witnesses and exhibits:**

Witness: Steve Taneyhill;
Brian Glynn;
Bryan Riley;
Steve Cook; and
Torrickery Outing.

Exhibits: The Petitioner's Department of Revenue File, Menu, Grade A certificate from DHEC and Pictures of the location including pictures of seating and of the kitchen.

8. **A statement regarding the necessity of discovery, if any:**

The Petitioner states that discovery is necessary and ongoing at this time.

9. **The estimated time required for the hearing:**

The Petitioner anticipates the hearing to last two days given the number of protestants and that a similar hearing last year before Judge Durden took two days.

10. **Any dates the parties or key witnesses are specifically unavailable during the next three months:**

Based on this Court's Order, Petitioner understands that this matter was set for a hearing on February 11 and 12, 2020.

11. **An email address where you can be reached:**

Counsel for the Petitioner are John R. Alphin, jalphin@stromlaw.com and Bakari T. Sellers, BSellers@stromlaw.com

Respectfully submitted,

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February 4, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Ink, LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	Docket No.: 19-ALJ-17-0001-CC FILED DEC 19 2019 SC ADMIN LAW COURT

Reply to Petitioner's memorandum in opposition to Intervenors' motion for discovery sanctions

Petitioner Eighteen Ink, LLC, d/b/a Group Therapy (Group Therapy) offers *no* defense to Intervenors Thomas R. Gottshall, April C. Lucas, and Michael Drennan's motion for discovery sanctions arguing the bar ignored discovery obligations, allowed perishable evidence to be destroyed, and furnished incomplete information of dubious accuracy concerning its purported food sales. For the reasons already explained, spoliation sanctions are warranted.

Instead, Group Therapy urges the Court not to impose sanctions (1) because the decision regarding whether it is primarily and substantially engaged in meal preparation and service is "solely" within the authority of the South Carolina Law Enforcement Division (SLED) and Respondent South Carolina Department of Revenue (DOR) and (2) because South Carolina Code § 61-6-20(2) "does not include a percentage of sales component." See Pet.'s Mem., 1–2. These

arguments are not responsive to the discovery issue raised by the motion but can also be rejected (if the Court finds it necessary to address them) for the reasons that follow.[1]

I. The public protest statute allows Intervenors to raise *any* argument in opposition to an applicant, including the arguments raised here.

As noted in their protests and prehearing statement, Intervenors contend Group Therapy is categorically ineligible to obtain an on-premises liquor-by-the-drink license because it is not "engage[d] primarily and substantially in the preparation and serving of meals[.]" See S.C. CONST. art. VIII-A, § 1. Group Therapy contends its spoliation of evidence requested to reveal whether the bar is, in fact, engaged in preparing and serving meals (and the extent of that engagement) is immaterial because "such a determination is solely within the enforcement authority of SLED and the prosecutorial authority of the [DOR]." Pet. mem., 2. Citing South Carolina Code § 61-2-20[2] and South Carolina Department of Revenue v. Sandalwood Social Club, 399 S.C. 267, 731 S.E.2d 330 (Ct. App. 2012), Group Therapy concludes that because alcohol enforcement authority is vested with DOR and SLED, Intervenors' argument that Group Therapy is constitutionally ineligible for liquor licensure cannot be raised by public protestants during this re-licensure proceeding. See Pet. mem., 2–4. That view is flawed because it is irreconcilable with a licensure and permitting scheme that expressly creates a role for members of the public before a license or permit is issued or re-issued and crediting that view would render the public protest provisions of the State's alcohol beverage licensing (ABL) laws a nullity.

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[1] These arguments are substantially similar to the arguments submitted by Intervenors in another contested-case matter before the Court styled PM Palmetto, LLC, d/b/a Cover 3 v. S.C. Dept. Rev., No. 18-ALJ-17-0450-CC.

[2] See also S.C. Code Ann. § 61-2-80 (providing that DOR "is the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors," and is authorized to impose conditions or restrictions prior to issuing or renewing a license or permit).

Members of the public have an express, statutory right to present reasons why a permit or license should be denied. When an applicant seeks a beer-and-wine permit or liquor-by-the-drink license for on-premises consumption, a person residing in the county or within five miles of the location "may protest the issuance or renewal of the license if he files a written protests providing: ... (3) the specific *reasons* why the application should be denied[.]" S.C. Code Ann. § 61-6-1825(A) (emphasis added); see also id. § 61-6-1820 ("Upon the written request of a person who resides in the county where the license is requested to be issued, the department must not issue the permanent license until interested persons have been given an opportunity to be heard."). The same statutory scheme applies to retail license applications and renewals. See S.C. Code Ann. §§ 61-4-525 (beer-and-wine permit) & 61-6-185 (liquor license). Notably, § 61-6-1825 does not contain *any* limiting language restricting the "reasons" a public protestant may cite, nor does it retain with DOR certain legal prerogatives that the department alone may vindicate. To the contrary, the statute provides that *any* timely filed protest on which the protestant wishes to be heard means "the department *must not* issue the permanent license but must forward the file to the Administrative Law Court [(ALC)]." S.C. Code Ann. § 61-6-1825(B) (emphasis added). In other words, a timely protest is presumptively valid, at least for the purpose of referring the matter to the ALC to allow the protestants an opportunity to be heard.

For example, in Be Mi, Inc. v. South Carolina Department of Revenue, 408 S.C. 290, 758 S.E.2d 737, 738 (Ct. App. 2014), this Court considered a homeowners' association's challenge to a license under the theory that the applicant lacked statutorily required seating. Id. at 293, 758 S.E.2d at 738. While that argument failed on the facts, there was no question whether the homeowners' association had standing to raise the argument as grounds for denying the license. No statute or (to Intervenors' knowledge) precedent stands for the proposition that the "reasons"

a protestant might cite as grounds for denial are limited to certain issues. Properly understood, the South Carolina Code distinguishes between application or re-application periods and post-licensure regulatory enforcement. During the former, § 61-6-1825 grants the public an express right to be heard to raise *any* issue that might be grounds for denying a license or permit. Once a license or permit is issued, § 61-2-80 reserves all legal authority to regulate and enforce against the licensed or permitted entity to DOR. E.g., Sandalwood Social Club, 399 S.C. at 281, 731 S.E.2d at 337 (criticizing reliance on testimony from a third-party to substantiate DOR's citation).

Group Therapy concludes that Intervenors' effort to raise the issue is "inappropriate and unauthorized" (Pet. mem., 3) without stating, in its view, what issues *are* appropriate for public protestors to raise in a re-licensure proceeding. Such a view frustrates the very procedure designed to give the public a role. Put differently, Group Therapy's reading presumes the General Assembly engaged in a futile legislative act by creating a public protest procedure but denying the public an opportunity to raise all possible reasons for denying a permit or license. Such a reading is contrary to the cannons of statutory interpretation and the presumption that § 61-6-1825 was intended to grant the public a substantive role in protesting permitting and licensure matters. See TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something."). Again, Intervenors do not claim a right to enforce against or punish Group Therapy for violations of the ABL laws—although that is relevant evidence of the applicant's fitness for licensure. The public at large, and Intervenors here, have a statutory right to be heard on why a permit and license should be denied, and in presenting such evidence, Group Therapy's constitutional eligibility to receive a liquor-by-the-drink license is legitimate grounds for inquiry, and therefore proper grounds for discovery.

II. Any licensure criteria imposed by statute are in addition to the regulatory floor established by the Constitution.

Alternatively, Group Therapy argues food sales are immaterial because South Carolina Code § 61-6-20(2), "which codified the definition for the constitutional requirement" effectively abrogated Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Commission, 273 S.C. 782, 260 S.E.2d 452 (1979). See Pet. mem., 4–5. In Group Therapy's view, Article VIII-A, § 1 "vests the General Assembly with the right to regulate the sale of alcoholic liquors within the State[,]" so the absence of a statutory food requirement excuses Group Therapy from making any showing it is, in fact, primarily and substantially engaged in the preparation and service of meals. See id. The bar is mistaken because, while the legislature has *almost* plenary power to regulate alcohol, that power is not absolute and cannot be exercised to relieve any applicant of the primary-and-substantial food requirement.

Article VIII-A, § 1 of the South Carolina Constitution establishes a minimum, non-negotiable regulatory floor that all applicants seeking an on-premises liquor-by-the-drink license must meet, notwithstanding any additional requirements the General Assembly may add. Were there any doubt that the Constitution imposes a limit on the legislature's plenary power over the regulation of alcohol, the General Assembly has acknowledged as much as recently as 2018, when it passed Act No. 147, finding and declaring that:

> The state's police power to regulate the business of retail liquor sales in the manner and *to the extent allowed by law including, but not limited to, Section 1, Article VIII–A of the South Carolina Constitution, 1895*, includes regulating the number and localities of retail dealer licenses that a person may be issued and regulating what wholesalers may deliver to persons licensed to sell alcoholic liquors for on-premises consumption, processes that affect the health, safety, and morals of the State.

2018 S.C. Laws Act No. 147 (H.4729), § 1(B) (emphasis added). While Act 147 concerned retail liquor sales, not on-premises consumption, the General Assembly's findings preceding the act

include this express recognition that, with respect to alcohol, the legislature's power has been limited by the People's adoption of Article VIII-A, § 1. Simply put, the Constitution establishes a regulatory floor while granting the legislature power to regulate up to the ceiling.

Thus, any ABL statute must be read to impose requirements *in excess of* the constitutional minimum, not as a substitute for it. For example, South Carolina Code § 61-6-1610, concerning licensure of "Food-service establishments or places of lodging[,]" provides hours for the sale of liquor for on-premises consumption if:

> (1) the business is bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging; and
>
> (2) the business has a license from the department authorizing the sale and consumption of alcoholic liquors by the drink, which is displayed conspicuously on the main entrance to the premises and clearly visible from the outside.

S.C. Code Ann. § 61-6-1610(A). Subsection (2)—requiring a license displayed conspicuously—is an example of a permissible regulation *in addition to* what the Constitution requires.

Group Therapy places great emphasis on South Carolina Code § 61-6-20(2), defining "[b]ona fide engaged primarily and substantially in the preparation and serving of meals" as a business with (1) seating for 40 people at tables, (2) a kitchen, (3) menus, and (4) hot meals prepared for service on demand to customers. S.C. Code Ann. § 61-6-20(2); see also id. §§ 61-6-1610(I)(1)–(3) (defining kitchen, meal, and bona fide). The bar would have the Court hold that so long as these technical requirements are met, there is no food-sales requirement in conjunction with licensure. That is not correct.

The better way to read the statutory scheme is as a supplement to (not a substitute for) the constitutional requirement. Notably, the statutory requirements include a term the Constitution does not: bona fide. See S.C. Code Ann. § 61-6-1610(I)(3) ("Bona fide engaged primarily and substantially in the preparation and serving of meals" means ..."). This distinction should be read

to have real meaning as an effort by the legislature to provide guidance when restaurant indicia might understandably be lacking—i.e., like when an applicant first applies for a license. The term "bona fide" simply means in good faith.[3] With a first-time applicant, there will not be any sales data or other evidence of the applicant's business practices to discern whether it is, in fact, primarily engaged in the preparation and service of meals and substantially engaged in doing so. Thus, the check-list imposed by statute simply add regulatory requirements and help guide DOR's determination by establishing indicia of a good-faith engagement in the restaurant business.

This reading also comports with the significance Intervenors ascribe to Brunswick Capitol Lanes, the only clear authority to speak on the issue of meal preparation and service as it relates to a license. As Intervenors have noted in their prehearing statement, in Brunswick, the Supreme Court construed a statute with *nearly* identical language to the Constitution and held a bowling alley that derived just 10 percent of its revenue from the preparation and service of meals fell short of the primary and substantial requirement. See Brunswick, 273 S.C. at 783–84, 260 S.E.2d at 453. However, the statutory language construed in Brunswick was not identical, but required "the business is *Bona fide* engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging ..." Brunswick, 273 S.C. at 783, 260 S.E.2d at 452 (emphasis added) (quoting now-repealed Code § 61-5-20(4)(a)). While the Brunswick statute included good-faith indicia of restaurant status—namely a DHEC license and seating requirement—the Court's analysis turned on the primary-and-substantial requirement. The legislature subsequently repealed that statute and enacted the current regime. While it is far from clear the Supreme Court would construe the current statute much differently, to the extent it sought to supplant Brunswick's construction, the General Assembly had that power. But with respect to the constitutional

[3] BONA FIDE, Black's Law Dictionary (10th ed. 2014).

restaurant requirement and how this Court should understand it, Brunswick's plain text analysis is strong evidence of how Article VIII-A, § 1 (which has no good-faith clause) is meant to be read.

Simply put, notwithstanding any other restriction the legislature might add, the Constitution requires that an enterprise must be primarily engaged in meal preparation and service, and substantially engaged in that business in order to obtain a liquor license. Accordingly, evidence concerning Group Therapy's food sales is relevant to establish it is not eligible for licensure.

CONCLUSION

Finally, without offering any authority to support the contention, Group Therapy argues that an order precluding it from introducing evidence concerning food sales as a sanction for its conduct would not be proportional to the alleged harm. The bar offers no alternative and would thus have the Court hold that because the requested relief is too harsh, it should escape consequences altogether. That cannot be the correct result particularly where, as is the case here, the factual record is so damning that the party resisting discovery fails to defend its conduct.

From the inception of this contested case matter, Intervenors have been clear concerning their view of the constitutional restaurant requirement and the discovery they needed on that central issue. Group Therapy did not object or move for protection—it made an incomplete production and let other evidence be destroyed. The motion for sanctions should be granted and the Court should preclude Group Therapy from offering any evidence it serves food and order any further relief the Court deems just and proper.

[signature page follows]

Respectfully submitted,

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ATTORNEYS FOR INTERVENORS
GOTTSHALL, LUCAS, AND DRENNAN

December 19, 2019
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen, Ink, LLC d/b/a Group Therapy, Petitioner, v. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	)	Docket No.: 19-ALJ-17-0001-CC

PETITIONER'S MEMORANDUM IN OPPOSITION
TO INTERVENORS' MOTION FOR DISCOVERY SANCTIONS

COMES NOW, the Petitioner, by and through its undersigned Counsel of Record, and files this Memorandum in Opposition to Intervenors' Motion for Discovery Sanctions. Petitioner, Group Therapy has operated at its current location since 1978 making it one of the oldest establishments in Five Points. Intervenors seek to challenge whether Group Therapy is "engage[d] primarily and substantially in the preparation and serving of meals." The decision regarding whether the Petitioner is in compliance with this requirement is solely within the enforcement authority of SLED and prosecutorial authority of the Department of Revenue. Allowing the Intervenors to prosecute a statute exclusively within the enforcement authority of the Department of Revenue and SLED would violate the Court of Appeals holding in *S.C. Dep't of Revenue v. Sandalwood Social Club*, 399 S.C. 267 (S.C. App., 2012). In addition, the term "engage[d] primarily and substantially in the preparation and serving of meals" as used in the state constitution

was defined by the General Assembly in S.C. Code Ann. § 61-6-20(2) and does not include a percentage of sales component. As a result, the discovery sought by the Intervenors is improper and irrelevant. As such, Intervenors' Motion for Discovery Sanctions should be denied.

I. THE INTERVENORS LACK THE AUTHORITY TO CHALLENGE WHETHER PETITIONER IS "ENGAGED PRIMARILY AND SUBSTANTIALLY IN THE PREPARATION AND SERVING OF MEALS" AND AS SUCH PETITIONER'S COMPLIANCE IS NOT AN ISSUE IN DISPUTE.

Spoliation of relevant evidence has not occurred in this matter because the requested evidence is not related to a central issue properly in dispute. The Intervenors in this matter seek discovery related to Petitioner's video recording system and sales records. The Intervenors state that this discovery is necessary to determine whether Petitioner is "engaged primarily and substantially in the preparation and serving of meals." Intervenors' Motion at 8. As set forth herein, such a determination is solely within the enforcement authority of SLED and the prosecutorial authority of the Department of Revenue.

Section 61-2-20 vests "[t]he functions, duties, and powers set forth in this title are vested in the department[1] and the division[2]. The department must administer the provisions of this title, and the division must enforce the provisions of this title." No private right of action exists related to enforcement of Title 61. *See S.C. Dep't of Revenue v. Sandalwood Social Club*, 399 S.C. 267, 280 (S.C. App., 2012) ("only DOR may bring violations under its regulations, and no private right exists to bring a claim against a business under DOR's regulatory scheme."). The Department of Revenue has determined that Petitioner met the statutory requirement of being "engaged primarily and substantially in the preparation and serving of meals." The Intervenors are attempting to

[1] "Department" means the Department of Revenue. S.C. Code Ann. § 61-2-10.

[2] "Division" means the South Carolina Law Enforce Division ("SLED"). S.C. Code Ann. § 61-2-10.

impose their own interpretation of the law in place of the determination that was properly made by Department of Revenue. Intervenors attempt to usurp the statutory authority delegated to the Department of Revenue and SLED by the General Assembly is inappropriate and unauthorized.

This is consistent with the Court's holding in *Sandalwood.* In *Sandalwood,* the Court made clear "DOR is charged with the responsibility of administering and enforcing the laws and regulations governing the manufacture and sale of alcoholic beverages, including beer, wine, and alcoholic liquors." *Sandalwood*, 399 S.C. at 278. The Court continued "only DOR may bring violations under its regulations, and no private right exists to bring a claim against a business under DOR's regulatory scheme." *Id.* at 280. The Court concluded "the allowance of what amounted to a private citizen bringing a claim under DOR's regulatory scheme was an error of law." *Id.* at 281.

The Court's holding in *Sandalwood* applies to this case as well. As this is a renewal case with the Petitioner already holding a license, whether Petitioner is in compliance with §§ 61-6-20, 61-6-1610, and 61-6-1820 is an enforcement issue to be investigated by SLED and prosecuted by the Department of Revenue in accord with § 61-2-20. Consistent with their enforcement authority, the Department of Revenue issued South Carolina Revenue Procedure #13-2, which sets forth that failure to be "primarily and substantially engaged in the preparation and serving of meals" is a violation of the license holder's license. The penalty set forth by the Department of Revenue for such a violation is revocation. In accordance with § 61-2-20, the only authority authorized to investigate whether a violation has occurred is SLED and only the Department of Revenue may prosecute any violation.

If the Court were to allow the Intervenors to prosecute their claim that Petitioner is not "engaged primarily and substantially in the preparation and serving of meals" it would be allowing a private citizen to bring a claim under the DOR's regulatory scheme. As the Court in *Sandalwood*

made clear, allowing Intervenors to advance such an argument is not supported in law and is improper. As a result, spoliation of relevant evidence could not have occurred in this matter because the requested records relate to whether Petitioner is "engaged primarily and substantially in the preparation and serving of meals," which cannot be a central issue properly in dispute in this matter. As such, Intervenors Motion should be denied.

II. THE GENERAL ASSEMBLY'S DEFINITION OF THE CONSTITUTIONAL REQUIREMENT DOES NOT INCLUDE A PERCENTAGE OF SALE REQUIREMENT.

Assuming arguendo, that Intervenor can prosecute[3] whether Petitioner is "engaged primarily and substantially in the preparation and serving of meals," spoliation of relevant evidence has not occurred because Petitioner's food sales cannot be a contested issue. The Intervenors in this matter seek discovery related to the video recording system and sales records from the Petitioner. The Intervenors state that this discovery is necessary to determine whether Petitioner is "engaged primarily and substantially in the preparation and serving of meals." Intervenors' Motion at 8. The Intervenors cite to *Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Commission*, 273 S.C. 782, 260 S.E.2d 452 (1979) in support its argument that the requested discovery is necessary because the Court must determine what percentage of Petitioner's sales are related to food. *Id.* In *Brunswick*, the Supreme Court held that food sales of 10% did not equate to being engaged primarily and substantially in the preparation and serving of meals.

Brunswick was decided in 1979 long before the General Assembly passed S.C. Code Ann. § 61-6-20(2), which codified the definition for the constitutional requirement found in S.C. Const. art. VIII-A § 1. Article VIII-A § 1 vests the General Assembly with the right to regulate the sale

[3] As set forth in I above, Petitioner disputes that Intervenors can present such arguments.

of alcoholic liquors within the State. With the authority granted by Article VIII-A § 1, the General Assembly passed S.C. Code Ann. § 61-6-20(2) and specifically defined what it meant to "engage primarily and substantially in the preparation and serving of meals." Section 61-6-20(2) provides:

> "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.

S.C. Code Ann. § 61-6-20(2).

The General Assembly's adoption of this definition abrogated the minimum food sales percentage established by the Court's holding in *Brunswick*. In *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 628–29, 207 S.E.2d 75, 78 (1974), the Court held

> The construction of a statute is a judicial function and responsibility. Subject to constitutional limitations, the legislature has plenary power to amend a statute. *Boatwright v. McElmurray*, 247 S.C. 199, 146 S.E.2d 716. However, a judicial interpretating of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary **will only be effective from the date of its enactment** and cannot be applied retroactively.

The same is true here. Prior to the legislative amendment, *Brunswick* defined what it meant to "engage primarily and substantially in the preparation and serving of meals." However, once the General Assembly enacted S.C. Code Ann. § 61-6-20(2), *Brunswick* was no longer good law on

this point going forward. As a result, the Petitioner's video and sales records are not relevant to a disputed issue in this proceeding.

Should the Court allow Intervenors to challenge whether Petitioner is "engage[d] primarily and substantially in the preparation and serving of meals," the Court's answer is guided by S.C. Code Ann. § 61-6-20(2), which does not include a percentage of sales analysis. Therefore, the evidence sought by the Intervenors does not relate to a central issue in dispute. For this reason, Intervenors' Motion should be denied.

III. THE SANCTION SOUGHT BY THE INTERVENORS IS NOT PROPORTIONATE TO THE ALLEGED HARM.

Petitioner has produced evidence in discovery demonstrating it meets all of the requirements set forth in S.C. Code Ann. § 61-6-20(2). Unhappy with this result, Intervenors now seek to prevent the Petitioner from introducing any evidence at trial regarding its preparation and service of food based on its own interpretation of the requirement. As demonstrated above, the Intervenors are without authority to advance such an argument. Even if the Court allowed the Intervenors to make such an argument, the issue before the Court would be Petitioner's compliance with S.C. Code Ann. § 61-6-20(2), which does not impose a volume of food sales requirement. As set discussed above, the discovery alleged to have not been produced is in no way determinative of the Petitioner's compliance with S.C. Code Ann. § 61-6-20(2).

Barring Petitioner from introducing any evidence based on an alleged deficiency in its production is grossly disproportionate to any harm allegedly caused to the Intervenors. Petitioners, if the Court deems a sanction is warranted, respectfully seek a sanction that just and equitable and proportionate to the harm found to have been caused to the Intervenors.

IV. CONCLUSION

The decision regarding whether the Petitioner is in compliance with S.C. Code Ann. §§ 61-6-20, 61-6-1610, and 61-6-1820 is solely within the enforcement authority of SLED and prosecutorial authority of the Department of Revenue. The Court of Appeals holding in *Sandalwood* makes clear that an intervenor cannot advance such claims. In addition, the term "engage[d] primarily and substantially in the preparation and serving of meals" as used in the state constitution was defined by the General Assembly in S.C. Code Ann. § 61-6-20(2) and does not include a percentage of sales component making the discovery sought by the Intervenors improper and irrelevant. As such, Intervenors' Motion for Discovery Sanctions should be denied.

Respectfully submitted,

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December 13, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Ink, LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	Docket No.: 19-ALJ-17-0001-CC **INTERVENORS' MOTION FOR DISCOVERY SANCTIONS**

Intervenors Thomas R. Gottshall, April C. Lucas, and Michael Drennan hereby move the Court under Rules 19(C) and 21 of the Administrative Law Court (ALC) Rules and Rules 26, 34, and 37 of the South Carolina Rules of Civil Procedure for a spoliation and discovery sanctions order precluding Petitioner Eighteen Ink, LLC, d/b/a Group Therapy (Group Therapy) from introducing *any* evidence that it is engaged in the preparation and service of food.

As detailed below, Group Therapy did not even attempt to collect documents responsive to Intervenors' discovery requests until Intervenors moved to compel and the Court shortened the bar's deadline to respond. What is now clear, is that Group Therapy permitted the destruction of voluminous, discoverable surveillance video that would support or undermine its claim that it is a restaurant. Likewise, when Intervenors deposed Group Therapy's owner in an effort to learn why the bar was unable to produce any meaningful sales data aside from a single-page report, he identified an entirely new, previously undisclosed set of paper sales records—the records he uses to track his businesses performance. Respectfully, sanctions are warranted.

FILED
MAY 16 2019
SC ADMIN LAW COURT

PROCEDURAL AND FACTUAL BACKGROUND

By Order dated February 4, 2019, Mr. Gottshall, Ms. Lucas, and Mr. Drennan were granted leave to intervene in this contested-case matter. On February 18, Intervenors served Petitioner with standard interrogatories and document requests (**Exhibit A**). On March 26, 2019, the undersigned contacted Group Therapy's counsel via email (**Exhibit B**) to inquire as to the status of the bar's discovery responses. The next day, counsel indicated he would call that afternoon to discuss the status, but that telephone conference did not occur. On March 28, the undersigned contacted Group Therapy's counsel via telephone and inquired as to the status of the bar's responses. Counsel indicated responses would be forthcoming within a week—i.e., on or before April 4, 2019. On April 5, Intervenors moved to compel.

On April 9, 2019, Chambers' staff notified the parties via email correspondence (**Exhibit C**) that Group Therapy's deadline to respond to the motion was shortened to on or before April 11, 2019. See Rule 19(A), SCALC. On April 11, Group Therapy's counsel notified Chambers' staff that Group Therapy had "produced documents responsive to the Intervenor's Request" and would "provide additional documents this afternoon to finalize its production." Ex. C. Group Therapy's counsel indicated further that the responses and production "should resolve the Motion filed by Intervenors." Ex. C. Via Dropbox link, Intervenors' counsel received 27 documents (of varying page numbers).

The next day, Chambers' staff requested an update from Intervenors. The undersigned explained that, based on a cursory review of the bar's discovery responses, Group Therapy's interrogatories were no longer at issue, but "there may be some outstanding issues concerning [document] Request Nos. 5 and 11," and that counsel had not yet had an opportunity to detail those issues for opposing counsel, in part because of a technical difficulty downloading surveillance

video. Ex. C. Document Request No. 5 seeks "a complete copy of [Group Therapy's] accounting books in their native form, whether it be paper or ESI (i.e., Quickbooks)." Document Request No. 11 seeks "all video surveillance footage of the [Group Therapy] premises." The undersigned proposed reporting back on or before April 16.

Later that day, on April 12, Intervenors' counsel received a flash memory drive with 13 mp4 video files (among other text and video player files) of a single camera view showing the alley outside Group Therapy. The date stamp on the video indicates all of the footage is from April 10 and April 11—i.e., the day after the Court shortened Group Therapy's deadline to respond.

Meanwhile, also on April 12, the undersigned sent detailed email correspondence (**Exhibit D**) to Group Therapy's counsel highlighting issues potentially in dispute. Specifically, concerning document Request Nos. 5 and 11, Intervenors' counsel questioned whether Group Therapy's production was complete:

> 3. **Request No. 11**. When I click on the videos in Dropbox, it appears they are all dated April 10 or 11. Can you confirm the date range for which your client is producing video? I understand it is common for these video systems to have data "roll off" the back unless it is collected; however, our discovery requests were served on February 18, so Group Therapy had notice of its obligation to preserve and collect this data for some time. Specifically:
>
> a. Is the bar able/willing to produce video from February 18 forward?
> b. And, if the video system cannot be recovered and was not placed on legal hold, why not?
>
> 4. **Request No. 5 (STEVES Sunday Report 2)**. I only see one of these sales reports for the period of December 1, 2018 through February 28, 2019.
>
> a. Is Group Therapy willing and able to produce this data for the entire requested period? Or is there some other system or data set with this sales data in it?
> b. This appears to be a report run specifically to respond to our discovery. Is Group The[rapy] willing to produce this data in a native electronic file as it was requested (e.g., .xls or .csv)?
> c. If not, it appears the reporting period can be manipulated. Would Group Therapy be willing to produce a monthly and annual reports for the relevant period?

Ex. D (bold original). Intervenors' counsel did not receive a written response but received a phone call indicating Group Therapy's counsel would investigate further and respond. No written response was received.

On April 16, 2019, Intervenors filed a status report and supplement to the pending motion to compel advising the Court that Group Therapy had not complied with two critical categories of requested documents and that, if produced, these documents would speak directly to a core contention disputed in this case: whether Group Therapy is, in fact, a restaurant. Intervenors urged the Court to either sanction Group Therapy by prohibiting it from introducing evidence purporting to establish its status as a restaurant or, alternatively, continue the final hearing that was set for April 22. The Court continued the final hearing to allow Intervenors to depose document custodians that might explain the status of Group Therapy's document production. Thereafter, Group Therapy produced an external hard drive with additional video files (discussed below).

On May 3, 2019, Intervenors deposed Group Therapy's owner, Steve Taneyhill (**Exhibit E**), and door man, Fabian Ludwig (**Exhibit F**). Taneyhill testified he has owned Group Therapy since June 30, 2016 and he manages the establishment. Ex. E at 7:7–24. According to Taneyhill, the first time he became aware of Intervenors' document requests was "a couple weeks ago." Ex. E at 8:13–9:13. After he had an opportunity to examine two single-page sales reports titled "STEVES Sunday Report 2" (Ex. E at Exs. 3 & 4), Taneyhill clarified he became aware of Intervenors' discovery requests on or around April 11 or April 16—i.e., the dates those sales reports were generated. See Ex. E at 9:14–22; see also id. at 20:14–25 ("Q. Am I correct that you basically -- going back to these discovery requests, Exhibit 1 -- that you become aware of the request and attempted to fulfill it sometime on or around April 11, 2019? A. Yes."). While Group Therapy produced the reports as evidence of its sales practices, Taneyhill testified he does not use

the reports in his role as owner and manager. Ex. E. at 10:14–21; see also id. at 11:13–16 ("Q. … And is this a piece of software that keeps this information and generates this report? A. I have no idea.") & 12:7–8 ("Q. Do you have a log-in? A. I have a log-in, but I don't use this."). Instead, Taneyhill "keep[s] everything written[,]" meaning he uses a paper folder system with receipts to track his business's sales. See Ex. E. at 12:9–13:22. As to the location of those records, Taneyhill was not entirely clear, but suggested that at least "some" of them are stored at Group Therapy. Ex. E at 13:2–4 & 13:20–14:7. Asked whether the electronic sales reports furnished to Intervenors were accurate, Taneyhill indicated that he "hope[d]" they were but, "I guess I don't know that." Ex. E at 19:6–11. When asked whether it was possible to run a two-year sales report (instead of the one-year report furnished), Taneyhill said he did not think it was possible. See Ex. E at 21:5–22:1. However, when counsel sought to confirm that sales data from 2017 could be gleaned from the previously discussed paper records, Taneyhill claimed there were no such records, but then retracted and disclaimed any knowledge. See Ex. E at 22:2–14 ("Q. Those have all been destroyed? A. Not destroyed. I mean, I just -- I don't think those paper records exist.").

Taneyhill uses these paper records for precisely the same purpose Intervenors seek them here: "so you can count up at the end of the month." See Ex. E at 14:11–19; see also id. at 18:19–23 ("Q. Yeah. But … when you, as the business owner, want to understand how much you sold, you go to the paper records? A. Yes."). Taneyhill described these records as a "printout at the end of the night" that reports what has been entered into the point-of-sale system, which includes (for example) the number of dollars in liquor sales. See Ex. E at 22:15–23:16.

Group Therapy's video surveillance system is comprised of 11 cameras—two cameras exterior to the structure and nine inside. Ex. E at 25:23–26:24. Taneyhill explained that he instructed Ludwig to collect the video sometime on or around April 10 or 11 (see Ex. E at 27:6–

28:3 & 30:25–31:7)—long after Group Therapy's deadline to respond, after Intervenors moved to compel, and after the Court shortened the bar's deadline to respond. Ludwig also testified that his first effort to collect video in this case was on April 11. Ex. F at 6:18–22. When asked to explain why Group Therapy only produced a single, exterior camera view for the April 10–11 video, Ludwig explained, "We don't know what happened, but this was the only video that I could collect on this day. Someone had switched from continuous just to record this. And so we locked up -- I changed it back to continuous recording and put a lock on the door so no one can mess with it." Ex. F at 7:14–8:3. Of course, Group Therapy did not discover this until April 11—more than 50 days after Intervenors first requested the video—meaning there is *no video* prior to April 10, 2019. See Ex. F at 8:4–15 ("Q. Okay. So is it -- is it accurate to say that there is no video at Group Therapy prior to April 10th? A. Yes. Q. All that video has been deleted? A. Yes.").

Concerning Group Therapy's supplemental video production on an external hard drive, Ludwig explained that the hard drive contains video "from Sunday to Wednesday when we closed." Ex. F at 8:16–24. While Ludwig could not recall the precise dates reflected on the external hard drive production, counsel's review indicates there are 1,616 individual mp4 files from just three camera views—channel 4 (depicting an area outside two bathrooms), channel 6 (depicting a view of one of Group Therapy's bars), and channel 8 (depicting another view of the same bar)—from the time period Sunday, April 21 through Wednesday, April 24.

Group Therapy is yet to produce a single video file[1] created during a Thursday, Friday, or Saturday when the University of South Carolina (USC) is in session and college kids routinely

[1] After the depositions, the Intervenors' counsel received an email notice that opposing counsel loaded additional video files into a Dropbox folder. The undersigned has not attempted to download any of these videos because, as was explained in the April 12 correspondence to opposing counsel, the undersigned is unable to successfully download and open the video files from Dropbox.

flood into the Five Points district. Moreover, as to the limited pròduction made to date, the form of that production is exceedingly difficult to review. Based on a review of approximately 800 of the 1,616 individual mp4 files contained in the production, most of the individual video files are only minutes, some only seconds, long. Each file must be opened in the video player application, meaning it is very time consuming to open video after video. Notably, of the videos reviewed, there is no evidence of customers sitting at tables ordering food or any other indicia suggesting Group Therapy is in the business of serving meals, with the only discernable evidence of food sales being a woman eating out of a Styrofoam to-go container of unknown origin.

Asked whether there was any video from February or March 2019, Taneyhill responded, "I would think not, but I don't know." Ex. E at 31:20–22. Ludwig testified that, had Taneyhill asked him to collect video in February or March, he could have done so. See Ex. F at 9:17–10:3. To Ludwig's knowledge, Group Therapy typically retains video for a week or week and a half. Ex. F. at 10:4–10. Asked whether Group Therapy had taken any affirmative steps since this contested case began to ensure records were not destroyed, Taneyhill obfuscated, evaded, and never answered. See Ex. E at 23:18–25:6. Clearly the answer is no. This motion followed.

ARGUMENT

Group Therapy should be sanctioned for its spoliation of evidence and refusal to participate in discovery, and the appropriate sanction is the exclusion of any evidence that Group Therapy prepares or serves meals.

I. Group Therapy spoliated probative video evidence.

Group Therapy has intentionally permitted the destruction of probative evidence by failing to place its video surveillance system on a legal hold. That system should have been placed on hold to ensure no video would be destroyed no later than February 18, when Group Therapy

received Intervenors' discovery requests or, at least, shortly thereafter. Even under the most charitable reading of the record—i.e., accepting Ludwig's testimony that someone inadvertently switched the video system settings such that only a single camera view was being recorded—that error should have been discovered sometime in February. Instead, Group Therapy ignored Intervenors' discovery requests until after they moved to compel, and the Court contacted the parties. During the intervening period, more than six weeks passed and all of the video during that period was erased.

Intervenors' have raised two principle arguments against granting Group Therapy a beer-and-wine permit and liquor-by-the-drink license: (1) Intervenors challenge the suitability of the proposed location and (2) they dispute the contention that Group Therapy is constitutionally qualified to receive a license-by-the-drink because it is not "engage[d] primarily and substantially in the preparation and serving of meals[.]" S.C. CONST. art. VIII-A § 1. The only court to construe language nearly identical to the constitutional language held a bowling alley with 10 percent of its gross revenue from food was not primarily and substantially engaged in preparing and serving meals, Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Comm'n, 273 S.C. 782, 783, 260 S.E.2d 452, 452 (1979), and the Attorney General has opined that the purpose of limiting on-premises liquor consumption to places where meals are served is to ensure the abolition of the public saloon. See Re: No. 5, Alcoholic Liquors, Op. No. 3277, 1972 S.C. Op. Att'y Gen. 79 (1972). Thus, the question of whether Group Therapy is, in fact, engaged in meal preparation and service and the scope of that engagement is a central, contested issue in this case.

Intervenors' request for video surveillance is designed to ferret out whether Group Therapy is, in fact, a restaurant. If Group Therapy is primarily in the business of preparing meals and substantially engaged in doing so, then video surveillance taken from inside the bar would no doubt

depict patrons seated at tables enjoying meals. Based on the partial review of the video produced to date, that is not the case. Intervenors suspect that had the video been preserved and produced, and had Group Therapy produced video for a Thursday, Friday, or Saturday night when USC is in session, those videos would depict a crowded nightclub, not a restaurant. The spoliation of evidence is prejudicial when the missing evidence would have helped the factfinder resolve an issue in dispute. E.g., Stokes v. Spartanburg Reg'l Med. Ctr., 368 S.C. 515, 522, 629 S.E.2d 675, 679 (Ct. App. 2006). Accordingly, the destruction of this evidence is highly prejudicial to Intervenors' case and their ability to present evidence on this central issue.

II. Group Therapy has also failed to collect and produce responsive documents in its possession.

Group Therapy has failed to meet its discovery obligations because, as the record indicates here, it failed to collect responsive documents that were discovered only after Intervenors raised questions about its inability to produce a more fulsome data and has still not produced all available video surveillance footage.

Initially, the bar produced a single one-page report, titled "STEVES Sunday Report 2," that reported the bar's food sales during the period of December 2018 through February 2019 were just 13.5 percent of all gross sales. When pressed to provide data beyond this three-month period, the bar produced another report for a single year that evidences food sales as just 11.3 percent from April 16, 2018 to April 16, 2019. However, these reports are not the records its owner uses to track his business's performance and he cannot even confirm their accuracy. Instead, Taneyhill receives paper reports generated on a nightly bases that he uses to track monthly goals—precisely what Intervenors sought to do here.

On April 11, Group Therapy represented to the Court that its forthcoming production "should resolve the Motion filed by Intervenors." Ex. C. Far from it, the record indicates the bar

made an incomplete production of information it could not confirm while withholding the records it uses without disclosing their existence. Intervenors learned about the paper sales reports for the first time on May 3 during Taneyhill's deposition.

Group Therapy has made no serious effort to meet its discovery obligations, even after the Court had to continue the final hearing to allow the parties to conduct discovery on this issue. It is yet to complete its video production and, of the video produced, it is curious that none of it was taken on a Thursday, Friday, or Saturday night. Perhaps the best evidence of Group Therapy's approach to the rules is the now-established fact that it did not even begin collecting responsive documents until after the Court contacted the parties. Notably, this is not a case where the party obligated to disclose objected to disclosure and put the requesting party on notice documents were being withheld—Group Therapy has never interposed an objection to the documents sought. Instead, the bar led Intervenors and the Court to believe it was making a production that would satisfy the request. That was not true; it is discovery abuse, and it should be sanctioned.

III. The appropriate sanction is the exclusion of evidence that Group Therapy prepares and serves meals.

Rule 37 of the civil rules provides "an evasive or incomplete answer [in response to a discovery request] is to be treated as a failure to answer." Rule 37(a)(3), SCRCP. When a party fails to comply with discovery, a court can enter any order deemed just and, among other possible action, is permitted to sanction the party by (A) ordering that a fact shall be taken as established in accordance with the claim of the party obtaining the order; (B) limiting a disobedient party's support or opposition on a claim or defense, or prohibit designated matters from being introduced into evidence; or (C) striking a pleading. See Rule 37(b)(2)(A)–(C) & (d), SCRCP. Here, the Court should find that Group Therapy (1) spoliated probative video evidence by failing to timely collect it and (2) has been evasive and incomplete in disclosing responsive, discoverable documents.

Precedent supports such a sanction. For example, in Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (2009), the Supreme Court upheld the decision of a master in equity to exclude belatedly disclosed evidence of a novel defense theory because the discovery rules "mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party." Id. at 434, 673 S.E.2d at 457. Citing Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997), the Court found the master properly exercised discretion after weighing the nature of the discovery, the posture of the case, the willfulness of the disobedience, and the degree of prejudice. Historic Charleston Holdings, 381 S.C. at 435, 673 S.E.2d at 457. For the reasons explained above, these considerations (willful disobedience and degree of prejudice) weigh heavily against Group Therapy.

Often when evidence is lost or destroyed, courts resort to a jury instruction that the evidence would have been adverse to that party. E.g., Stokes, 368 S.C. at 521, 629 S.E.2d at 678. That would not be the appropriate remedy here because the Court sits as factfinder. The better approach is for the Court to simply prohibit Group Therapy from presenting any evidence on this issue. Doing so ensures a clear record on this point and is consistent with the instruction that "[w]hatever sanction is imposed [it] should serve to protect the rights of discovery provided by the rules." Kershaw Cty. Bd. of Educ. v. U.S. Gypsum Co., 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990) (citing Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987)). Spoliation instructions are typically used in cases like Kershaw County Board or Stokes where there is some element of accident, mistake, or inadvertent destruction. That is not what the record reflects here. The better precedent is Historic Charleston Holdings where the sanctioned party had already failed to respond to discovery and evidence was withheld even though the parties had agreed to make full disclosures to one another. See Historic Charleston Holdings, 381 S.C. at 435, 673 S.E.2d at 457.

Here, Taneyhill or some other Group Therapy representative will, presumably, be called to the stand to testify that the establishment is primarily and substantially engaged in the preparation and service of meals. The discovery Intervenors requested was designed to test those claims and, after initially ignoring discovery, Group Therapy claimed it would fully respond. By failing to produce this information, Group Therapy is now able to offer self-service testimony about its so-called restaurant status while Intervenors are unable to rebut that contention and prove their theory that Group Therapy is actually a bar/nightclub. Considering the posture of this dispute and prejudice attached, the exclusion of evidence Group Therapy prepares and serves food is the appropriate sanction.

CONCLUSION

For these reasons, this motion should be granted, and the Court should sanction Group Therapy by precluding it from offering any evidence that it serves food and order any further relief the Court deems just and proper.

Respectfully submitted,

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GOTTSHALL, LUCAS, AND DRENNAN

May 16, 2019
Columbia, South Carolina.

EXHIBIT A

(Intervenors' Interrogatories and Requests for Production to Petitioner, February 18, 2019)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Inc., LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	C/A No.: 19-AJL-17-0001-CC, **INTERVENORS' INTERROGATORIES TO PETITIONER AND RESPONDENT**

TO JOHN ALPHIN, ATTORNEY FOR PETITIONER EIGHTEEN INC., LLC, D/B/A GROUP THERAPY AND PATRICK McCABE, ATTORNEY FOR RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE:

Intervenors Thomas R. Gottshall, April C. Lucas, and Michael Drennan, pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure and Rule 21 of the Administrative Law Court, hereby requires Petitioner Eighteen Inc., LLC, d/b/a Group Therapy, and Respondent South Carolina Department of Revenue to answer the following interrogatories **under oath** and in writing on or before **30 days after service of this document request as required by Rule 33(a) of the civil rules.**

Please take notice that the following instructions and definitions below are <u>not</u> boilerplate but were specifically drafted to explain the information sought and the way the rules require it be disclosed. You should expect Plaintiff to move the Court to compel disclosure and seek other appropriate relief if furnished with responses that interpose boilerplate objections or otherwise depart from what the civil rules require.

INSTRUCTIONS

Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. You must serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. Rule 33(b), SCRCP.

"The grounds for objecting to an interrogatory must be stated with specificity." Rule 33(b)(4), SCRCP. "Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure." Id. Objections based on privilege must expressly make the claim and describe the nature of the information withheld in a manner that will allow the requesting party to assess the applicability of the privilege or protection. Rule 26(b)(5)(A), SCRCP.

Please note, Intervenors take the view that interposing nonspecific, boilerplate objections while also making a limited disclosure "subject to" those objections is inconsistent with your disclosure obligations under the rules and grounds to move the Court to waive objections and compel disclosure.

Pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure, you are under a duty to timely supplement your answers.

DEFINITIONS

1. As used in these requests, "person" shall include natural persons, proprietorships, corporations, public corporations, municipal corporations, state governments, local governments, governmental agencies, political subdivisions, partnerships, groups, associations or other business or public organizations.

2. To "identify" a document means to state the date of the document, its author, each person to whom the document or any copy thereof was sent, and every person having custody of the document or a copy thereof. Where the name or identity of a natural person is requested, please state the individual's full name, home and business addresses, and home and business telephone numbers. Where the name or identity of an organization is requested, please state the organization's full name, business address and business telephone number.

3. The term "and" shall include the term "or."

4. The term "or" shall include the term "and."

5. The terms "relating to," "with respect to," and "refer to" shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.

6. Unless specifically stated to the contrary, all words and phrases utilized here shall be given their ordinary, dictionary, and common-sense definitions. Additionally, unless another meaning is obvious from the context, the terms used here shall have the same meaning as they have in the Complaint in this action.

7. "Communications" means the transmittal of oral or written information, facts, or ideas, including, without limitation, communications in the form of any discussion, conversation, inquiry, negotiation, agreement, understanding, meeting, telephone conversation, letter, correspondence, note, memorandum, e-mail, text message, instant message, telegram, advertisement, or other form of exchange of words, whether oral or written.

8. "Documents" or "document" shall have the broadest meaning permitted under Rules 26 and 34 of the South Carolina Rules of Civil Procedure and include, without limitation, all writings of any nature whatsoever (including, specifically, all drafts), whether originals or

copies, including all non-identical copies (whether different from the original because of notes made on or attached to them or otherwise), whether drafts, preliminary, proposed or final versions, whether printed, recorded, produced or reproduced by any other mechanical or electronic process, whether written or produced by hand, within your possession, custody or control, including without limitation, contracts, agreements, arrangements, understandings, communications, including intra-office communications, intra-department communications, correspondence, telegrams, records, reports, studies, memoranda (including memoranda of telephone, personal, intra-office or intra-department conversations and memoranda of conferences, notes, advertisements, notices, telex and facsimile communications), telephone bills and records, cables, books, diaries, appraisals, forecasts, statistical statements, accountants' work papers, graphs, summaries, lists, tabulations, calendars, charts, maps, diagrams, blueprints, tables, indices, pictures, recordings, tapes, microfilms, charges, accounts, minutes, brochures, pamphlets, circulars, trade letters, press releases, stenographic, handwritten or any other notes, projections, working papers, checks, check stubs, receipts, invoice vouchers, tape data sheets or data processing cards or disks, magnetic tapes, disks, drums, promotional devices, or any other document or writings of whatever description, including, without limitation, CD-ROMS, e-mails, instant messages, text messages and any information contained in any computer or memory system, although not yet printed out, or any material underlying, supporting or used in the preparation of any such documents. "Documents" or "document" includes ESI.

9. "ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (*e.g.*, hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

10. "Group Therapy" means Petitioner Eighteen Inc., LLC, d/b/a Group Therapy, and its officers, members, directors, employees, consultants, and agents acting on its behalf.

11. "DOR" means Respondent South Carolina Department of Revenue.

LIMITATION IN SCOPE

Unless expressly stated otherwise, the document requests below are limited to the period of January 1, 2014 through the present.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

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

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

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

[signature page follows]

Respectfully submitted,

Richard A. Harpootlian (SC Bar No. 2725)
Christopher P. Kenney (SC Bar No. 100147)
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
(803) 252-4810 (facsimile)
rah@harpootlianlaw.com
cpk@harpootlianlaw.com

ATTORNEYS FOR INTERVENORS
GOTTSHALL, LUCAS, AND DRENNAN

February 18, 2019
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eighteen Inc., LLC, d/b/a Group Therapy, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Thomas R. Gottshall, April C. Lucas, and Michael Drennan, Intervenors.	C/A No.: 19-AJL-17-0001-CC **INTERVENORS' REQUESTS FOR PRODUCTION TO PETITIONER**

TO: JOHN ALPHIN, ATTORNEY FOR PETITIONER EIGHTEEN INC., LLC, D/B/A GROUP THERAPY:

Intervenors Thomas R. Gottshall, April C. Lucas, and Michael Drennan, pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure and Rule 21 of the Administrative Law Court, hereby requires Petitioner Eighteen Inc., LLC, d/b/a Group Therapy, to make available certain documents, tangible things, and electronically stored information (ESI) specified below for copying, photographing, inspecting, or measuring on or before **30 days after service of this document request as required by Rule 34(b) of the civil rules.**

Please take notice that the following instructions and definitions below are <u>not</u> boilerplate but were specifically drafted to explain the information sought and the way the rules require it be disclosed. You should expect Intervenors to move the Court to compel disclosure and seek other appropriate relief if furnished with responses that interpose boilerplate objections or otherwise depart from what the civil rules require.

INSTRUCTIONS

You are required to respond to each request in writing and to serve a copy of your responses, along with copies of all responsive documents, upon counsel for the Intervenors. Every request for production shall be deemed continuing, and the answers are to be supplemented promptly, if relevant information is obtained in addition to, or in any way inconsistent with, the initial answer to any such request for production.

In responding to these document requests, produce all documents available to you or subject to your reasonable access or control, including but not limited to all documents available to your counsel in this case, or any experts. In producing documents, you are required to produce each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof and shall be legible and bound or stapled in the same manner as the original.

If any requested document is not or cannot be produced in full, you are required to produce it to the extent possible, indicating which document, or portion of that document, is being withheld and the reason that document is being withheld.

Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this Request. Rule 34(b), SCRCP. In making production of electronically stored information (ESI), including, without limitation, electronic data compilations, electronic email, or documents that are kept in electronic format (such as, without limitation, Microsoft Outlook, Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or any similar program or platform), produced them in their native format along with all passwords necessary to access the documents. If you choose to process ESI prior to production,

produce single page images along with an accompanying load file, full OCR text, and metadata. Native files should also be produced.

Documents attached to each other should not be separated. Documents not otherwise responsive to this Request shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by this discovery request, or if such documents are attached to documents called for by this document request and constitute routing slips, transmittal memoranda, or letters, comments, evaluations, or similar materials.

Your response "shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to[.]" Rule 34(b), SCRCP. If objections are made, they must be specifically stated as to the reason and the request. Id. If objection is made to the requested form or forms for producing ESI, you must state the form or forms you intend to use, which may include the form in which the ESI is customarily maintained (i.e., native files). See id.

Objections based on privilege must expressly make the claim and "describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." Rule 26(b)(5)(A), SCRCP.

Please note, Intervenors take the view that interposing nonspecific, boilerplate objections while also making a limited disclosure "subject to" those objections is inconsistent with your disclosure obligations under the rules and grounds to move the Court to waive objections and compel disclosure.

Pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure, you are under a duty to timely supplement your answers.

DEFINITIONS

1. As used in these requests, "person" shall include natural persons, proprietorships, corporations, public corporations, municipal corporations, state governments, local governments, governmental agencies, political subdivisions, partnerships, groups, associations or other business or public organizations.

2. To "identify" a document means to state the date of the document, its author, each person to whom the document or any copy thereof was sent, and every person having custody of the document or a copy thereof. Where the name or identity of a natural person is requested, please state the individual's full name, home and business addresses, and home and business telephone numbers. Where the name or identity of an organization is requested, please state the organization's full name, business address and business telephone number.

3. The term "and" shall include the term "or."

4. The term "or" shall include the term "and."

5. The terms "relating to," "with respect to," and "refer to" shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.

6. Unless specifically stated to the contrary, all words and phrases utilized here shall be given their ordinary, dictionary, and common-sense definitions. Additionally, unless another meaning is obvious from the context, the terms used here shall have the same meaning as they have in the Complaint in this action.

7. "Communications" means the transmittal of oral or written information, facts, or ideas, including, without limitation, communications in the form of any discussion, conversation, inquiry, negotiation, agreement, understanding, meeting, telephone conversation, letter,

correspondence, note, memorandum, e-mail, text message, instant message, telegram, advertisement, or other form of exchange of words, whether oral or written.

8. "Documents" or "document" shall have the broadest meaning permitted under Rules 26 and 34 of the South Carolina Rules of Civil Procedure and include, without limitation, all writings of any nature whatsoever (including, specifically, all drafts), whether originals or copies, including all non-identical copies (whether different from the original because of notes made on or attached to them or otherwise), whether drafts, preliminary, proposed or final versions, whether printed, recorded, produced or reproduced by any other mechanical or electronic process, whether written or produced by hand, within your possession, custody or control, including without limitation, contracts, agreements, arrangements, understandings, communications, including intra-office communications, intra-department communications, correspondence, telegrams, records, reports, studies, memoranda (including memoranda of telephone, personal, intra-office or intra-department conversations and memoranda of conferences, notes, advertisements, notices, telex and facsimile communications), telephone bills and records, cables, books, diaries, appraisals, forecasts, statistical statements, accountants' work papers, graphs, summaries, lists, tabulations, calendars, charts, maps, diagrams, blueprints, tables, indices, pictures, recordings, tapes, microfilms, charges, accounts, minutes, brochures, pamphlets, circulars, trade letters, press releases, stenographic, handwritten or any other notes, projections, working papers, checks, check stubs, receipts, invoice vouchers, tape data sheets or data processing cards or disks, magnetic tapes, disks, drums, promotional devices, or any other document or writings of whatever description, including, without limitation, CD-ROMS, e-mails, instant messages, text messages and any information contained in any computer or memory system,

although not yet printed out, or any material underlying, supporting or used in the preparation of any such documents. "Documents" or "document" includes ESI.

9. "ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (*e.g.*, hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

10. "Group Therapy" means Petitioner Eighteen Inc., LLC, d/b/a Group Therapy, and its officers, members, directors, employees, consultants, and agents acting on its behalf.

11. "DOR" means Respondent South Carolina Department of Revenue.

LIMITATION IN SCOPE

Unless expressly stated otherwise, the document requests below are limited to the period of January 1, 2014 through the present.

DOCUMENT REQUESTS

Please produce the following documents:

1. Produce all permit and license applications and reapplications made to DOR.

2. Produce any other submission made to DOR in conjunction with or pursuant to an effort to obtain licensure.

3. Produce exemplars of menus or listings detailing all of Eighteen Inc., LLC, d/b/a Group Therapy, food and beverage offerings.

4. Produce the personnel files of all employees whose job responsibilities include the sale or service of alcohol.

5. Produce all a complete copy Eighteen Inc., LLC, d/b/a Group Therapy, accounting books in their native form, whether it be paper or ESI (i.e., Quickbooks).

6. Produce all sales tax reports whether kept for internal use or DOR reporting.

7. Produce all incident reports created, maintained, or collected that memorialize incidents that occur on Eighteen Inc., LLC, d/b/a Group Therapy, premises. By way of example, "incidents" include accidents, injuries, suspected crimes, crimes, or other business irregularities warranting notice to management or law enforcement.

8. Produce copies of any communications between staff and management concerning any incident as described in Request No. 7.

9. Produce all citations issued to Eighteen Inc., LLC, d/b/a Group Therapy, by any law enforcement agency, whether local, state, or federal.

10. Produce all citations issued to any Eighteen Inc., LLC, d/b/a Group Therapy, employee while acting as an employee by any local, state, or federal law enforcement agency.

11. Produce all video surveillance footage of the Eighteen Inc., LLC, d/b/a Group Therapy, premises.

12. Produce all communications with DOR, including any communications between a lawyer or lobbyist acting on Eighteen Inc., LLC, d/b/a Group Therapy, behalf with DOR.

Respectfully submitted,

Richard A. Harpootlian (SC Bar No. 2725)
Christopher P. Kenney (SC Bar No. 100147)
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
(803) 252-4810 (facsimile)
rah@harpootlianlaw.com
cpk@harpootlianlaw.com

ATTORNEYS FOR INTERVENORS
GOTTSHALL, LUCAS, AND DRENNAN

February 18, 2019
Columbia, South Carolina.

EXHIBIT B

(Email from C. Kenney to J. Alphin, March 26, 2019)

From: John Alphin
To: Chris Kenney
Cc: Holli Miller
Subject: Re: Eighteen Inc., LLC d/b/a Group Therapy v. SCDOR: discovery responses
Date: Wednesday, March 27, 2019 2:53:57 PM
Attachments: image001.png
image002.png
image003.png
image004.png

---

got your message. I have been in Court all day today. Will call you late this afternoon.

John Alphin
Strom Law Firm, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
jalphin@stromlaw.com
www.stromlaw.com
(803)252-4800

On Mar 26, 2019, at 11:23 AM, Chris Kenney <cpk@harpootlianlaw.com> wrote:

> John,
> We served the attached document requests and interrogatories on February 18. By my calculation, Group Therapy's responses should have been served on or before March 18. Can you advise concerning the status of these requests?
> Thanks,
> Chris

<image001.png> **Chris Kenney**
Attorney at Richard A. Harpootlian, PA <image002.png> <image003.png> <image004.png>

Address 1410 Laurel Street Columbia, SC 29201
Phone 803-252-4848 **Fax** 803-252-4810 **Email** cpk@harpootlianlaw.com **Website** http://www.harpootlianlaw.com/

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your cooperation.

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<2019-02-18 INT Interrogs to SCDOR & Group Therapy.pdf>

<2019-02-18 INT Req for Production to Group Therapy.pdf>

EXHIBIT C

(Email from Chamber's Staff to Parties, April 9, 2019)

From: Tia Smith
To: John Alphin
Cc: Bakari Sellers; Dick Harpootlian; Holli Miller; Chris Kenney; Patrick McCabe
Subject: Eighteen, Inc. LLC d/b/a Group Therapy v. SCDOR
Date: Tuesday, April 09, 2019 4:32:38 PM

Good afternoon Attorney Alphin:

On April 5, 2019, the Court received Intervenor's Motion to Compel Disclosure by Petitioner in Response to Interrogatories and Document Requests. Per Judge Robinson, after carefully reviewing the motion, she would like Petitioner to file a response to the motion and she is shortening the response time. *See* SCALC Rule 19(A). Petitioner's response to the motion is due on or before Thursday, April 11, 2019.

Best Regards,

Ti'a Smith
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803)-734-6402 (chambers)
(803)-734-6400 (fax)

EXHIBIT D

(Email from C. Kenney to J. Alpin, April 12, 2019)

From: Chris Kenney
To: "John Alphin"
Subject: RE: Group Therapy
Date: Friday, April 12, 2019 10:39:12 AM
Attachments: image001.png
image002.png
image003.png
image004.png

John,
Per my email to Tia Smith a minute ago, here's what I see as the outstanding issues:

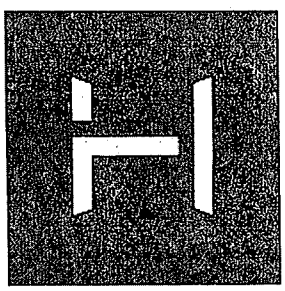
1. **Video Download.** I've tried to download the videos three times (including overnight) and its still not working. Can you put them on a flash drive and I will have a runner pick them up?

2. **Temporal Scope**. I do not see any document, regardless of request category, prior to 2016. The requested scope of our discovery was January 1, 2014 to the present. Can you explain the reason (e.g., objection, no such records, precedes current owner, etc., etc.)?

3. **Request No. 11**. When I click on the videos in Dropbox, it appears they are all dated April 10 or 11. Can you confirm the date range for which your client is producing video? I understand it is common for these video systems to have data "roll off" the back unless it is collected; however, our discovery requests were served on February 18, so Group Therapy had notice of its obligation to preserve and collect this data for some time. Specifically:
    a. Is the bar able/willing to produce video from February 18 forward?
    b. And, if the video system cannot be recovered and was not placed on legal hold, why not?

4. **Request No. 5 (STEVES Sunday Report 2)**. I only see one of these sales reports for the period of December 1, 2018 through February 28, 2019.
    a. Is Group Therapy willing and able to produce this data for the entire requested period? Or is there some other system or data set with this sales data in it?
    b. This appears to be a report run specifically to respond to our discovery. Is Group Theory willing to produce this data in a native electronic file as it was requested (e.g., .xls or .csv)?
    c. If not, it appears the reporting period can be manipulated. Would Group Therapy be willing to produce a monthly and annual reports for the relevant period?

Thanks,
Chris



Chris Kenney
Attorney at Richard A. Harpootlian, PA

Address 1410 Laurel Street Columbia, SC 29201
Phone 803-252-4848 **Fax** 803-252-4810 **Email** cpk@harpootlianlaw.com **Website** http://www.harpootlianlaw.com/

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IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

From: Chris Kenney
Sent: Thursday, April 11, 2019 11:41 AM
To: John Alphin <jalphin@stromlaw.com>
Subject: RE: Group Therapy

Ok. Thanks. -cpk

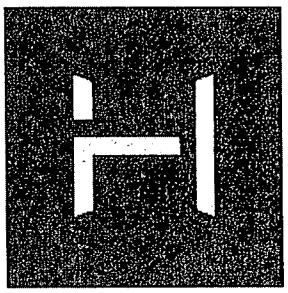
From: John Alphin <jalphin@stromlaw.com>
Sent: Thursday, April 11, 2019 11:40 AM
To: Chris Kenney <cpk@harpootlianlaw.com>
Subject: RE: Group Therapy

Will have all of that at 1:00 today and upload it for you to the extent we have responsive documents.

From: Chris Kenney [cpk@harpootlianlaw.com]
Sent: Thursday, April 11, 2019 11:32 AM
To: John Alphin
Subject: RE: Group Therapy

John,
Thanks for this and for the follow-up call regarding the forthcoming production of menu exemplars and videos. I've downloaded the documents you sent via Dropbox and quickly reviewed them and have a follow-up question.
First, I received 14 individual electronic files (of varying size and page numbers) from the Dropbox. Based on my review of the documents, they generally appear to be correspondence with DOR regarding licensure and the DOR file. If there were additional files sent that I did not receive, please let me know.
Second, per our conversation, I understand you're sending me menus and video that would address document Request Nos. 3 and 11.
However, what I do not see are any documents responsive to Request Nos. 4 (personnel files), 5 (accounting books), 6 (sales tax reports), and 9 (citations). Will these documents also be in the

supplemental production or have I overlooked them somewhere?
Thanks,
Chris



Chris Kenney
Attorney at Richard A. Harpootlian, PA

Address 1410 Laurel Street Columbia, SC 29201
Phone 803-252-4848 **Fax** 803-252-4810 **Email** cpk@harpootlianlaw.com **Website** http://www.harpootlianlaw.com/

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IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

From: John Alphin <jalphin@stromlaw.com>
Sent: Thursday, April 11, 2019 8:38 AM
To: Chris Kenney <cpk@harpootlianlaw.com>
Subject: Group Therapy

Please find attached, Petitioner's responses to Intervenor's RFPs.

EXHIBIT E

(Deposition of Steven T. Taneyhill)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

- - -

EIGHTEEN INK, LLC, d/b/a GROUP THERAPY,	:	
Petitioner,	:	
vs.	:	Case No. 19-ALJ-17-0001-CC
SOUTH CAROLINA DEPARTMENT OF REVENUE,	:	
Respondent,	:	
THOMAS R. GOTTSHALL, APRIL C. LUCAS, and MICHAEL BRENNAN,	:	
Intervenors.	:	

DEPOSITION OF STEVEN T. TANEYHILL

DATE TAKEN: Friday, May 3, 2019

TIME BEGAN: 10:03 A.M.

TIME ENDED: 10:31 A.M.

LOCATION: Richard A. Harpootlian, P.A.
1410 Laurel Street
Columbia, South Carolina 29201

REPORTED BY: Robin L. Herrera, RMR, CRR, CRC
CA CSR 13466; TX CSR 8741
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

APPEARANCES:

STROM LAW FIRM, LLC
BY: JOHN R. ALPHIN, ESQUIRE
2110 North Beltline Boulevard
Columbia, South Carolina 29204
803-252-4800
jalphin@stromlaw.com
Representing the Petitioner

SOUTH CAROLINA DEPARTMENT OF REVENUE
BY: PATRICK MCCABE, ESQUIRE
P.O. Box 12265
Columbia, South Carolina 29211-9979
803-898-5056
patrick.mccabe@dor.sc.gov
Representing the Respondent

RICHARD A. HARPOOTLIAN, P.A.
BY: CHRISTOPHER P. KENNEY, ESQUIRE
1410 Laurel Street
Columbia, South Carolina 29201
803-252-4848
cpk@harpootlianlaw.com
Representing the Intervenors

ALSO PRESENT:

Fabian Ludwig

I N D E X

EXAMINATION	PAGE
By Mr. Kenney	4
By Mr. Alphin	28
By Mr. Kenney	30
Certificate of Reporter	33

E X H I B I T S

TANEYHILL EXHIBITS	DESCRIPTION	MARKED
Taneyhill-1	"Intervenors' Requests for Production to Petitioner"	4
Taneyhill-2	"Petitioner's Response to Intervenors' Request for Production"	4
Taneyhill-3	"STEVES Sunday Report 2"	4
Taneyhill-4	"STEVES Sunday Report 2"	4
Taneyhill-5	Color Photograph	4

FRIDAY, MAY 3, 2019, 10:03 A.M.

RICHARD A. HARPOOTLIAN, P.A.

1410 LAUREL STREET

COLUMBIA, SOUTH CAROLINA

- - -

(Exhibit Taneyhill-1, "Intervenors' Requests for Production to Petitioner," marked for identification.)

(Exhibit Taneyhill-2, "Petitioner's Response to Intervenors' Request for Production," marked for identification.)

(Exhibit Taneyhill-3, "STEVES Sunday Report 2," marked for identification.)

(Exhibit Taneyhill-4, "STEVES Sunday Report 2," marked for identification.)

(Exhibit Taneyhill-5, color photograph, marked for identification.)

- - -

STEVEN T. TANEYHILL,

having been first duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

\\\

BY MR. KENNEY:

Q. Would you state your full name for the record.

A. Steven Thomas Taneyhill.

Q. Okay. Mr. Taneyhill, my name's Chris Kenney. I represent the intervenors in this matter. We're here to take your deposition about some very, very discreet limited topics. We're not going to be here long, but I'm still required to explain the rules of this process to you.

Have you ever been deposed before?

A. (Shaking head.)

Q. The first rule is you have to verbalize your responses. Our court reporter here is taking down everything they said in the room. She can't record a shake of the head or a nod; so if you forget, I'll try to remind you.

It's also important that we try not to speak over one another. If you'll let me finish my question, I'm going to let you try to finish your answer so that she can get down everything that's said. Do you understand that?

A. Yes.

Q. Okay. You just took an oath to tell the truth. It's no different than if we were in a

courtroom. All the same penalties of perjury, you know, attach to it. You understand that?

A. Yes.

Q. Okay. If at some point you hear somebody object -- it's possible that Mr. Alphin will object to the question I asked or Mr. McCabe may object or I may object to a question they ask -- all the lawyers are doing is we're putting a marker in the record so at a later date, if we had to, a judge could rule on whether the evidence is appropriate and comes into evidence; right?

For your purposes, what you're going to do is, you're going to let counsel object, and as long as you understand the question, you just go ahead and answer the question. The one exception to that, which is unlikely to come up, is if Mr. Alphin were to instruct you not to answer the question. Then it's up to you to follow counsel's advice or not; okay? Do you understand all that?

A. Yes.

Q. Okay. If at any point during this process you do not understand my question; if it's confusing, if it's poorly worded, if it's compound, if it's any of those things, you can just say, "I don't understand your question," and I will try to

rephrase my question; is that fair?

A. Yes, sir.

Q. Let me just get a little bit of background information about you. Are you the owner of the bar that we call -- we sort of know as Group Therapy?

A. I own Group Therapy, yes.

Q. Okay. And how long have you owned Group Therapy?

A. Since June 30th, 2016.

Q. All right. And are you also the person who manages Group Therapy?

A. What do you mean by that?

Q. I mean, are you the guy, are you the guy who is responsible for day-to-day operations, the employees, the managers, whomever, report to about its performance, about its day-to-day operation?

A. I am the manager, but I'm not the -- all the time there. I'm not all the time there.

Q. I understand that. I mean, what I'm getting is --

A. I'm the owner.

Q. You are the owner. You're the man at the top.

A. I'm the owner. Yes, sir.

Q. All right. Very good.

We're here to talk about two discovery topics, Topics 5 and 11, on some document requests that we served. I understand you may not be the guy who can provide us all of the information about the video, and that's why we have Mr. Ludwig here, and if we need to, we'll take his deposition right after we take your deposition, and so he can fill in some gaps if you don't know.

"I don't know" is an okay answer; all right? I'm trying to figure out what you know, what you don't know. Do you understand?

A. Yes.

Q. Let's look at Exhibit Number 1. Have you -- this is "Intervenors' Request for Production to Petitioner," to Group Therapy. Have you seen this document before?

A. This is why I'm here today; correct?

Q. Yes, sir.

A. So then, yes.

Q. All right. Now, if you would turn to page 6 of the exhibit.

A. (The witness complies.)

Q. You see there's a heading that says "Document Requests."

A. Yes.

Q. All right. Do you see Number 5 says "Produce a complete copy of Eighteen Ink, LLC, d/b/a Group Therapy, accounting books in their native form, whether it be paper, ESI (i.e., QuickBooks." Do you see that?

MR. ALPHIN: Object to the form.

THE WITNESS: I do.

BY MR. KENNEY:

Q. So when did you become aware of this document request?

A. I guess a couple weeks ago. Whenever the document was produced. I think there's a date on it, isn't there?

Q. Okay. Let me see if I understand what you're referring to. When you say the document produced, are you referring to what we marked as Exhibit 3?

A. It would have been around that day somewhere, I guess.

Q. Okay. So --

A. 4/11 or 4/16. Obviously, they're five days apart.

Q. And let's focus on Exhibit Number 3 for just a second. That's the single page.

A. (The witness complies.)

Q. What is this document?
A. That's "STEVES Sunday Report 2."
Q. All right. Are you Steve?
A. I am.
Q. So this is a report you get on Sunday?
A. No, sir.
Q. When do you get this report?
A. I don't.
Q. Who gets this report?
A. I guess you can pull it up --
Q. Okay.
A. -- if you have the log-in to the computer. I don't -- this isn't sent to me.
Q. All right. What is the purpose of this report?
A. To show you the -- or to show us the line items, I guess.
Q. All right. In your ownership and management of Group Therapy, do you use this report for any operational purpose?
A. No.
Q. All right. What is the system that generates this report?
A. I don't understand.
Q. You mentioned a computer a minute ago;

correct?

A. Uh-huh.

MR. ALPHIN: Please try to use "yes" and "no." I'm sorry to interrupt.

THE WITNESS: Yes.

BY MR. KENNEY:

Q. This comes out in a computer; is that right?

A. Yes, sir.

Q. Okay. Is that, like, a desktop computer somewhere in your office?

A. In the bar. In Group Therapy in the bar.

Q. Okay. Very good.

And is this a piece of software that keeps this information and generates this report?

A. I have no idea.

Q. All right. Who would be the person at Group Therapy that would know that?

A. Would know what, exactly?

Q. Who would know what the piece of software is that generates "STEVES Sunday Report 2"?

A. The whole system was there before I bought it; so we're on the same system that was there before.

Q. Okay. But what I'm kind of getting at is

there somebody at Group Therapy -- maybe it's a manager, maybe it's an employee, a bartender -- somebody who uses this system on a daily or weekly basis?

A. I guess if you have a log-in, you could use it.

Q. Do you have a log-in?

A. I have a log-in, but I don't use this.

Q. What do you use?

A. I keep everything written.

Q. Tell me what you keep written.

A. We're on a folder system. So at the end of the night, they write everything on a folder.

Q. Like a manila folder?

A. Uh-huh.

Q. Then what happens to the folder?

A. We keep them for a month at least.

Q. And then what happens?

A. Store them.

Q. Where do you store them?

A. I think they're supposed to -- I think you're supposed to store them for a while; correct? I'm not positive.

Q. I can't really answer that question for you, but it's whatever you know, whatever y'all's

practice is.

Where do you store them?

A. If they're there, they would be at the bar somewhere.

Q. All right. And the information on those folders is what? Is it sales information?

A. It would be the receipts.

Q. Okay. "Receipts" meaning what the bar sold for that particular night?

A. Yeah. Each folder is a day.

Q. Okay. And who prepares those folders?

A. Whoever closes.

Q. All right. Would that be a bartender or manager?

A. Yeah. Whoever closes at the end of the night.

Q. And that's -- the folders, they go to you or to somebody else?

A. They just -- you keep them there.

Q. Okay. So these are hard copy paper records that are in Group Therapy?

A. There's probably some, some there.

Q. Right.

A. We've had it for three years; so I don't know how long they go back.

Q. Right.

But if I understand, your testimony is these folders are prepared every night?

A. Yes.

Q. All right. And at least some of them are still at the bar.

A. Somewhere, yes.

Q. All right. Do you store them at any other location other than the bar?

A. No.

Q. Do you take any of the information on that folder and put it into some sort of electronic system, like either this system in Exhibit 3 or QuickBooks?

A. No.

Q. Okay. What, if anything, do you do with those paper records?

A. They're there so you can count up at the end of the month.

Q. All right. When you count up at the end of the month, then what do you do?

A. Then you have an idea of what you did for the month.

Q. Right.

But what I'm saying is does that data get

recorded somewhere?

A. No. Obviously it goes to this.

Q. Well, I don't know that that's obvious. If it's -- at the end of the month, do you or one of your employees put the information into this system?

A. No.

Q. No.

What do you do with the information?

A. I look at it.

Q. And then what?

A. I look at it.

Q. You don't give it to, like, an accountant?

A. My accountant gets some, yes, sir.

Q. What's your accountant's name?

A. Beverly Winstead.

Q. All right. Does she get copies of all of these reports?

A. I would have to ask her that.

Q. You don't know that?

A. I don't know that answer.

Q. Is there somebody else at Group Therapy that knows the answer to that?

A. I would doubt it.

Q. All right. I mean, are you the guy who is responsible for the finances at Group Therapy?

A. I don't understand your question.

Q. Are you the man who is in charge of figuring out how much money came in and reporting that money for -- whether it be for tax purposes or some other purpose?

A. I guess so, yes, sir.

Q. Okay. Like, your bartenders don't do that for you. Your managers don't do that. You're that guy?

A. They give me information, yes.

Q. Okay.

A. But I'm the only one that talks to Beverly.

Q. Okay. Great.

So to your knowledge, the numbers on this page in Exhibit 3, do they have anything to do with those paper records that you've been describing to me?

A. Say that again now.

Q. The numbers on the folder system that you described, do those numbers have anything to do with the numbers that we see on Exhibit 3?

A. They should.

Q. Okay. Well, explain that to me. When you say "They should," what is the relationship between

Exhibit 3 and the paper records that y'all compile?

A. All right. One more time. You're confusing me a little bit.

Q. That's all right.

What I'm trying to figure out is -- I think, if I understand what you're saying, you're saying there's a relationship between those paper records that are created every night and there's a monthly paper report. That's all correct; right? I mean, that's what you just described.

A. Yes.

Q. Okay. All right. Is there a relationship between those paper records and the information on them and the electronic report that we're looking at in Exhibit 3?

A. There should be, yes.

Q. Okay. Now, when you say "There should be," what do you mean by that?

A. Well, this came off the POS; so it should in theory. Yes. They should be, I guess, the same.

Q. All right. Tell me what a POS is quickly.

A. That's your point of sale.

Q. All right. Now, and the point of sale is what? What does that mean?

A. The stuff that was sold.

Q. Okay. But how do -- the information in the paper records, how does that get into the electronic system?

A. I guess when they hit the button on the -- when they sell something, it goes on that system.

Q. I see.

Do you ever reconcile the paper records that you described with the electronic report that we're looking at in Exhibit 3?

A. Do I?

Q. Yes, sir.

A. I might have once or twice. I don't -- like I said, I use the paper, not this.

Q. Who uses the electronic record?

A. They might be able to pull it up at the end of the night. I would assume that they can get in there with the log-in and pull up, like, last night.

Q. Yeah. But if I'm understanding what your testimony -- like, when you, as the business owner, want to understand how much you sold, you go to the paper records?

A. Yes.

Q. Okay. And perhaps some of your staff uses this electronic system?

A. If they have a log-in, yes, they can look.

Q. Okay. And does your accountant ever reconcile the electronic Exhibit 3 record with the paper records that you rely on?

A. You'd have to ask Beverly that.

Q. Okay. Do you know whether the numbers that we see in Exhibit 3 are accurate?

A. I would hope they were, yes.

Q. Well, but do you know that they are accurate?

A. I guess I don't know that.

Q. Okay.

A. I would hope that they are --

Q. Okay.

A. -- as far as what was keyed in.

Q. And just explain, when you say "keyed in"...

A. Rang up.

Q. Right.

And you referred to the point of sale. Is it -- am I correct -- I'm just sort of -- if this is wrong, you correct me -- but am I correct what you're saying is the point of sale information that, say, your bartender would key into the point of sale computer, that that's what's being captured and

reported in this sales report?

A. I believe so.

Q. Okay. I got you.

A. I'm not the computer person; so...

Q. Right.

Who is the computer person?

A. I don't think we have one.

Q. All right.

A. Again, the system was there when I bought Group Therapy.

Q. I understand. But it's your system now. You own it.

A. I do own it, yes, sir.

Q. Am I correct that you basically -- going back to these discovery requests, Exhibit 1 -- that you become aware of the request and attempted to fulfill it sometime on or around April 11, 2019?

A. Yes.

Q. And that's what this little -- on Exhibit 3 in the top right-hand corner, that's the time stamp that would reflect the time that you went in and ran the report?

A. Yes.

Q. All right. Did you personally do that?

A. Yes.

Q. All right. Now, if you look at Exhibit 4, this is a different report that -- it looks like you prepared it on April 16; correct?

A. That's on the top right, yes.

Q. Yes.

And I understand the period for this record is April 16, 2018, to April 16, 2019; is that right?

A. One year.

Q. One year.

Is it possible to run a report similar to Exhibit 3 or Exhibit 4 but do it on a monthly basis going backward for, let's just say, a two-year period?

A. I don't believe so.

Q. Okay. And why? Why don't you believe that's possible?

A. I believe that the system's one year.

Q. And is that based on your use of the system?

A. That's based on when I pulled this (indicating).

Q. Okay. I mean, is -- what you're telling me is you were -- you were unable to run a report that predated April 16, 2018?

A. Yes.

Q. Okay. If we wanted to know what the sales were in 2017, by way of example, would we have to go to the paper records that you referred to earlier?

A. There's no paper records from then.

Q. Those have all been destroyed?

A. Not destroyed. I mean, I just -- I don't think those paper records exist.

Q. Okay. What happens -- what is the business's practice in terms of document retention concerning sales?

A. I guess you would talk to Beverly.

Q. Okay. That's the accountant?

A. Yes, sir.

Q. Okay. The paper records that we've talked about, do those have -- well, how about just describe for me what is the breakdown of information that is in that paper record?

A. We'd have a receipt.

Q. Like, for each transaction?

A. Not necessarily each transaction. You would have their printout at the end of the night.

Q. Okay. And just tell me, as best you can recall, what is the information that is on the printout?

A. That question would -- I don't know everything that's on there, but it's whatever was rang -- I think, I'm not positive.

Q. Okay.

A. This would be a better question for maybe Fabian to answer, but it has what was sold as far as how they can make sure the box is right as far as money and sales for the night.

Q. Okay. Would these end-of-evening receipts reflect the number of dollars in liquor sales, for example?

A. Yes. I think it's liquor -- yes. I think it's -- I think it's sort of like that right there.

Q. Sort of like the information on Exhibit 3?

A. Again, that would be a better question for Fabian, but I don't close the bar; so...

Q. Okay. That's fine.

All right. Since this -- this contested case began, has the bar taken affirmative steps to make sure that you don't destroy or misplace any records?

A. Say that again.

Q. Yeah.

Since we -- you understand we're in front of the administrative law court in this case. You

understand that; right?

A. Yes, sir.

Q. Since that case began, have you or Group Therapy taken affirmative steps to make sure that records like these sales records, the paper, the electronic, that those are not destroyed?

A. I would hope so, yes.

Q. Well --

A. I'm not there at the end of the night; so...

Q. Right.

I mean, you're the guy in charge; correct?

A. Yes.

Q. Have you told your employees to preserve the records?

A. Well, we should have everything for a year.

Q. Okay. But my question is since this litigation began, have you instructed your employees to save everything?

A. I think everything should be saved.

Q. No. No. That's not the question. The question is have you instructed your employees to save everything?

A. Save everything meaning...?

Q. Meaning your records.
A. Like this or like the receipts?
Q. All of the -- yes, both.
A. All of the receipts should be there.
Q. Okay. But for one year?
A. Whatever this says.
Q. Okay. Let me ask you, because you may be able to help us and we wouldn't need Fabian then. Let me ask you about video for just a second; okay?

And we got some technical issues. Y'all produced a bunch of video on this hard drive that I have here, and we'll work through the technical issues. I'm not as worried about that. But if you look at Exhibit 1 and you look at Number 11, see where it says "Produce all video surveillance footage for Eighteen Ink, LLC, d/b/a Group Therapy premises"? Do you see that?

A. Yes.
Q. Now, just generally, generally speaking, would you just explain what the video system is at Group Therapy.
A. That question would be better for Fabian.
Q. For example, do you know how many cameras you have?
A. Yes.

Q. How many?
A. Eleven.
Q. All right. And those 11 cameras, they record footage of things that happen inside and outside the bar; correct?
A. Yes.
Q. How many cameras are inside; do you know?
A. Showing the inside?
Q. Yes, sir.
A. I mean, all the cameras are located inside.
Q. Okay. Look at Exhibit 5 for just a second. So that's --
A. Okay. That camera there is on the outside of that door, yes.
Q. Okay. And that looks at an alley outside the bar; right?
A. Yes.
Q. All right. Now, are the rest of the cameras on the inside?
A. Of the bar or the whole -- the whole building?
Q. Just the building.
A. The building, yes.
Q. Okay. Normally -- just routine business,

no lawsuit, just day-to-day business, how long is -- the video that's captured by the Group Therapy system, how long is it retained or saved in the system?

A. I'm not the guy. I don't know.

Q. Okay. All right. Did you do anything to help collect the video that's been produced to us in this case?

A. I told Fabian to get the video.

Q. Okay. When would you have told Fabian to get the video?

A. I don't know. I don't know what that date was.

Q. Would it have been --

A. Can I ask John that --

Q. Don't tell me what you told John.

A. -- because he told me they needed video.

Q. Let me stop you. I'm not entitled to know what you talked about with your lawyer.

A. Oh, okay.

Q. So you shouldn't misunderstand any of my questions today to try to figure out what you --

A. I don't know what date it was, then. I don't know.

Q. Would it have been somewhere around

April 10th, 2019, which is the time stamp on Exhibit 5?

A. I think it was 4/11.

Q. Okay. But approximately April?

A. Okay.

Q. Do you know -- and I can ask Fabian this -- but do you know whether there is video available on the Group Therapy system, for example, February of 2019?

A. I don't know that answer.

Q. Okay. Those are all the questions I have.

MR. MCCABE: No questions from the Department.

- - -

EXAMINATION

- - -

BY MR. ALPHIN:

Q. For the video you have instructed -- is it true that you've instructed your employees to retain the video going forward?

MR. KENNEY: Objection.

THE WITNESS: What does that mean?

MR. KENNEY: Oh, you can go ahead and answer it. You can just ignore me and answer his question.

THE WITNESS: Okay. Can you repeat.

BY MR. ALPHIN:

Q. At some point in time have you instructed your employees to maintain the video? Or have you instructed Fabian to maintain the video?

A. Yes.

Q. And have you gone as far as putting a padlock on that so the video cannot be altered or tampered with?

A. Yes. On that room, yes.

Q. On that room.

A. Yes.

Q. Prior to when you put the padlock on there, all the employees would have had access to that; correct?

A. Yes. It's an employee rest area.

Q. Okay. And normally when you look at the screen like you look on Number 5, it would have all the cameras on one frame; is that correct?

A. No.

Q. Okay. Tell me what you would see normally.

A. You could see 1, you could see 2, you could see 3.

Q. But they're -- are they in a grid on the

screen?

A. Yeah. They're on a grid.

Q. So they're on a grid. So somebody would have had to change the camera so you only seen one camera; correct?

A. Yeah. You would click on the camera you want to see.

Q. Okay. But you don't -- you've watched an investigation, and you don't know who clicked it so that only one camera was recording; is that correct?

A. That's correct.

Q. And this was after you instructed them not to destroy the video; correct?

A. Yes.

Q. Okay.

MR. KENNEY: Can I follow up on that? Are you done?

MR. ALPHIN: I'm done, yes.

- - -

EXAMINATION

- - -

BY MR. KENNEY:

Q. When did you instruct Fabian to preserve the video?

A. Well, we were trying to pull the video on

this date.

Q. On April 10.

A. We were actually doing it on the 11th for the 10th.

Q. Okay. Is that when that instruction would have been given to him?

A. Yes.

Q. All right. And -- and Mr. Alphin asked you a question I didn't quite follow, but I think I get the gist of it.

Am I correct that -- I mean, we've got -- we're looking at this screenshot of the alleyway for April 10, and are there any other camera views that have been preserved and are available for April 10?

A. I think you should ask Fabian that.

Q. Okay. I'll ask Fabian.

A. I instructed him to pull the video. I don't know how it pulls the video.

Q. I got you.

And to your knowledge, is there any video from February or March of 2019?

A. I would think not, but I don't know.

Q. All right. Okay. But Fabian will have those answers, hopefully?

A. I mean, we don't -- in the three years

that we've had that -- or coming on three years, I don't know that we've ever used it to pull anything --

Q. Okay.

A. -- except for a still shot. So you get it to rewind from the night before, and you take a still shot.

Q. I got you.

A. We've had that happen with the CPD, but you just take the still shot.

Q. What was the -- when was that that you did that for CPD?

A. CPD came maybe back at the very first year for something that happened outside, and then the Deebo Samuel case we used the still shot because it was -- happened on Saturday, and they came and saw me on Monday.

Q. Okay. All right. Great. Those are all the questions I have.

MR. ALPHIN: Any questions?

MR. MCCABE: No.

MR. ALPHIN: No questions.

- - -

(The deposition concluded at 10:31 A.M.)

- - -

CERTIFICATE OF REPORTER

I, Robin L. Herrera, Registered Merit Reporter, Registered Realtime Reporter, Registered Realtime Captioner, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of May 2019, at Hartsville, Darlington County, South Carolina.

Robin L. Herrera, RMR, CRR, CRC
CA CSR 13466; TX CSR 8741
Notary Public
State of South Carolina at Large
My Commission Expires: 3/27/2028

EXHIBIT F

(Deposition of Fabian Ludwig)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

- - -

EIGHTEEN INK, LLC, d/b/a GROUP THERAPY,	:	
Petitioner,	:	
vs.	:	Case No. 19-ALJ-17-0001-CC
SOUTH CAROLINA DEPARTMENT OF REVENUE,	:	
Respondent,	:	
THOMAS R. GOTTSHALL, APRIL C. LUCAS, and MICHAEL BRENNAN,	:	
Intervenors.	:	

DEPOSITION OF FABIAN LUDWIG

DATE TAKEN: Friday, May 3, 2019

TIME BEGAN: 10:40 A.M.

TIME ENDED: 10:46 A.M.

LOCATION: Richard A. Harpootlian, P.A.
1410 Laurel Street
Columbia, South Carolina 29201

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I N D E X

EXAMINATION	PAGE
By Mr. Kenney	4
Certificate of Reporter	11

(No Exhibits Proffered.)

FRIDAY, MAY 3, 2019, 10:40 A.M.

RICHARD A. HARPOOTLIAN, P.A.

1410 LAUREL STREET

COLUMBIA, SOUTH CAROLINA

- - -

FABIAN LUDWIG,

having been first duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

BY MR. KENNEY:

Q. Would you state your full name for the record.

A. Fabian Ludwig.

Q. Mr. Ludwig, you were present for Mr. Taneyhill's deposition just a minute ago; correct?

A. Yes.

Q. You heard me explain the rules?

A. Yes.

Q. Do you understand the rules?

A. Yes.

Q. Let's dive right in.

I am told you are the guy that has

information about the video system; is that correct?

A. Yes.

Q. Just to make sure I'm not missing something, do you have any information about the sales records that I was discussing with Mr. Taneyhill?

A. Only just the receipts that he was telling you about.

Q. Okay. In -- first of all, what do you do at Group Therapy?

A. I'm the head door guy --

Q. Head door guy. Got you.

A. -- /closer.

Q. So that's how you know about the receipts?

A. Uh-huh.

Q. Is that a "yes"?

A. Yes.

Q. All right. Do you have anything to add in terms of Mr. Taneyhill's description of the process where those paper receipts get printed out, put into a folder, and then stored, I guess, somewhere at Group Therapy?

A. No, that's all. That's pretty much what I know.

Q. Is that the -- your extent of that -- that

transaction as you prepare it?

A. Yeah. I just write the folder.

Q. You just write the folder.

And inside of those --

A. The folder has the receipts.

Q. When you're done with that, physically where do you put the folder?

A. Put it in our little folder box -- little folder box that we have on the desk.

Q. Okay. And the desk is in the office?

A. Yes, sir.

Q. That's inside Group Therapy?

A. Yes, sir.

Q. Okay. Do you know what period of time you have those paper records for?

A. I'm not sure. I do not know.

Q. Okay. Not a problem.

Let's talk about video. Were you asked sometime around April 11th, I think, was what was -- Mr. Taneyhill said -- were you asked to collect some video at Group Therapy?

A. Yes.

Q. All right. Had you been asked to collect any video prior to that?

A. Only once.

Q. Okay. And when was that other time?
A. That was right when Taneyhill first got there.
Q. So that's sometime in 2016?
A. Yeah.
Q. Okay. There about. All right.
Now, if you had been asked -- I mean, it's not a problem for you to retrieve video, you've done it before?
A. Yes.
Q. Okay.
A. I mean, I did it for the hard drive.
Q. Right.
We'll talk about the hard drive in a second. You're looking at Exhibit Number 5, which is a screenshot from Camera 1; correct?
A. Yes.
Q. Now, you collected that video?
A. Yes.
Q. All right. And is there -- are there other camera views from April 10th that we don't have or the bar does not have?
A. We don't know what happened, but this was the only video that I could collect on this day. Someone had switched from continuous just to record

this. And so we locked up -- I changed it back to continuous recording and put a lock on the door so no one can mess with it.

Q. Okay. So -- okay. And you discovered that?

A. When I had to -- when we had to do this first one.

Q. Okay. You discovered it on April 11th?

A. The 11th.

Q. Okay. So is it -- is it accurate to say that there is no video at Group Therapy prior to April 10th?

A. Yes.

Q. All that video has been deleted?

A. Yes.

Q. Okay. Now -- okay. I understand that.

Let's talk about this hard drive that -- that we got yesterday. And we got some technical issues with it, and we'll figure it out. We'll work through that. It's not a big deal. But tell me generally what time period of data is on this hard drive.

A. That goes from Sunday to Wednesday when we closed.

Q. Sunday --

A. So Sunday from open to close, Monday from open to close, Tuesday open to close, Wednesday open to close.

Q. Right.

What date? What dates are on here approximately?

A. I think it was last week's. I think it was a week ago. Last week, I want to say. I can't tell you. I can't say the date.

Q. That's okay.

It's April; is that right?

A. Yeah, it's April. Yeah. It is, like, last -- yeah.

Q. It's April, and it's all after April 10th; is that correct?

A. Yes.

Q. Okay. If you -- if Mr. Taneyhill had asked you in February of this year to go to the video system and produce, you know, all of the video that was on that hard drive, would you have been able to do that?

A. In February?

Q. Yes, sir.

A. Possibly, yeah.

Q. I mean, just like you've done this hard

drive, you could have done that in February or you could have done that in March?

A. Yeah. Yeah.

Q. Okay. Do you know what the retention period if -- assuming nobody -- business as usual, nobody's asked you to do anything, it's just day to day, how long does the bar routinely keep video before it's overwritten or deleted?

A. I'm not a hundred percent sure, but I want to say it's a week, week and a half.

Q. Okay. Okay. Great. Those are all the questions I have. I appreciate your time.

A. Yeah. No problem.

MR. KENNEY: All right, guys.

MR. MCCABE: No questions from the Department.

MR. ALPHIN: No questions.

- - -

(The deposition concluded at 10:46 A.M.)

- - -

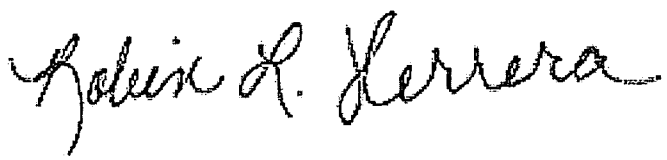
CERTIFICATE OF REPORTER

I, Robin L. Herrera, Registered Merit Reporter, Registered Realtime Reporter, Registered Realtime Captioner, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of May 2019, at Hartsville, Darlington County, South Carolina.



Robin L. Herrera, RMR, CRR, CRC
CA CSR 13466; TX CSR 8741
Notary Public
State of South Carolina at Large
My Commission Expires: 3/27/2028

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MAR 23 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

On appeal from
THE ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge

Docket No. 19-ALJ-17-0001-CC

Eighteen Ink, LLC, d/b/a Group Therapy.....Respondent,

v.

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

and

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

CERTIFICATE OF COUNSEL

Undersigned counsel hereby certifies under Rule 210(g) of the South Carolina Appellate Court Rules that the record on appeal contains all material proposed to be included by the parties and not any other material. This certification also extends to the documents marked "confidential" under the Administrative Law Court's confidentiality order, which are included in the record, but are being submitted in camera.

Respectfully submitted,

Christopher P. Kenney (Bar No. 100147)
RICHARD A. HARPOOTLIAN, P.A.

Attorney for Intervenors, Appellants

March 23, 2021
Columbia, South Carolina.