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Jan 12 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
Appellate Case No.: 2021-000756

Henry Brewington, Individually and d/b/a Levelz Bar & Grill, Respondent,

v.

City of Myrtle Beach, Appellant,

Horry County Court Of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Trial Court Case No. : 2017-CP-26-685

RECORD ON APPEAL

VOLUME I

Other Counsel of Record

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COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Henry Brewington and Virginia Brewington,
Individually and d/b/a Levelz Bar & Grill,

Plaintiff(s)

CIVIL ACTION COVERSHEET

17-CP-26-685

vs.

Melina Devine Davis, et al

Defendant(s)

Submitted By: Thomas C. Brittain, Esq.

Address: 4614 Oleander Drive
Myrtle Beach, SC 29577

SC Bar #: 00893

Telephone #: 843-449-8562

Fax #: 843-497-6124

Other:

E-mail: tommyvb@brittainlawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

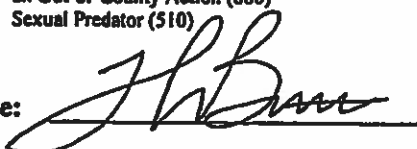
*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☒ Other (199) ☐ Tortious Interference of Contract	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)	☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Employment Security Comm (991) ☐ Other (999)

Submitting Party Signature:



Date: February 2, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

002
Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Henry Brewington and Virginia Brewington,
Individually and d/b/a Levelz Bar & Grill,

Plaintiffs,

vs.

Melvina Devine Davis, City of Myrtle Beach,
State of South Carolina and Horry County,
State of South Carolina,

Defendants.

TO: THE DEFENDANTS ABOVE NAMED:

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2017-CP-26-

SUMMONS
(Jury Trial Demanded)FILED
HORRY COUNTY
2017 FEB -2 PM 1:36
RECEIVED
CLERK OF COURT
HORRY COUNTY

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiffs' attorneys, Thomas C. Brittain and Mary Madison Brittain Langway, at The Brittain Law Firm, P.A., 4614 Oleander Drive, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the date of such service and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina on the 2nd day of February, 2017.

THE BRITTAIN LAW FIRM, P.A.


 Thomas C. Brittain, Esquire
 Mary Madison Brittain Langway, Esquire
 4614 Oleander Drive
 Myrtle Beach, SC 29577
 (843) 449.8562
 (843) 497.6124 (Fax)
 Attorneys for the Plaintiffs

4C COPY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Henry Brewington and Virginia Brewington,
Individually and d/b/a Levelz Bar & Grill,

Plaintiffs,

vs.

Melvina Devine Davis, City of Myrtle Beach,
State of South Carolina and Horry County,
State of South Carolina,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 2017-CP-26-

COMPLAINT
(Jury Trial Demanded)FILED
HORRY COUNTY
2017 FEB -2 PM 1:06
RECEIVED
CLERK OF COURT
HORRY COUNTY

NOW COMES the Plaintiffs, by and through their undersigned attorneys, Thomas C. Brittain and Mary Madison Brittain Langway, hereby complaining of the Defendants, would allege and show unto this Court as follows:

1. That Plaintiff Henry Brewington (hereinafter referred to as "Plaintiff Henry") at all times relevant herein was a citizen and resident of the State of South Carolina, County of Williamsburg.
2. That Plaintiff Virginia Brewington (hereinafter referred to as "Plaintiff Virginia") at all times relevant herein was a citizen and resident of the State of South Carolina, County of Williamsburg.
3. That, together, Plaintiffs owned and operated an establishment known as Levelz Bar & Grill (hereinafter referred to as "Plaintiff Business") located at 515 9th Avenue North, Myrtle Beach, SC and did so within the confines of the law.
4. That Defendant Melvina Devine Davis (hereinafter referred to as "Defendant Davis") at all times relevant herein was a citizen and resident of the State of South Carolina, County of Georgetown.

5. That Defendant City of Myrtle Beach, State of South Carolina (hereinafter referred to as "Defendant City") at all times relevant herein was a governmental entity, operated as a political subdivision of the State of South Carolina, with its principal place of business in the City of Myrtle Beach, County of Horry.

6. That Defendant Horry County, State of South Carolina (hereinafter referred to as "Defendant County") at all times relevant herein was a governmental entity, operated as a political subdivision of the State of South Carolina, with its principal place of business in Horry County.

7. That, upon information and belief, all pertinent and relevant acts that resulted in this action occurred in Horry County, South Carolina.

8. Both Jurisdiction and Venue are proper and appropriate in this Horry County Court of Common Pleas.

9. That on or about April 16, 2014, Plaintiffs entered into a five (5) year lease agreement with Defendant Davis for the property located at 515 9th Avenue North, Myrtle Beach, SC to open and operate Plaintiff Business.

10. That Plaintiffs complied with all applicable laws of the State of South Carolina, County of Horry and City of Myrtle Beach in the establishment and operation of Plaintiff Business.

11. Further, that Plaintiffs hired security through Advanced Protections Services, LLC ("APS") and installed high quality surveillance cameras, all in an effort to ensure Plaintiff Business was appropriately operated and maintained.

12. Upon information and belief, in 2014 Defendant County, with the aid and assistance of Defendant City, began a campaign to shut down certain businesses they deemed undesirable to the area.

13. That, upon information and belief, Plaintiff Business was one of the businesses targeted in this campaign.

14. That on or about October 14, 2014 at approximately 1:33 am, two officers were dispatched to Plaintiff Business to conducted a "keep check" and, while performing a walk-through of the club, they found one (1) patron in possession of marijuana who was arrested and charged with simple possession.

15. That on or about October 18, 2014, Defendant City was notified that Plaintiff Henry had sold some fireworks at Plaintiff Business without a proper license to do so and the Fire Marshall was notified. Upon investigating, it was discovered that Plaintiff Henry had served sparklers in a drink special offered at Defendant Business, not sold fireworks, and received a suspended fine.

16. That on or about December 14, 2014 at approximately 2:20 am, Defendant City and Defendant County conducted an operation at Plaintiff Business to determine if they were selling liquor after 2 am on a Sunday. An administrative violation was issued for after-hours sale of liquor and, in addition, an officer found one (1) patron in the men's restroom with marijuana who was subsequently arrested.

17. That on or about January 24, 2015 at approximately 9:56 pm, an officer for Defendant City arrived at Plaintiff Business on a golf cart and entered the establishment. The officer advised the Plaintiffs that the "word on the street" was that a shooting that occurred in Conway, South Carolina was somehow linked to Plaintiff Business. The officer then left.

18. That on or about January 25, 2015 at approximately 12:30 am, officers for Defendant City who were observing the public areas around/near Plaintiff Business approached a vehicle in a parking lot located behind Defendant Business due to "suspicious activity" and, upon

searching the vehicle, found a small amount of marijuana and issued a citation to the offender for simple possession.

19. That, upon information and belief, from approximately 1:00 am to 4:30 am on the morning of January 25, 2015 there was a heavy presence of police from Defendant City at Plaintiff Business conducting multiple walkthroughs with as many as ten (10) officers in the building at a time.

20. That at approximately 1:07 am, while conducting one of these walkthroughs, an officer found one (1) patron in the men's restroom with marijuana.

21. At approximately 2:24 am four (4) officers for Defendant City again entered the establishment. One (1) officer went to the men's restroom, one (1) officer went on the stage and the remaining two (2) officers walked to the back of the building and then went up on the stage. After finding no violations they walked out of the establishment at approximately 2:27 am.

22. At approximately 2:29 am the officers re-entered Plaintiff Business and began questioning a patron and asked him for his identification. After again finding no violations, the officers left the establishment.

23. At approximately 2:54 am, officers observed two (2) females in a physical altercation in front of Plaintiff Business. Both females were arrested.

24. Further, at approximately 2:54 am, while still standing outside of Defendant Business, officers observed an intoxicated person in the roadway near Defendant Business who they arrested.

25. That on or about January 26, 2015, Plaintiff Virginia contacted PFC Lisa Robertson with Defendant City to file a complaint about the recent harassment by the police at Defendant Business.

26. That on or about January 28, 2015, Officer Robertson contacted Plaintiff Virginia to schedule a meeting with Plaintiffs, which Plaintiffs were led to believe was to discuss their recent complaint of harassment by the police.

27. That on or about February 2, 2015, Plaintiffs arrived at the scheduled meeting with Defendant City and, at that time, learned that the meeting was not about their complaints against Defendant City for harassment but was instead pertaining to the desire of Defendant County and Defendant City to shut down Plaintiff Business.

28. That on or about February 5, 2015, Plaintiffs received, by certified mail, from the Office of the Solicitor for the Fifteenth Judicial Circuit on behalf of Defendant County notice of public nuisance pertaining to Plaintiff Business stating that the "property is reportedly being used for the unlawful possession and sale of controlled substances and for continuous breach of peace" and further notifying Plaintiffs they had "ten days to abate the nuisance."

29. That on or about February 10, 2015, this same notice of public nuisance was sent to Plaintiff's landlord, Defendant Davis.

30. That on or about February 13, 2015, Plaintiffs received from Defendant Davis notice that, based upon the notice of public nuisance she received from Defendant County, she believed Plaintiffs had defaulted on their lease and therefore needed to vacate the premises within ten (10) days.

31. That on or about February 15, 2015 in the early morning hours, a man was shot and killed in front of the building next door to Plaintiff Business located at 513 9th Avenue North.

32. That it was later determined the shooter had been hired to kill the victim and the shooting was in no way related to the operation of the premises of Plaintiff Business.

33. That on or about February 17, 2015 a Verified Petition and Motion for Temporary/Preliminary Injunction was filed against Plaintiffs by Defendant County.

34. That, in response to Defendant County's and Defendant City's harassment and intimidation tactics Plaintiffs decided to sell Plaintiff Business.

35. That, upon information and belief, Natalie Litsey signed a contract of sale on January 27, 2015 to purchase Plaintiff Business for approximately One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00).

36. Further, that Plaintiffs spoke with their landlord Defendant Davis regarding transferring their lease to Ms. Litsey and, further, that all parties were agreeable to this transfer.

37. That, upon information and belief, Defendant City contacted Ms. Litsey, upon learning of the pending sale of Plaintiff Business, and interrogated her as to the business she intended to open in that location, what her relationship was to the Plaintiffs, whether she had the appropriate licenses, etc. and further misrepresented to Ms. Litsey that Plaintiff Business had been a problem location and that incidents that had occurred in proximity to their location were directly related to Plaintiff Business.

38. That, upon information and belief, after being contacted and questioned by Defendant City, Ms. Litsey decided not to proceed with purchasing Plaintiff Business and signed a release of agreement.

39. That on or about February 20, 2015, an Order Granting Motion for Permanent Injunction was filed against Plaintiffs.

40. That Plaintiffs had been deprived of their rights and had no opportunity to continue based upon actions of the Defendants.

AS A FIRST CAUSE OF ACTION
AS TO ALL DEFENDANTS

(Tortious Interference of Contract and Action under United States code, Section 1983)

41. That Plaintiffs reallege each and every allegation set forth above as if set forth herein verbatim.

42. That the operation of Plaintiff Business was within accordance with the law.

43. That had there been any issues of drug violations, fighting and public intoxications, all of them were dealt with properly and in accordance with the law.

44. That it is a policy of Defendant City and Defendant County to "close bars" based on any misconduct that is associated therein, even if it is not occurring within or on the premises.

45. Further, that Plaintiff Business was in no way responsible or had anything to do with the illegal activities that took place in proximity to their location including the shooting that occurred on February 15, 2015.

46. That in early February of 2015, the representatives of Defendant City and Defendant County began to inaccurately notify Defendant Davis that her tenant, Plaintiff Business, had become a "public nuisance" and was being used for the "sale of controlled substances".

47. That these misrepresentations, of a significant nature, were made to injure and eventually terminate the business relationship between Defendant Davis and the Plaintiffs.

48. That through constant harassment and exchange of, in many ways, false information, the contract between the landlord and these Plaintiffs/tenants was terminated in early fashion all to the great cost and expense of the Plaintiffs.

49. This constitutes the act of tortious interference with a contract.

50. Further, based on the harassment as set forth above and the improper information made available to Defendant Davis by Defendant County, Plaintiffs' lease was terminated causing

them to suffer the loss of entitlements to the four (4) additional years of investments and revenue associated with operating Plaintiff Business under said lease.

51. Further, based on the harassment as set forth above and the improper information communicated to Natalie Litsey by Defendant City, the contract Plaintiffs entered into with Ms. Litsey to sell Plaintiff Business for One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) was rescinded.

52. Further, that all of this was done in violation of the South Carolina Tort Claims Act in that the Defendant City and Defendant County, through its officers and representatives, misrepresented and misinformed Defendant Davis thereby inducing her to terminate the lease with the Plaintiffs and ending their opportunity to function in connection with Plaintiff Business.

53. Further, that this was a constitutional right of property which was lost.

54. That there are significant damages based on the termination of this lease and untimely fashion.

55. That all of it was done in violation of the law and rules.

56. Further, that a nuisance action which was filed and which was ended by agreement is not a bar to this action since by the time the nuisance action was up to be tried, these Plaintiffs had no property interest left; it was gone and had been demolished based on the conduct of the representatives of the Defendant City and Defendant County.

57. That the Plaintiffs were denied equal protection under the law among other constitutional rights.

AS A SECOND CAUSE OF ACTION
AS TO DEFENDANT CITY AND DEFENDANT COUNTY
(Violation of Section 1983 United States Code of Law)

58. That Plaintiffs reallege each and every allegation set forth above as if set forth herein verbatim.

59. That the misrepresentations, interference with the contractual relationship between Defendant Davis and Plaintiffs deprived these Plaintiffs of their propriety rights to operate a business within the confines of Myrtle Beach, Horry County and the State of South Carolina.

60. That the misrepresentations, interference with the contractual relationship between Ms. Litsey and Plaintiffs deprived these Plaintiffs of their right to sell Plaintiff Business in accordance with the law.

61. Further, that the right of property is a special right contained in the first ten amendments of the United States constitution and any police or state action which impinges, hinders or terminates those rights, would require the State or the political subdivision to compensate the injured party for the sacrifice and or termination of those rights.

AS A THIRD CAUSE OF ACTION
AS TO DEFENDANT DAVIS
(Breach of Contract)

62. That Plaintiffs reallege each and every allegation set forth above as if set forth herein verbatim.

63. That Plaintiffs entered into a legally binding contract with Defendant Davis on April 16, 2014 to lease the property located at 515 9th Avenue North, Myrtle Beach, SC for five (5) years.

64. That Plaintiffs were in compliance with all of the terms of their lease and timely paid their rent each month.

65. That upon receiving the notice of public nuisance from Defendant County, on or around February 10, 2015, Defendant Davis immediately terminated that lease.

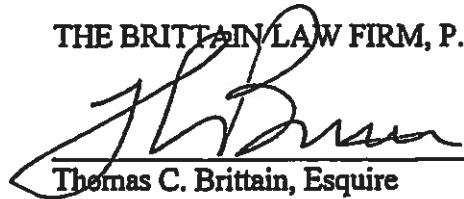
66. That Defendant Davis did not take any action to confirm that the allegations contained in the notice of public nuisance were accurate prior to terminating the lease.

67. That ten (10) months after entering into the five (5) year lease agreement with Plaintiffs, Defendant Davis terminated the agreement; further, that Plaintiffs spent the first four (4) months of the lease making renovations to the property and, therefore, were only able to operate Plaintiff Business for six (6) months prior to the premature termination of their lease agreement.

68. Further, that Plaintiffs have suffered significant damages based on the premature termination of this lease including, but not limited to, loss of revenue from Plaintiff Business for the four (4) years and two (2) months remaining on the lease and loss of ability to recoup initial investments and renovation expenses made by Plaintiffs in order to open and operate Plaintiff Business.

WHEREFORE, Plaintiffs, having complained of the Defendants, pray to this Honorable Court that Plaintiffs be awarded all actual, consequential and special damages as described herein as well as punitive damages and any further relief this Court deems just and proper.

THE BRITTAIN LAW FIRM, P.A.



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Attorneys for the Plaintiffs

Myrtle Beach, South Carolina

February 2, 2017

COPY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Henry Brewington and Virginia Brewington,
Individually and d/b/a Levelz Bar & Grill,

Plaintiffs,

vs.

Melvina Devine Davis, City of Myrtle Beach,
State of South Carolina and Horry County,
State of South Carolina,

Defendants,

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-26-685

ANSWER

FILED
HORRY COUNTY
2017 FEB -8 PM 2:30
RENEE H. ELYS
CLERK OF COURT
HORRY COUNTY, S.C.

TO PLAINTIFFS AND THEIR ATTORNEYS, THE BRITAIN LAW FIRM PA:

City of Myrtle Beach, ("Defendant"), by and through its undersigned counsel, hereby responds to Plaintiffs' Complaint and would show this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter expressly admitted is hereby denied.
2. Answering the allegations contained in paragraphs 1 and 2 of the complaint; this defendant is informed and believes that the same are true.
3. Answering the allegations contained in paragraphs 3 of the complaint, this defendant denies the same.
4. Answering the allegations contained in paragraphs 4 – 7 of the complaint, this defendant is informed and believes that the same are true.

5. Answering the allegations contained in paragraphs 8 of the complaint, this defendant denies the same.

6. Answering the allegation contained in paragraphs 9 of the complaint, this defendant does not have sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies the same.

7. Answering the allegations contained in paragraphs 10 - 13 of the complaint, this defendant denies the same.

8. Answering the allegations contained in paragraph 14 of the complaint, this defendant admits its police officers arrested and charged another patron in Levelz with possession of marijuana.

9. Answering the allegations contained in paragraph 15 of the complaint, this defendant admits one of the plaintiffs was convicted of selling fireworks in Levelz without a license, pled guilty and received a suspended fine.

10. Answering the allegations contained in paragraph 16 of the complaint, this defendant admits that plaintiffs were cited by the South Carolina Law Enforcement Division with violation of laws pertaining to the sale of alcohol in Levelz during a joint operation with this defendant.

11. Answering the allegation contained in paragraph 17 of the complaint, this defendant admits that a person was charged in the back parking lot of Levelz with possession of marijuana.

12. Answering the allegation contained in paragraphs 19 – 24 of the complaint, this defendant admits its police officers responded to a fight disturbance call at Levelz which resulted in assault charges, assault on a police officer charge, and resisting arrest charges against patrons of Levelz. In addition, defendant's police officers responded to a second disturbance call at Levelz which resulted in an arrest for public intoxication and police officers made two additional arrests at Levelz for possession of marijuana. All of the above incidents occurred on January 25, 2015.

13. Answering the allegations contained in paragraphs 25-27 of the complaint, this defendant admits that plaintiffs contacted Pfc Robertson to complain about the actions of this defendant's police officers in connection with Levelz and that a meeting was held in which plaintiffs' problems and this defendants' problems connected with the operation of Levelz were discussed.

14. Answering the allegations contained in paragraphs 28 -29 of the complaint, this defendant admits that plaintiffs and plaintiffs' landlord, Defendant Davis, received a notice to abate a public nuisance at Levelz from a Special Prosecutor for the Solicitor for the Fifteenth Judicial Circuit and this defendant would further show that the Solicitor for the Fifteenth Judicial Circuit is an independent officer of the State of South Carolina authorized by S.C. Code Ann. §15-43-10 & § 15-43-120 to give such notice and to maintain an action in equity in the name of the State to enjoin perpetually a public nuisance as defined by that statute, the person conducting or maintaining the public nuisance and the owner or agent of the building or ground upon which the nuisance exists.

15. Answering the allegation contained in paragraphs 30 of the complaint, this defendant does not have sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies the same.

16. Answering the allegations contained in paragraphs 31-32 of the complaint, this defendant admits a man was murdered on February 15, 2017, while exiting from Levelz by a hired gunman.

17. Answering the allegations contained in paragraphs 31-32 of the complaint, this defendant admits that on February 17, 2015, a Verified Petition and Motion for Temporary Injunction was filed against the plaintiffs and the property owners by the Solicitor for the Fifteenth Judicial Circuit to abate the public nuisance at Levelz.

18. Answering the allegations contained in paragraph 34 of the complaint, this defendant denies the same.

19. Answering the allegation contained in paragraphs 35-36 of the complaint, this defendant does not have sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies the same.

20. Answering the allegations contained in paragraphs 37-38 of the complaint, this defendant denies the same.

21. Answering the allegations contained in paragraph 39 of the complaint, this defendant admits the Court of Common Pleas issued an order which closed Levelz for the period of one year and enjoined plaintiffs from further operation of Levelz and enjoined plaintiffs from operating, using, maintaining, and assisting in the using and maintaining of any place in the State

of South Carolina where a public nuisance exists in violation of S.C. Code Ann. § 15-43-10, et seq.

22. Answering the allegations contained in paragraph 40 of the complaint, this defendant denies the same.

23. Answering the allegations contained in paragraphs 41-61 of the complaint, this defendant denies the same.

24. Answering the allegation contained in paragraphs 62-68 of the complaint, this defendant does not have sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies the same.

FOR A SECOND DEFENSE

25. Each and every response set forth hereinabove is repeated and realleged herein.

26. The allegations set forth in the complaint against this defendant fail to state any cause of action upon which relief can be granted.

FOR A THIRD DEFENSE

27. Each and every response set forth hereinabove is repeated and realleged herein.

28. Plaintiffs duly consented through their attorney to be enjoined and restrained from operating their business, Levelz, because of a public nuisance at their business for a period of one year. Plaintiffs' consent was memorialized by a final judgment issued by the Court of Common Pleas. A copy of said judgment is attached hereto and fully incorporated herein as Exhibit "A."

29. This defendant is informed and believes that plaintiffs waived any claims against this defendant as a result of their consent to the final judgment.

FOR A FOURTH DEFENSE

30. Each and every response set forth hereinabove is repeated and realleged herein.

31. Plaintiffs are judicially estopped from claiming that their business Levelz was not a public nuisance as defined by S.C. Code Ann. §15-43-10, et. seq.

FOR A FIFTH DEFENSE

32. Each and every response set forth hereinabove is repeated and realleged herein.

33. This defendant is absolutely immune from Plaintiffs' claims under 42 USC §1983 for any alleged violation plaintiffs' constitutional rights.

FOR A SIXTH DEFENSE

34. Each and every response set forth hereinabove is repeated and realleged herein.

35. As to any portion of the Complaint that may be interpreted as brought under the South Carolina Tort Claims Act, § 15-78-10, entire sequence, of the South Carolina Code of Laws, this defendant pleads said Act and all pertinent provisions contained therein as a limitation or bar on the plaintiff's claims.

FOR A SEVENTH DEFENSE

36. Each and every response set forth hereinabove is repeated and realleged herein.

37. Plaintiffs' business was adjudicated to be a public nuisance by consent of the Plaintiffs and by final judgment of the Court of Common Pleas. The defendant's actions to abate the public nuisance were authorized, privileged, and justified under the statutes and law of the State of South Carolina.

FOR AN EIGHTH DEFENSE

38. Each and every response set forth hereinabove is repeated and realleged herein.

39. Plaintiffs' claims against this defendant are barred by the doctrine of actual and implied consent.

FOR A NINTH DEFENSE

40. Each and every response set forth hereinabove is repeated and realleged herein.

41. Plaintiffs' claims against this defendant are barred by the applicable statute of limitations.

FOR A TENTH DEFENSE

42. Each and every response set forth hereinabove is repeated and realleged herein.

43. Plaintiffs' claims are barred by the doctrine of res judicata.

FOR AN ELEVENTH DEFENSE

44. Each and every response set forth hereinabove is repeated and realleged herein.

45. Plaintiffs' claims are barred by the doctrine of collateral estoppel.

WHEREFORE, having fully answered the Complaint, Defendant City of Myrtle Beach prays that the same be dismissed, for its costs, and for such other and further relief as to the Court is just and proper.



Michael Warner Battle
Attorney Defendant City of Myrtle Beach
BATTLE LAW FIRM, LLC
Post Office Box 530
Conway, South Carolina 29528
(843) 248-4321

February 8, 2017

STATE OF SOUTH CAROLINA

HORRY COUNTY

State of South Carolina on the relation of
Jimmy A. Richardson, II, Solicitor of the
Fifteenth Judicial Circuit,

PETITIONER,

vs.

Henry Brewington & Virginia Brewington
d/b/a Levelz Bar & Grill,

RESPONDENTS.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-26-1228

ORDER GRANTING MOTION FOR
PERMANENT INJUNCTION

2015 FEB 20 AM 9:51
HORRY COUNTY
CLERK OF COURT

This matter comes before the Court pursuant to a Notice of Motion, Motion for Temporary Injunction, and Verified Petition for Permanent Injunction of the above named Petitioner, seeking an Order of this Court enjoining and restraining the above-named Respondents from using, maintaining, and assisting in the using or maintaining of Levelz Bar & Grill located at 515 9th Avenue North, Myrtle Beach, South Carolina in Horry County as a public or common nuisance in violation of S.C. Code Ann. 15-43-10, et seq. and to direct and command the Sheriff of Horry County or his designees summarily to abate this public or common nuisance. After being duly served with notice of the within proceedings, the Respondents have conveyed to Petitioner their intent to permanently close the subject business and to vacate said premises immediately prior to the adjudication of this matter on the merits, and they are not making any admissions to any violation of law by virtue of the execution of the within consent order by their attorney.

WHEREFORE, pursuant to the Petitioner's Motion and the parties' consent, this Court orders the following:

1 / MHC

1. Respondents Henry Brewington and Virginia Brewington d/b/a Levelz Bar & Grill, their agents, servants, subordinates, and employees, are enjoined and restrained from operating, using, maintaining, and assisting in the using and maintaining of Levelz Bar & Grill located at 515 9th Avenue North, Myrtle Beach, South Carolina in Horry County as provided by S.C. Code Ann. §15-43-10, et seq. for a period of 1 year.

2. The Sheriff of Horry County or the officers of the Myrtle Beach Police Department are hereby ordered to post copies of this Order on the premises along with a sign warning trespassers that the entire premises is closed by Order of this Court and that violators of the Order may be punished for contempt of court or such other statutes or ordinances as may be applicable. Officers are also directed to place police tape over the entrances to the building.

3. Respondents and each of them, their agents, servants, subordinates, and employees, are enjoined and restrained from operating, using, maintaining, and assisting in the using and maintaining of any place in the State of South Carolina where a public nuisance exists in violation of S.C. Code Ann. § 15-43-10, et seq.

IT IS SO ORDERED.

Benjamin H. Culbertson

Hon. Benjamin H. Culbertson
Circuit Court Judge
Court of Common Pleas

Conway, South Carolina
February 20, 2015

I CONSENT:

James R. Battle

James R. Battle
BATTLE LAW FIRM, LLC
PO Box 530
Conway, SC 29528
Petitioner's Attorney

I CONSENT:

John M. Prosser (96)

John M. Prosser, Jr.
PROSSER LAW FIRM, P.A.
PO Drawer 779
Johnsonville, SC 29555
Respondent's Attorney

2017 FEB -8 PM 2:31

FILED
HORRY COUNTY

BENJAMIN H. CULBERTSON
CLERK OF COURT
HORRY COUNTY, SC

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OPENING BY BRITTAIN

25

1 so I can discuss it more fully with them, please remember any
2 ruling I make is not a comment on the facts. All I'm deciding
3 is whether it's proper for you to hear or not. If I decide
4 it's proper for you to hear, then you give it whatever weight
5 you think it deserves.

6 The parties understand, the Court understands that we
7 have asked you to do something you didn't volunteer to do, but
8 our system of justice, our system of resolving disputes
9 peaceably cannot operate unless we have participation of the
10 citizens of the county, and that's the role that y'all will
11 fill in the next day or so in resolving this dispute between
12 the plaintiffs and the defendant.

13 All right. Mr. Brittain?

14 OPENING BY BRITTAIN:

15 MR. BRITTAIN: Thank you very much, Your Honor.

16 Madame Forelady, ladies and gentlemen of the jury, I
17 introduced myself to you earlier. My name is Tommy Brittain.
18 I've been practicing law for quite some time here in Horry
19 County and other parts of the state. I introduce my clients
20 to you, Virginia and Henry Brewington; and Tucker Player, who
21 is assisting in the trial of this case today.

22 Let me echo what Judge John said about the jury. I've
23 had people call me all during my legal practice and ask me to
24 help them get out of jury service. I think a lot of people
25 don't want to sit on a jury. I never do that because it's the

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1 one thing that sets us apart, us and England, from the whole
2 rest of the world. We let the people keep in check the
3 conduct of one another. It really is an important part of
4 society as Americans.

5 Now, I've seen this old courtroom abused. I've seen
6 people come in here claiming they got a sore neck when they
7 don't have a sore neck, and that's when this process is at its
8 worst. Every now and then something like what happened today,
9 what we're gonna be talking about today happens. It's
10 important for every one of us when government oppresses her
11 citizens. They're the most powerful part of our society. The
12 government has the police on their side. If they decide to
13 take aim against a citizen, a shopkeeper, a businessperson,
14 they got a lot of tools in their bag. And so, the nature of
15 this case, on behalf of the Brewingtons, is that they were
16 legitimate, honest business owners. Now, they had a bar. My
17 daddy was a Methodist preacher. He don't believe in drinking,
18 but he believes in every citizen being treated fairly. The
19 City of Myrtle Beach allows bars; they allow the sale of
20 alcohol. So, you've already told the judge this morning,
21 you've got no problem with somebody that sells alcohol and
22 you'll be fair to them, and that's all we ask is that you be
23 fair.

24 Henry and Virginia Brewington have been married 29 years.
25 You know, that's a little unusual for an interracial couple.

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1 I think of that as a more current thing. They've been married
2 for 29 years, and they've got a son. He is one of those guys
3 that can fix anything. He's an electrician, he's a plumber,
4 he's a carpenter. And they're from the big town of Hemingway,
5 South Carolina. And over the years he became successful in
6 those trades and started a business in Hemingway, which was a
7 bar and was very successful with it.

8 2015 or so, he heard about Myrtle Beach expanding and
9 talked to some people about what was available here and he had
10 his life savings together, had a nice little nest egg. So, he
11 comes down to Myrtle Beach, he and his wife, and they invest
12 in a -- a piece of property over on what -- you know, some of
13 you know -- if y'all live here in Horry County, you've
14 probably read about what's kind of being called the Superblock
15 in Myrtle Beach. You come up 501, cut right into Myrtle
16 Beach, the old main way to get into Myrtle Beach, and right
17 there on your left are several buildings. The old triangle
18 building used to be there; it's torn down now. But right in
19 that section in there is where they leased a piece of property
20 from a very fine lady by the name of Melvina Davis. And she's
21 passed away. She passed away -- Mike, a couple of months ago,
22 wasn't it? Just recently; she died recently. She owned the
23 property we're talking about. She was the owner of the
24 property. So, Henry and Virginia signed a five-year
25 commercial lease with her. She said you've got it; you pay me

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1 X and you use it however you want to use it. You know, this
2 is America; you start the business you want to start and run
3 your business, and you pay me X as rent, a standard commercial
4 lease.

5 So, it wasn't in very good shape. So, Henry and Virginia
6 go in there and spend a lot of money to turn it into a fancy
7 environment so people will come in there and drink in the
8 evenings, to attract business. So, he spends a lot of money
9 to upgrade the premises and, you know, try to get open for
10 business. State of the art, all the security stuff, the
11 cameras, all the glitz inside, made quite an investment in it.
12 When it was all said and done, he ended up with about \$300,000
13 in the facility, advertising, fees, et cetera.

14 So, they tried to get open by July the 4th so they could
15 get some traffic in there and start making good. And it looks
16 like they're gonna get in by July the 4th. Supposed to get
17 the license and -- you know, it's not the biggest deal in the
18 world, but too much red tape. They couldn't get the license
19 by July the 4th, so the advertisement they done and everything
20 was kind of wasted. Here again, no big deal, but it still
21 took a while to get the license from the City of Myrtle Beach
22 before they could get open. And but eventually they got their
23 license to open and they opened. Well, when they gave them
24 their license, they said you don't have the after-2-o'clock
25 license. So, you can't sell anything after 2 o'clock. In

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1 order to get the after-2-o'clock license, you've got to fill
2 out another whole set of documents to get the after-2-o'clock
3 license, which a lot of these people -- I mean, we've got some
4 young people on the jury, they go out at 2 o'clock, you know
5 -- I mean, that's crazy to me but, I mean, people go out and
6 they stay at these bars until after 2 o'clock. So, here
7 again, it -- it's -- it's off to a rocky start, no big deal.
8 They applied for the after-2-o'clock license. And eventually
9 -- they had to push, but eventually, they got the after-2-
10 o'clock license. So, here we've got a person trying to get in
11 business, trying to get going, and you know, the City is in a
12 position of responsibility to see that that happens, can
13 happen, easy, hard or whatever.

14 So, once they get the after-2-o'clock license, within a
15 week, the police are down there walking through the bar and
16 even though nobody is selling any alcohol after 2 o'clock,
17 they come and check it anyway because there were people in the
18 bar at 2 o'clock; they hadn't left the premises yet. And this
19 begins a process of the City constantly sending the police
20 officers into the establishment. Now remember, this is where
21 people are going in there to drink. A bunch of policemen
22 standing around ain't exactly the thing you want in order to
23 complete your business transactions in a bar. But that's the
24 way it was, and they were making due and beginning to make
25 money in spite of the consistently constant police presence.

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1 And eventually they started making money down there, and the
2 situation with the City got worse. They were sending large
3 numbers of police officers down there. Now, they did find
4 three things that were wrong. One, one policeman found a young
5 man in the bathroom with a marijuana cigarette. Of course, he
6 was cited for that as he should've been. It happened in
7 Levelz, but Henry and Virginia didn't have anything to do with
8 that. One time out of all the times they were down there
9 checking, somebody allegedly sold a drink, one, after 2
10 o'clock. They were cited for that. Paid it; history. The
11 third thing was a party down there, not Henry and Virginia
12 now, having a party and somebody had a sparkler. So, you tell
13 me. They wrote them up for the sparklers, fire code
14 violation.

15 So, after all that, these two feel under the gun, so they
16 asked for a meeting with the City officials to complain about
17 the way they're being treated by the City of Myrtle Beach.
18 When they go in there, the big dogs are in that meeting. The
19 City attorney and others, and instead of it being a meeting
20 about what's happening to them, at that meeting, the City
21 attorney tells them, I'm gonna shut you down. I'm giving you
22 one chance to pack your stuff and go back to Hemingway. I'm
23 gonna shut you down and you better just pack up and go. I've
24 never lost a case and I ain't starting with you.

25 Now, I'm gonna tell you, it upset Henry, but Henry

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1 decides to leave. He's been around all his life; you decide
2 to fight or you decide to go. They had his number. He
3 decided I'm not wanted in this place; I don't think I've done
4 anything wrong much, but I'm gonna to try to sell out and get
5 something back from what I've invested and go. Well, that
6 City lawyer, just like he said, he didn't wait around; he
7 popped in with what's called an abatement notice. What is
8 that? That says you've been doing things wrong; we're holding
9 you accountable for the things that happened in your
10 establishment, eight or nine things, and we're going to shut
11 you down as a business, a legal proceeding, and we've got the
12 documents and all. And so, here again, the Brewingtons, they
13 had a lawyer up in Hemingway. They showed up at the nuisance
14 proceeding and their lawyer wasn't there, and the lawyer for
15 the City -- they went up and asked the lawyer for the City,
16 you know, what can we do; what's the situation here? And the
17 lawyer for the City, he didn't tell them, you know, I'm not
18 your lawyer, get a lawyer or whatever. He said, well, I'll
19 tell you, you can't win, and you might as well agree to all
20 this. If you don't, you know, I'm gonna win anyway.

21 So, and I -- you know, this is -- this is not the best
22 part of our case. I mean, they -- they agreed. Now, read
23 that document closely when you get it. They didn't admit to
24 anything -- doing anything that was wrong, it was just Henry
25 basically telling them, look, I've decided to pull out, you

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1 know, I'm gonna sell my business, close my business down, sell
2 it to somebody else; maybe they'll have better luck with the
3 City of Myrtle Beach. You can read it; it's in there and I
4 don't admit anything that's wrong. All right.

5 So, okay, that would've probably been the end of the
6 story. You'll see that contract. He ended up having a
7 contract with a veteran, a United States Army Veteran, Natalie
8 Litsey. She paid him the \$10,000 down and was gonna pay him a
9 substantial amount of money, about half of what he had
10 invested in it and she would start her own business there, not
11 Levelz or the Brewingtons, but the government couldn't --
12 there were too many hard feelings, I guess. They couldn't
13 live with that. And they'd said all these things to the
14 landlord that weren't true. She -- she was trying to throw
15 them out, Ms. Davis, she was -- she was -- the City had her
16 bamboozled. And that's why we say they were wrongfully
17 interfering with that contract relationship. When the City
18 starts telling you you got problems, we're gonna shut your
19 business down, there's gonna be a problem for your ownership;
20 that's interfering in that business relationship. But that
21 wasn't enough for them. They didn't want Henry to sell his
22 business. They did the same thing with Ms. Litsey. Nah, you
23 know, we don't want you there, you might not be able to
24 operate there; there are problems there. Now, look, there was
25 -- there was a killing over there, not in their club. There

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1 are killings all over Myrtle Beach. They didn't have anything
2 to do with that killing, but the City ran Ms. Litsey off.

3 So, that's why we've ended up with two causes of action;
4 the City conduct here, after you hear it all -- as the Judge
5 said, the theory is that they wrongfully, in other words,
6 improperly interfered with these contract relationships.
7 These are good people. There's nothing wrong with these two
8 people. You won't hear one bad word about their background
9 and history from Mr. Battle or anybody on the City of Myrtle
10 Beach's side, none. There's no reason for them to have been
11 treated this way. You know, the police are supposed to stop
12 the crimes. It takes a lot of nerve to blame the shopkeeper
13 and the business owner for the crimes; they didn't commit any
14 of these crimes. It's the City that's supposed to stop them.
15 It takes a lot of nerve and a lot of arrogance to blame these
16 people. Let me tell you something, you think any of those
17 hotels up on the boulevard have ever been shut down with all
18 the killings that's happened up there? No, sir; they don't
19 happen up there. Those people don't get shut down; they don't
20 even get challenged. It's this couple from Hemingway in a
21 place where the City had designs for different types of
22 businesses. Have they misused the power of their office, the
23 police, the inspectors, the City officials?

24 Now, that's just a discussion of what we feel like the
25 case is about, which is all I'm supposed to do at this point.

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1 That's where the evidence comes from. You will hear probably
2 five to six witnesses before this case is -- is done. Our
3 case is really very simple; to put Henry Brewington on the
4 witness stand and he will testify about his experiences, what
5 he knows, what he heard, that sort of thing. Then we will
6 read into evidence, because she lives either -- she lives in
7 another state and I think I've already got it wrong, but I
8 believe she might be from Tennessee, but anyway -- Natalie
9 Litsey is not here because it would cost a lot of money to get
10 her to come. So, what we have is her deposition. Earlier,
11 she was asked a bunch of questions about this stuff under
12 oath. Mr. Battle and I were there asking questions, and she
13 answered them, and that was all taken and that -- that
14 deposition will be read to you just like she was testifying.
15 We'll have somebody up there that reads her responses, that
16 will be our second witness. And then our third witness will
17 be Ms. Brewington and that will be our case with some
18 documents, the lease, the contract, some things like that, not
19 many.

20 Then, Mr. Battle will go forward with his case, and he
21 has between three and five witnesses that he will put on the
22 witness stand, and then you will get to hear everybody's
23 version of how these things took place.

24 We ask that you return a verdict in our favor, believing
25 our witnesses, our interpretation of the law and the facts

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1 that will do justice to the Brewingtons, and do no harm to the
2 City but hold them accountable for what took place under these
3 circumstances.

4 Thank you very much.

5 THE COURT: Mr. Battle?

6 OPENING BY BATTLE:

7 MR. BATTLE: Good afternoon, ladies and gentlemen of the
8 jury. My name is Mike Battle, and I represent the City of
9 Myrtle Beach. Here today on behalf of the City of Myrtle
10 Beach I want you to meet -- please stand up -- Lisa Robertson.
11 She was the regulatory officer for the City of Myrtle Beach
12 during all the events that occurred that are pertinent to this
13 lawsuit. She is now retired and she's the person that they're
14 saying that did all these bad things. I also have Stephanie
15 Parham-- please stand up, Stephanie. She is the current
16 regulatory officer for the City of Myrtle Beach. She's not
17 gonna testify in this case cause she was not involved in any
18 of the activities that took place, but she is very interested
19 in what's going to take place because this is a program that
20 the City is trying to implement and has been implemented since
21 2004 to make the City a safer place. And we'll talk about how
22 that program is implemented. And finally, I have Myka'h
23 Frazier. She is our paralegal and she'll be helping me and
24 assisting me throughout this lawsuit.

25 I've been trying cases with Tommy Brittain for over 30

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1 years. He's a friend of mine. We've known each other and
2 worked together, worked on the same team, worked on opposite
3 teams. He's a very good criminal lawyer, but I think he's out
4 of his depth on this case, because I don't believe he
5 understands what a nuisance action is and the purpose of what
6 happens when a nuisance action takes place. We have a
7 situation where I don't believe he understands the facts,
8 because I disagree with most of the categories and most of the
9 statements of facts that he has made.

10 What he didn't tell you and what you need to know is that
11 the Notice of Abatement was not sent by the city attorney.
12 The Notice of Abatement is an action that is brought by the
13 solicitor. The solicitor is empowered by the statute to bring
14 an abatement of a public nuisance, and if a public nuisance
15 exists, there are statutory remedies. The statutory remedy
16 is, is that the Judge, if he agrees that there is a public
17 nuisance under the statute, where there is somebody -- that is
18 you have somebody doing illegal drugs, violence, repeated acts
19 of violence, or you have let's say prostitution and that sort
20 of stuff, then you shut the place down or you shut the
21 building down for a year, and that's a preventative measure.
22 Because, you have people like the Brewingtons say, we're not
23 responsible for what our customers do; we're not responsible
24 for what our customers do to other properties; and we're not
25 doing anything wrong; and we can't help it if our property --

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1 if our customers go across the street or shoot up the windows
2 of the church next door, or if our customers trash the parking
3 lots, or if our customers actually -- we had a contract
4 shooting come out of this particular bar.

5 So, what was being sought from this bar and what was
6 being sought from Mr. Henry Brewington -- and, by the way, Mr.
7 Henry Brewington is the only one that entered into the lease.
8 Ms. Brewington did not -- she did not sign it at least. Is
9 that the solicitor sought, and he obtained from the Judge an
10 order shutting down Levelz for a period of one year. When you
11 shut down the place, you put police tape around it, and you
12 board it up. That's what the Judge ordered. And he did it
13 with the consent of the Brewingtons, who were represented by
14 their attorney; and whose attorney, on their behalf -- they'll
15 admit it -- whose attorney agreed to it, authorized his
16 signature to be put on a consent order that you'll see and
17 didn't even both to show up for the hearing.

18 After the property is terminated for the period of a
19 year, after that consent order was entered, the Brewingtons
20 stopped paying rent, and Ms. Davis was unable to rent her
21 property to anybody else during that period of that year.
22 That was what they had consented to and that's what the Judge
23 ordered because of what took place in and outside of that bar
24 or by the customers of that bar.

25 Now, the Brewingtons say it's not our fault. We can't

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1 control what our customers do. The City of Myrtle Beach
2 brought a complaint to the solicitor's attention and said
3 these acts are occurring. We're asking you to invoke what is
4 called a civil remedy. Now, the civil remedy is to abate a
5 public nuisance. And let me see if I can make clear to you in
6 such a way that you can understand maybe a little clearer.
7 You're living out in a neighborhood, a fraternity house buys
8 the property next door to you, and they start having parties
9 and people going in -- in the fraternity party, people come in
10 and they trash your house and they trash your yard and maybe
11 some of them get carried away with guns and shoot up the
12 windows in your house. At that point in time, how do you stop
13 them? The fraternity itself is not breaking the law; the
14 customers are breaking the law. Where the law gives you
15 remedies. It says you can abate the nuisance with a statutory
16 remedy of just shutting the place down. We're not gonna argue
17 about whether you broke the law, or your customers broke the
18 law; we're just not gonna allow that place to use that because
19 you are affecting the happiness, peace, and tranquility of
20 everybody in that neighborhood. And under the law that the
21 Judge will charge you, we have a right to petition the Court
22 to get the Judge to close you down. And it was the solicitor
23 that made that decision. Mr. Brittain seems to think it was
24 the City that made that decision. It was the solicitor, and
25 we will have the assistant solicitor who was in charge of that

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1 case talk to you and testify in this thing. And I have to
2 give you forewarning, that person was my oldest son, who was
3 the assistant solicitor. He has been both a private attorney
4 and a special prosecutor for the City. I'm gonna put him on
5 the stand to the subject to cross-examination from Mr.
6 Brittain, but he is gonna tell you how the nuisance activity
7 and what is being done and how many clubs and what we do or
8 what the solicitor does with the acts of the City to try to
9 make Myrtle Beach a safer place, particularly in its nightlife
10 and its nightclubs.

11 A civil remedy is a preventative remedy. It prevents the
12 people from coming in, drinking past 2 o'clock, 4 o'clock, 5
13 o'clock in the morning, getting intoxicated and then going out
14 and doing crazy things. A preventative remedy is something --
15 not a criminal remedy. You cannot convict somebody of a crime
16 that they think they might want to commit or what they could
17 be possibly could commit. You can only convict somebody after
18 they commit the crime. And so to have the police to be able
19 to convict somebody or arrest somebody, they have to probable
20 cause that the crime has occurred. So, you don't have the
21 remedy where you have people coming -- different people coming
22 every night. What you have is you have a situation where we
23 say okay, if that presents a problem for the neighborhood, we
24 can stop it by closing down the place. That kind of law is in
25 every state in this country and it's been around for over a

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1 hundred or more years.

2 Levelz will say, we're not responsible for what our
3 customers do. The Judge will charge you, they are
4 responsible, and you have taken an oath to apply the law to
5 the facts as they are presented to you and as you believe and
6 hear them off of the witness stand.

7 Now, that is the motive for why the plaintiff made -- I
8 mean, I'm sorry -- why the City made the complaint to the
9 solicitor and the motive why the solicitor sought the
10 abatement and sought the Judge's order, which they consented
11 to.

12 Now, this is not about that except to one extent. This
13 case is about tortious interference with the contract, and I'm
14 going to tell you what the elements of tortious interference
15 with the contract are. One, there has to be an actual
16 contract; two, the party being sued has to have knowledge of
17 that contract; and the third one is, and this is where it's
18 important and why I spent so much time talking about the
19 nuisance, that the party has to intend to procure the breach
20 of that contract. And our position in this case is our intent
21 solely was to prevent a public nuisance. We didn't care who
22 had contracts with who or anything along those lines; didn't
23 talk to the people, didn't try to encourage them one way or
24 another because we had, and the solicitor had what was needed
25 which was an order to shut it down. So, there was no need to

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1 fool with the contracts. It was already -- they had already
2 consented to what needed to be done to prevent the nuisance,
3 and as far as we were concerned that was the end of it.

4 The next element that you have to show is you have an
5 absence of justification. Justification for the City and for
6 the solicitor in this case, but justification for the City and
7 trying to bring the action against the -- bringing the
8 complaint to the solicitor's attention was to stop a public
9 nuisance, and the statute specifically gives the cities and
10 all cities in all states everywhere, have the right to stop a
11 public nuisance. Otherwise, you wouldn't be protected, we
12 wouldn't be protected in our homes if we had a situation where
13 somebody next door and came in and constantly disturbed the
14 peace that we have, and I'll get down these points in just a
15 minute to show you how important that is.

16 So, the motive that we have here, the intent of the City
17 was to stop the public nuisance. Now, there wasn't any motive
18 to prevent anybody from owning the building or having a lease
19 on the building, and if the Brewingtons had been willing to
20 approach the Court or even when they -- the incident he talked
21 about ahead of time where he was talking about, well, what can
22 we do, that sort of thing, if they had been interested in
23 trying to do something to stop the people -- to stop their
24 people from doing what they were doing, their customers, we
25 wouldn't be here.

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1 So, let's talk about the facts that are important that
2 you're gonna see come down in this case. First of all, you've
3 got Levelz opens late July 2014. Why is that important? It's
4 important because you're going to hear complaints from the
5 church next door, First United Methodist Church, and from the
6 businesses in that area. Businesses and church that had been
7 there for a long time. So, it wasn't like the businesses
8 moved to an area where they already had set up their
9 environment. They came in and brought their new club to this
10 environment that created the problems.

11 Then you have nuisance acts began in October of 2014.
12 Why is that important? Well, you're gonna hear about his
13 taxes and the money; he was losing money. In 2014, he lost
14 \$92,000 according to his tax returns. In 2015, during the
15 brief period of time he was working, I think he only had a net
16 profit of \$216. So, he was desperate to get clients and get
17 customers in and do what it took to please them. So, he kept
18 trying to find ways to attract them; offer DJ's, music, give a
19 much easier way of -- of conducting yourself in the club, a
20 club where you can come in and do what you wanted to do; come
21 in and smoke dope, whatever you wanted to do, those type
22 things. And you know, he says two things; you're gonna hear
23 nine different things that took place before they started
24 getting into -- on the radar. And you're going to hear that
25 came not just from the City of Myrtle Beach; SLED was also

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1 involved in the situation. SLED was also bringing charges
2 against them and what they were doing.

3 So, they had to use this action. They had the City
4 trying to do something about it. They say we overpowered them
5 with police officers and brought them in. Well, the police
6 officers were there to try to keep the peace and keep the
7 people from -- their clients and customers from doing the
8 things that they were doing that were causing the neighbors to
9 complain. And so, the police were trying to do something to
10 help them out. They said no, you can't help us out, we --
11 they even complained, said you've got too many police coming
12 in here and it's upsetting our customers. So, then you have a
13 situation where they meet with him, they don't want to --
14 matter of fact, they say, please -- we're gonna make a
15 complaint against you for sending these too much police in
16 here.

17 So, then they said, okay, we can't deal with you. They
18 made the complaint to the solicitor in February of 2015. They
19 did that when they said here is evidence, here's the record.
20 You'll hear -- Ms. Robertson will come in and testify about
21 the evidence she turned over to the solicitor's office and the
22 solicitor looking at it and making a decision. The solicitor
23 sends out a notice in February of 2015. The notice says you
24 have to -- to the property owner, you have ten days to abate
25 this nuisance. What they did was hire an attorney, and Ms.

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1 Davis wrote them a letter and says y'all have ten days to get
2 out of my business, you've created a nuisance here and I want
3 you gone. I'm not sure why, but the next thing that happens
4 is two days later there was a contract killing, a murder,
5 where they threw somebody out of the club, somebody else was
6 waiting, I don't know what connection, if any, was there,
7 somebody was waiting, and he was shot and killed. The person
8 was -- that shot him and killed him was caught and was
9 convicted of murder. They then said, okay, they had an
10 emergency hearing and they said look, Levelz is gonna have
11 another party, the next -- the murder occurred like on
12 Wednesday, Levelz is going to have another party Saturday
13 night that they're inviting the public and the rumors that
14 were out there were okay, there's gonna be a revenge because
15 this guy was a member of one club or gang and the other party
16 was a member of another club or gang. And so what we did was
17 say look, we got an emergency hearing. At that emergency
18 hearing, their attorney consented and said look, we'll close
19 it for a year; and that's what happened, they closed it for a
20 year. The following Monday or Tuesday, at the request of Mr.
21 Brewington, they allowed him to go into the club and get
22 whatever they needed or wanted out of there, products and that
23 sort of thing, and that was pretty much -- they were out and
24 stopped paying rent.

25 Then in March, it wasn't until March of 2015 that Ms.

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1 Litsey says Ms. Davis has said she's not going to rent it to
2 me. Therefore, she started looking for a place to rent, and
3 we'll have evidence and contract documents showing that she
4 wasn't -- it wasn't being talked to or persuaded by the City
5 or any police officer, it was Ms. Davis who had only talked
6 one conversation with the solicitor that she recalls and,
7 although she's deceased, we do have her deposition, her words
8 in writing stating why she terminated the lease. And it was
9 at that point in time, and you'll hear from the testimony of
10 Ms. Litsey, that's when she started looking for another
11 business and that's when they gave her back her money and
12 that's when they ended the case and I'll show you that
13 contract at the end of this case.

14 So, what we're saying is there's a difference in
15 philosophy in some respects. Is the club owner -- is the
16 person next door to you responsible for your peace and quiet
17 and your tranquility? Well, if they are bringing in people
18 that are disturbing you, the only thing you can do is stop
19 them from doing that. With regard to the elements of
20 interference with a contract, the City did not interfere with
21 the contracts, because they didn't need to, they didn't have
22 to, and they didn't want to. It wasn't their purpose. The
23 City's only purpose -- they didn't know the Brewingtons, they
24 didn't know Ms. Davis, they didn't know Ms. Litsey; they had
25 no personal grudges, they had nothing to gain, because they

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1 had the order that they agreed to, and they had them stopped
2 and they had the nuisance stopped. And for that reason, we're
3 gonna ask you to return a verdict for the defendant, the City
4 of Myrtle Beach, at the end of this case.

5 Thank you.

6 THE COURT: All right. Mr. Brittain, your first witness
7 please?

8 MR. BRITTAIN: All right. Henry Brewington stand forth
9 and be sworn, please.

10 THE COURT: Come around, right around up here to the
11 corner, right around up here, sir, please. Thank you. Right
12 up there next to the clerk.

13 THE CLERK: Please raise your right hand and place your
14 left hand on the Bible.

15 HENRY BREWINGTON, HAVING BEEN DULY
16 SWORN TESTIFIES AS FOLLOWS:

17 THE CLERK: Thank you. If you'll please be seated and
18 state your first and last name for the record? Please be
19 seated right there.

20 MR. BREWINGTON: Now? Can I go to the bathroom, first?

21 THE COURT: He wants to take a break?

22 MR. BATTLE: No objection.

23 MR. BRITTAIN: Yeah. Yeah. You need a break?

24 THE COURT: All right, sir.

25 MR. BREWINGTON: Yes.

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1 THE COURT: All right. Ladies and gentlemen, just have a
2 seat for a second. Okay? Just have a seat for a second,
3 please.

4 MR. PLAYER: Hold on. Let him dismiss the jury, Henry.

5 THE COURT: Mr. Brittain?

6 MR. BRITTAIN: Yes, sir.

7 THE COURT: Y'all have a seat for just one second. Okay?
8 Thank you.

9 BY THE COURT:

10 THE COURT: All right. Ladies and gentlemen, we'll take
11 a short break for about five minutes. Go to your jury room
12 and we'll come back in and hear our first witness.

13 Thank you very much.

14 (REPORTER'S NOTE: Jury exits courtroom @ 2:20 p.m.)

15 THE COURT: Before you leave, Mr. Brittain ---

16 MR. BRITTAIN: Yes, sir.

17 THE COURT: --- hold on for one second. And I apologize
18 I didn't remind you about my standard practice, but when the
19 jury leaves, everybody stays seated and do not move until the
20 jury is out of the courtroom. Okay? Thank y'all. Appreciate
21 it.

22 MR. PLAYER: Thank you, Your Honor.

23 MR. BATTLE: Thank you, Judge.

24 MR. BRITTAIN: Thank you.

25 OFF THE RECORD - 2:22 P.M.

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*****OFF THE RECORD*****

ON THE RECORD

THE COURT: You may be seated. Thank you. All right.
Is the plaintiff ready for the jury to come in?

MR. BRITTAIN: Yes, sir.

THE COURT: And the defense, Mr. Battle?

MR. BATTLE: Yes, Your Honor.

THE COURT: All right. Ask the jury to come in please.
(REPORTER'S NOTE: Jury enters courtroom @ 2:31 p.m.)

THE COURT: Mr. Brewington, if you want to come up and
have a seat in the witness chair, sir.

MR. BREWINGTON: You want me to sit down?

THE COURT: Yes, sir. Yes, you can just have a seat and
kind of scoot your chair up close to where the microphone is.
Okay?

MR. BREWINGTON: Okay. Thank you.

THE COURT: Mr. Battle, that's not into evidence yet; can
you turn it around?

MR. BATTLE: Yes, sir.

THE COURT: All right. Ladies and gentlemen, you have in
your seats a notepad and a pen. If you would put your name at
the top of the first page, please. Everybody put your name on
the top of the first page. We'll collect those at the end of
business day and give them back to you in the morning.

Now, after you've done that, let me tell you very

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1 briefly. Some people are better notetakers than others, and
2 just because somebody put something down on a piece of paper,
3 doesn't make it any more certain than somebody else's memory.
4 We are going to rely on your collective wisdom regarding this
5 particular case. All right?

6 All right. Mr. Brittain?

7 MR. BRITTAIN: All right. Thank you, Your Honor.

8 DIRECT EXAMINATION OF HENRY BREWINGTON BY MR. BRITTAIN:

9 Q: Mr. Brewington, how about give the jury the benefit of
10 your background. Where were you born?

11 A: I was born in Williamsburg County, South Carolina, in
12 Hemingway.

13 Q: When was that?

14 A: December 10th, 1944.

15 Q: All right, sir. And what kind of family were you born
16 into; how many brothers and sisters did you have?

17 A: They was just nine of us.

18 Q: Nine of you?

19 A: Yeah.

20 Q: What did your father do for a living?

21 A: Well, my father and mother was split up since I was
22 young.

23 Q: Do what?

24 A: They wasn't together -- the wasn't together since I was
25 young. I was like six years old.

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- 1 Q: All right. So, what did your mother do?
- 2 A: She work on the farm, different farms, sharecropping, put
3 in tobacco, broke corn, whatever we did just to make money to
4 survive.
- 5 Q: All right. And when did you start working?
- 6 A: I can't remember not working, sir.
- 7 Q: What did you do when you first started working?
- 8 A: Working on the farm.
- 9 Q: All right. Your farm or somebody else's farm?
- 10 A: No, somebody else's farm. Whoever farm needed day work,
11 we did it.
- 12 Q: All right. How far did you go in school, Mr. Brewington?
- 13 A: Probably about seventh or eighth, somewhere in there.
- 14 Q: I see. And after working on the farm, what was your next
15 line of work?
- 16 A: As soon as I get old enough, I move to New York and I
17 started working at car dealers.
- 18 Q: At a car dealers?
- 19 A: Yeah, from there to General Motors and Oldsmobile
20 division.
- 21 Q: What did you do at the car dealership?
- 22 A: Auto mechanic; one of their troubleshooters.
- 23 Q: Where did you get your training to become an auto
24 mechanic?
- 25 A: There was a guy name Frank Riverton, he taught me.

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1 Q: Okay. Look at the jury when you're answering a question;
2 you don't have to look at me. I'll ask you the question and
3 you can look at them when you're answering.
4 Well, how long were you in New York working as an auto
5 mechanic?
6 A: Twenty-seven years.
7 Q: All right, sir. And when you left New York, where did
8 you go?
9 A: I married to my wife, Virginia Brewington, right over
10 there.
11 Q: All right. Where did you meet her?
12 A: In New Jersey.
13 Q: Okay. And how long have y'all been married?
14 A: Twenty-nine years.
15 Q: Okay. Do you have any children?
16 A: Yes.
17 Q: How many you got?
18 A: We got five of them altogether.
19 Q: Okay. And how old are they?
20 A: They range from 28 back to about 50.
21 Q: Okay. All right. What -- where did y'all move; y'all
22 moved back to South Carolina, didn't you?
23 A: Yes from New Jersey.
24 Q: From New Jersey and moved where?
25 A: To Hemingway, South Carolina.

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- 1 Q: Where you were born and raised, right?
- 2 A: Yes.
- 3 Q: All right. What did you do in Hemingway, South Carolina?
- 4 A: Well, we have a beauty supply store and we also had a
- 5 club called Henry's Starlight Lounge.
- 6 Q: Okay. Now, do you have any other training besides being
- 7 an auto mechanic?
- 8 A: Well, I can do plumbing, I can do electrician. They call
- 9 me McIver; ain't many things I can't do.
- 10 Q: All right, sir. And how long did you operate those two
- 11 -- do you still operate those two businesses in Hemingway?
- 12 A: Yeah, we still operates the beauty supply store, and also
- 13 I've always been a fix-it, so I buy a police car, ex-police
- 14 car and fix them up and sell them.
- 15 Q: Okay. But the lounge you don't have anymore, right?
- 16 A: No, we sold that when we opened the place at the beach.
- 17 Q: Okay. Let's talk about how you ended up coming to Myrtle
- 18 Beach. What lead to your decision to come to Myrtle Beach and
- 19 open a business?
- 20 A: Well, my son and a guy named D.J. Rock, they kinda show
- 21 my how much money I can make down there -- down here at the
- 22 beach. And I checked it out a couple of times and everybody
- 23 seemed like they was making so much more money than you make
- 24 in Hemingway, so I kind of listened to my son, and Rock, and I
- 25 sold the place in Hemingway and invest the money down in

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1 Myrtle Beach.

2 Q: Okay. Have you had any problems anywhere else in your
3 business activities?

4 A: Sir, I went all over the United States. I already been
5 to all 50 states and never had a problem. I always get along
6 with everybody and I never, never had problem. I used to
7 always be glad to see a police; never had a problem with
8 nobody in nowhere in the world I ever went to. I'm the type
9 of guy people look up to. Hell, I looked up to my mother's
10 brother who was a good person and I came up, now I'm the older
11 senior in the family, one of the oldest ones and they all look
12 up to me. And if I can't be a plus to the community, I don't
13 want to be a negative one. Anywhere I go, you can call
14 Williamsburg County, Hemingway, anybody in the whole city and
15 they will let you know that I'm the person they look up to.

16 Q: All right. Henry, I appreciate that. Let me -- let me
17 move along a little bit on that. No problem there, just
18 listen to my question and kind of stick with the question as
19 best you can.

20 All right. So, let's talk about how you decided on this
21 piece of property and how that transaction took place?

22 A: Well, I went and I look at the property and then I did
23 see good potential in it. So, I invested money in it. And
24 so, the papers for the lease and stuff and I agreed on it, and
25 we signed them for five years, and we decided to take it.

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1 Q: Where was the property?

2 A: On 515 Ninth Avenue North, what I remember.

3 Q: Okay. And can you tell us -- give the jury just kind of
4 a general idea of where in Myrtle Beach that property is?

5 A: When you come up 501, soon as you get into Myrtle Beach,
6 where the Pavilion, used to be where all the rides and stuff
7 used to be over there, the next street to the left, down that
8 block is Ninth Avenue.

9 Q: All right. Mr. Brewington, let me hand you what's been
10 marked as Plaintiff's Exhibit Number 1.

11 Your Honor, defense counsel and I have reviewed this
12 document and I don't think there will be an objection to it.

13 MR. BATTLE: No objection.

14 THE COURT: All right. So, plaintiff's 1 then is into
15 evidence without objection.

16 PLAINTIFF'S EXHIBIT NUMBER 1

17 ADMITTED INTO EVIDENCE

18 BY MR. BRITTAIN:

19 Q: What is that, Mr. Brewington?

20 A: The contract.

21 Q: All right. And who -- can you tell by looking at it who
22 that contract is between?

23 A: Between Henry Brewington and Melvina Davis.

24 Q: Okay. And so, what did Melvina Davis -- what was her
25 relationship with this particular piece of property?

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- 1 A: She was the owner of it.
- 2 Q: Okay. And so, what -- what did you get by filling out
3 this document with her? What was y'all's arrangement as far
4 as what were the terms?
- 5 A: It was a five-year lease.
- 6 Q: Okay.
- 7 A: And she was -- so much loved the idea of how I fixed the
8 place up, and I had the place looking so good. She said, I
9 didn't know my place could have looked like this. Because
10 when I do something, I'm doing it a hundred percent or I don't
11 do it at all. That include anything I do.
- 12 Q: What -- what kind of shape was that -- about how big was
13 it, roughly?
- 14 A: It was like 50 by 100.
- 15 Q: Okay. How many square feet is that?
- 16 A: It's pretty big.
- 17 Q: I mean, well, maybe -- the jury probably knows what that
18 is. A good-sized place?
- 19 A: Yeah, it's a -- a large place.
- 20 Q: Okay. Now, what condition was it in when you went in
21 there and began to lease the property?
- 22 A: It was all run down, spider webs all over the place,
23 wires all over the place; it was like turning a spider web
24 into something outstanding, and she was so happy about it. I
25 felt -- I felt good that -- because she felt good because the

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- 1 place, how it looked, and if anybody ever see it, even though
2 if you want to, I've got videos and stuff how it looked. I've
3 got video on the phone, I got calls, I got everything. So, if
4 the jury want to see it, I'll be glad to show it all to them.
- 5 Q: What -- talk about what all you did to it and how much it
6 cost you to kind of get everything up and running with your
7 business?
- 8 A: It kind of costs right over \$300,000 and so -- and when
9 it's time you take your life savings and put it into something
10 and then somebody just come and snatch it all away, you
11 couldn't satisfy these people. Anything I do, I just couldn't
12 satisfy nobody.
- 13 Q: All right. You -- when you were fixing up the property,
14 did other people have to do some of the work, or did you do
15 all the work yourself?
- 16 A: No, I had help. My wife's brother, everybody that I
17 could get.
- 18 Q: And what about purchasing materials and that sort of
19 thing; was that required?
- 20 A: Well, we purchased material and things we could have used
21 from the other place. We buy everything mostly.
- 22 Q: How long did it take you to upgrade it to a place where
23 you were satisfied with it?
- 24 A: I think, you know ---
- 25 Q: Roughly, I mean, you know, I'm not asking ---

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1 A: --- probably around May to July, that's when we scheduled
2 to be open.

3 Q: Okay. All right. So, when did you first -- if ever,
4 when did you first start having a problem with the City and
5 licensing and that sort of thing, roughly?

6 A: Well, they -- we had planned to open by the 4th of July
7 and we had video commercials done, we had ads, flyers, people
8 planned to come in, you know, for opening. We spend money on
9 both radio stations. We was planning on for the 4th of July
10 and they wouldn't give us the license then. So, they make us
11 wait another week. So ---

12 Q: And when you got the license, what problems, if any, were
13 you left with as far as operating the place?

14 A: Well, the following week, we put up -- well, we went to
15 the City Hall to try and get the license by Friday and then
16 they said they could give it to us, but then they keep us
17 waiting so long and I have a lot -- a few more things I want
18 to get done before we open on that Friday night, so I leave my
19 wife there so when they get the license, she could just bring
20 it on and I could be getting things ready for the night, and
21 they keep us -- keep her there all -- all day, and just before
22 they close, they tell her they wasn't giving her the license;
23 that I had to come and get it. So, I stopped what I was doing
24 and run and get the license, and we opened that night. And,
25 about five minutes till 2:00, they -- they -- they was outside

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1 waiting and just because everybody wasn't out of the building
2 at 2 o'clock, they give us a ticket the first night.

3 Q: Okay. But you did -- they did finally give you, though
4 there was a delay, that second license that was required?

5 A: They give us the second license after -- well, they
6 called my wife on her birthday to tell her they wasn't giving
7 us the seat permit they call it, I think. And my wife started
8 calling different people and want to know why they won't give
9 us the license to stay open, because at Myrtle Beach, people
10 don't know it, they don't open -- people don't even get their
11 business open good to about 1:00, 2 o'clock. If you've got a
12 club or anything down there, you open it, nobody come in until
13 like maybe 1:00, 1:15, 1:30, and that's the time people come
14 out. And, if you closing at 2:00, we pay our bills from --
15 from our other business for the longest, and soon as we start
16 making money, that's when all the harassment started, the
17 biggest part of it, even though they give us a ticket the
18 first night.

19 Q: Now, well, if you -- excuse me. After you got this --
20 this start with the City for these things you've talked about,
21 what -- what happened say from this October/September
22 timeframe up until the first of the year, what sort of
23 activity was the City conducting in and around your business
24 and what, if anything, were the city officials or police
25 officers telling you and your wife?

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1 A: Well, they was always coming in harassing us.

2 MR. BATTLE: Your Honor, if I may?

3 THE COURT: Yes, sir.

4 MR. BATTLE: I'm going to object to any hearsay
5 statements of what the police may have told him. They're not
6 authorized to speak for the City or any position for the City.

7 THE COURT: Well, maybe, but if they spoke to him and
8 gave him directions, I'm going to let him tell the jury.

9 Thank you.

10 MR. BATTLE: Thank you.

11 A: I have videos and stuff of all of it and proof.

12 Everything I'm talking, I can show you on -- on telephone call
13 and proof.

14 BY MR. BRITTAIN:

15 Q: I understand that, Mr. Brewington. We're just interested
16 in your testimony right now.

17 A: Okay.

18 Q: So, you were telling us what the police and the city
19 officials were telling you during this interim period from
20 when you first had problems with them, and now you're trying
21 to operate your business. What's happening during this period
22 of time?

23 A: Well, it never let up. They brought us two and three
24 carloads at the time, and I also got pictures of that, and
25 they have like 10 or 12 around the building and inside at

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1 times. I've got proof of that in my phone. I've got it right
2 here, you can pull the screen up, I can play it all.

3 Q: Now, what -- what -- what sort of complaints were they
4 making to you? What complaints were they making about trash
5 or -- or stuff like that, what were they telling you was a
6 problem?

7 A: Well, they said nobody clean up, but they got my DVR, my
8 camera system, they got all the proof in that. All they have
9 to do is bring it to court and play it. I done begged for it,
10 I got phone calls by calling numerous times trying to get the
11 DVR back for the camera system; they won't give it because
12 they know everything I'm saying, I can prove it if they play
13 the DVR. Everybody can decide for themselves. They say a
14 picture worth more than a thousand words. So, show the
15 pictures.

16 Q: What did you do around that club on a regular basis as
17 far as cleanup was concerned?

18 A: You will see me every night before we open and after we
19 close picking up trash. They all on the DVR. That's why I
20 asked for the DVR, I begged for it, nobody give it up.
21 Also, the killing on the DVR.

22 Q: Okay. Now what, if anything, did you have to do with
23 that killer or the victim?

24 A: Well, my -- our security guard the one who shot him.
25 That's how the police got him in the first place.

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1 Q: So, the people you hired ---
2 A: Solved the crime.
3 Q: --- are the ones that responded to the circumstances?
4 A: Exactly.
5 Q: And ---
6 A: And the reason the boy get put out of the club in the
7 first place, because we had a no smoking thing because Myrtle
8 Beach was putting so much pressure on us, we don't know what
9 they smoking, so we put a no smoking in the club at all, and
10 that's how the boy get put out of the club is all on the DVR,
11 also. That's when the security guard put him out. He walked
12 across -- around the club, all the way across the front of our
13 club and when he get in the front of next place next door,
14 that's when the guy jumped from between the two cars and
15 started shooting, and he must be shoot about -- empty the gun,
16 I don't know, but he shot a lot of times. And our security
17 guard start running behind him -- it's all on the DVR -- and
18 shot him; that's how the cops get him in the first place. And
19 it was a paid assassin and it ain't had nothing to do with us.
20 Q: What -- what did you -- as these complaints were coming,
21 what, if anything, did you do to try to satisfy them? I mean,
22 did you add any security personnel or anything?
23 A: We added so much security inside. That's how they
24 control everything. They don't allow you to smoke a cigarette
25 because that's the policy. Myrtle Beach put the policy on us

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1 and we kept the security to cover all the bases because we
2 didn't want no hassle; we didn't want no trouble. I never had
3 trouble with the police in my life. Why would I go against
4 them to try and don't do what they say. I got it on tape
5 where we asking the police, we went to the police department
6 when the phones on record and talking to them about the things
7 we should do. They tell us what to do; we did them and I got
8 that on my phone too. You can see it.

9 Q: Okay. So, when you discussed these matters with the
10 police department, did you or did you not ask them for things
11 that you could do?

12 A: I did.

13 Q: And did you or did you not try to do those things?

14 A: I did everything they tell me to do.

15 Q: Okay. And what happened after that with respect to the
16 police activity around your business site?

17 A: They came like they always do and they check out, they
18 walk through, they mess with everybody who is smoking, some of
19 them may be a marijuana. Most of them just had cigarettes,
20 but they did arrested one guy for having a marijuana, ever
21 what it was, in the bathroom. I don't know one from the other
22 because I don't smoke. I don't even smoke a cigarette, never
23 did in my life.

24 Q: Okay. And did you, or your wife or your business have
25 anything to do with the smoking of that marijuana cigarette?

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- 1 A: If she been a smoker, she wouldn't have been my wife.
- 2 Q: Okay. And were there ever any circumstances where the
- 3 police charged anybody that was in your bar and grill with
- 4 selling drugs or anything like that?
- 5 A: No.
- 6 Q: Were you ever notified by the police department that
- 7 there was a problem selling drugs in your establishment?
- 8 A: I never was notified, but I don't even think nobody never
- 9 did nothing like that. I mean, I could be wrong, I just --
- 10 all the camera system we have around there, I think it would
- 11 be on there.
- 12 Q: Okay. What were your other citations that were actually
- 13 citations during this period of time?
- 14 A: They give me a citation for somebody had a sparkler. I
- 15 think they call it a -- well, anyway, you buy a bottle of
- 16 champagne, they put a sparkler on it, and they give me a
- 17 ticket for that. And when I went to Court, they threw it
- 18 out. I plead guilty to it, but I say -- I plead guilty, but I
- 19 don't know. I don't know who did it, even, but everything in
- 20 my name so I plead guilty to it just because somebody had it.
- 21 Q: And I believe ---
- 22 A: But they did throw it out.
- 23 Q: Okay. And were you or were you not cited for on one
- 24 occasion, somebody selling alcohol ---
- 25 A: Yes, one of the waitress sold a drink after 2 o'clock.

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1 That's why if you check out the DVR, since that incident,
2 every night five minutes till 2:00, you see me behind the bar.
3 And check the DVR; it's on there. You see me there every
4 night at five minutes till 2:00; that way I made sure nobody
5 is selling because nobody get in trouble but you. It's in
6 your name, you're responsible; so, you got to keep an eye on
7 all the rest of them and that's what I did.

8 Q: Now, after these events that you've testified to, did --
9 did an occasion arise for you to have a conversation with some
10 of the higher ups at the City?

11 A: Yes, that's Lisa Robertson. My wife called her to
12 complain about all the harassment and stuff we was getting,
13 and that happened on about the 20 -- 25th, maybe, and -- and
14 about the 26th or so they called us in for a meeting. And
15 when they called us in for the meeting, we thinking they gonna
16 talk to us about, you know, the police activity, and they
17 blindsided us. They blindsided us so bad, I never felt like ---

18 Q: Take a minute. You want to take a break; you all right?

19 A: I never felt like that in my life.

20 Q: Who was that -- describe the people that were there; Lisa
21 Robertson wasn't the only one there was she?

22 A: Lisa Robertson was there.

23 Q: Yeah.

24 A: And if she would tell the truth she would know. She -- I
25 always thought the police would tell the truth. I didn't

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1 realize they lies, too. Sorry.

2 Q: What was -- was Tom Ellenberg there?

3 A: Yeah, a kind of heavy guy?

4 Q: Was there a heavy guy there that was talking to you?

5 A: Yes.

6 Q: And what was he -- what did he tell you?

7 A: He start, Mr. Brewington, I'd just like you to know I

8 want you to get all your stuff and go back to Hemingway,

9 because, if you don't, I done closed many clubs and yours

10 ain't gonna be no different. I'm giving you a chance to get

11 all your stuff and go back to Hemingway, otherwise you ain't

12 getting nothing out of there, and I done closed a lot of clubs

13 and yours ain't gonna be ---

14 Q: Hold on a second. Has anybody got any Kleenex?

15 THE CLERK: Right here.

16 A: I'm sorry, Your Honor.

17 THE COURT: It's all right. Not a problem at all.

18 BY MR. BRITTAIN:

19 Q: Where did this meeting take place, Mr. Brewington?

20 A: At the police station she works at.

21 Q: Okay. And ---

22 A: I don't know what you call it.

23 Q: Okay. And so, what was your reaction to this meeting

24 with the police officials?

25 A: I -- I told them that I was sorry, but I can't forget

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1 about all my money I invested like that. I said y'all give me
2 my money back, I'll be glad to leave, because I ain't used to
3 fighting the police and can't never satisfy nobody down here.
4 And if you go to Hemingway where I'm from, you won't find one
5 person to say something bad about me, and you can talk to the
6 cops, you can talk to Williamsburg County cops, or you can
7 talk to this town cop; you won't find nobody can says
8 something bad about Henry Brewington.

9 Q: All right.

10 A: Some people name don't mean nothing to them, but I hold
11 mine way up over my head.

12 MR. BRITTAIN: Bear with me for one second, Your Honor.
13 I'm looking for the abatement notice and the ---

14 THE COURT: All right, sir.

15 MR. BRITTAIN: One second.

16 How about be looking for that while I ask him some more
17 questions. I'm looking for the abatement notice; I think
18 there's -- I'm still looking for the abatement notice.

19 BY MR. BRITTAIN:

20 Q: Mr. Brewington, after that meeting that you have
21 described at the City where the man, the heavysset man said
22 what he said to you, did or did not y'all or you receive a
23 notice from a lawyer or a -- you may not know who it was from,
24 but from some lawyer citing you as a public nuisance?

25 A: Yes.

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1 Q: Okay. And how close in time was that until after --
2 compared to the meeting that you had with Ellenberg or the
3 city official?

4 A: That was the day after my wife called complaining, or the
5 two days after my wife called complaining. Complaining about
6 all the police activity, and they looking around in every
7 garbage can, walking around in every bathroom, stopping and
8 checking everybody's cigarette butt like to see if it a
9 cigarette or a joint; I don't know.

10 Q: So -- so, was it close in time to the meeting that you
11 got the nuisance notice or was it a good bit later?

12 A: It was afterwards.

13 Q: Okay. Now, what did you do once you received the
14 nuisance, the nuisance notice? I think Mr. Battle said it
15 came from the solicitor's office. The City complained and the
16 solicitor's office sent you a nuisance notice; what did you do
17 once you received it?

18 A: We -- we did everything that they asked us to do in the
19 nuisance order, and then we -- we get more security guards, we
20 get more bouncers. We got, you know, to stop what the City
21 didn't like. I mean, I actually never seen nothing we was
22 doing wrong, but we complied with more security and stuff
23 anyway.

24 Q: Well, I understand all that, but at some point, they went
25 ahead and tried to get you shut down anyway; is that correct?

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1 A: Yeah, they did.

2 Q: Okay. And once you received that -- that legal document,
3 what did you do?

4 A: We came down to this courthouse right here. We meet --
5 and I think it was his son, Mr. Battle's son, and he told us
6 we was framed or called a gang club or whatever, and then he
7 said we had no fighting chance so all we had to do was sign
8 these papers. And then once we signed the papers, we wouldn't
9 have to worry about none of it and he -- he -- he -- he lead
10 us to think that we was part of the problem or we was -- would
11 be held accountable.

12 Q: Was there any question in your mind that you'd be able to
13 sell your business if you withdrew?

14 A: Well, we was selling the business to Natalie, but they
15 got involved with that, too.

16 Q: Now, before you get there, let -- let's -- let me ask you
17 -- and it seems to me, I can't remember, you can read pretty
18 -- can you read?

19 A: Pretty good, not too good.

20 Q: Okay. I'm going to hand you a document, it's entitled
21 Plaintiff's Exhibit Number 2 and see if you can read it.

22 PLAINTIFF'S EXHIBIT NUMBER 2

23 MARKED FOR IDENTIFICATION

24 A: Well, I ain't got -- I didn't bring no reading glasses,
25 really.

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1 Q: Okay. Well, if you can't read it, you can't read it.
2 We'll let Virginia read it later.

3 A: Okay.

4 Q: We'll get to this later. Do you recall that at some
5 point in time you received a decision from the Court
6 concerning the fact that you were a -- your business was a
7 nuisance; do you remember that happening?

8 A: Yeah.

9 Q: Okay. And you remember asking questions to the lawyer
10 for the solicitor's office about what was going on?

11 A: Right.

12 Q: And he was not your lawyer; is that correct?

13 A: That's right.

14 Q: You had a lawyer in Hemingway; is that right?

15 A: Yeah, actually, one time over in Johnsonville.

16 Q: Okay. And was he present when you came to this
17 courthouse and had this conversation with the lawyer for the
18 solicitor's office?

19 A: No, sir.

20 Q: Okay. And did the lawyer from the solicitor's office
21 give you advice about what was going on?

22 A: Yes.

23 MR. BATTLE: Objection to leading, Your Honor.

24 BY MR. BRITTAIN:

25 Q: What, if anything, did the lawyer for the solicitor's

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1 office tell you?

2 A: He told us that we already been called a gang club and
3 ain't nothing we can do about it, because we can't fight it;
4 we can't do nothing, just sign the papers and we'd be done,
5 but he told -- I really didn't want to sign them, but after he
6 act like it would be better if we sign them and we can't do
7 nothing about it anyway because they call us a gang club. I
8 ain't never been in a gang or heard of a gang. I mean, I've
9 seen it on T.V., but I never seen them.

10 Q: Now when, if ever, did he tell you that you needed to
11 consult your own lawyer before you signed that document?

12 A: He didn't never tell us that. We just believed what he
13 told us.

14 Q: All right. Okay. So ---

15 A: But he said we didn't have a chance anyway, so...

16 (REPORTER'S NOTE: Mr. Brittain confers with Mr. Battle.)

17 Q: Okay. All right. Here again now, this might take a
18 little reading. If you can't read it we'll let Ms. Virginia
19 talk about it. Do you recognize what's been marked as
20 Plaintiff's Exhibit Number 3?

21 PLAINTIFF'S EXHIBIT NUMBER 3

22 MARKED FOR IDENTIFICATION

23 BY MR. BRITTAIN:

24 Q: Now, if you can't read that Henry, don't try to say what
25 it is?

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1 A: All right.

2 Q: All right. So, after these -- after these things have
3 occurred, you've had these conversations, you agreed to do
4 what with your business? What did you agree to do with your
5 business as a result of these conversations and hearings?

6 A: I decided to just sell it to Natalie.

7 Q: Okay. So, with respect to your business, what was going
8 to happen to it?

9 A: Huh?

10 Q: What was gonna happen to your business; what was gonna
11 happen to Levelz Bar & Grill?

12 A: Oh, we was closing -- I mean, sell it to Natalie.

13 Q: Okay.

14 A: And Natalie was supposed to be taking over. She went
15 ahead and give me \$10,000 deposit on it, and that's way before
16 this start with the nuisance and stuff.

17 Q: Okay.

18 A: But they been harassing so much -- the papers was drawn
19 up, I just never would sign them, but since we had all this
20 cop presence that weekend, I signed it the next -- the next
21 week as soon as we could get an appointment with the lawyer.

22 Q: All right. Well, were you ever told or as far as you
23 know, is it or is it not in any order that the property in
24 question would be closed for a year?

25 A: No, we -- we told them Natalie was taking it over. We

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1 wasn't supposed to have -- it wouldn't have been no effects
2 going on -- on her or us, because they wanted us out. I
3 didn't thought they would mess with her, too. So, Natalie
4 gave me the \$10,000 deposit, she supposed to be taking it
5 over, and they talk her out of it, and I've got that on tape
6 too, because -- because my wife told that we had a sale for it
7 and Officer Robertson wanted to meet up with Natalie or talk
8 to her on the phone. So, my wife called Natalie and then
9 called her, and that's how we got the tape.

10 MR. BATTLE: I've got no objection. Those are separate
11 documents.

12 MR. BRITTAIN: Okay.

13 THE COURT: Is there any objection to that one, Mr.
14 Battle?

15 MR. BATTLE: No, Your Honor.

16 THE COURT: What's the plaintiff's exhibit?

17 MR. BRITTAIN: This is the contract of sale.

18 THE COURT: No, the number.

19 MR. BRITTAIN: Number 4.

20 THE COURT: Plaintiff's 4 is into evidence without
21 objection. You may proceed.

22 PLAINTIFF'S EXHIBIT NUMBER 4

23 ADMITTED INTO EVIDENCE

24 BY MR. BRITTAIN:

25 Q: Henry, I'm not gonna ask you to read this because we've

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1 talked about that, but I want you to look back here and see if
2 you recognize the signatures on this document?
3 A: Yes, it's -- yeah, that's me and Natalie.
4 Q: Okay.
5 A: Uh-huh, (affirmative response).
6 Q: Signed -- you signed?
7 A: Yeah, we signed this paper and this the one -- we did the
8 -- she give me the \$10,000.
9 Q: Okay. So, this was a contract of sale, you were selling
10 your interest in the property, right?
11 A: Yes.
12 Q: And you had three-and-a-half years remaining on the lease
13 or thereabouts; is that correct -- maybe four and a half?
14 A: That is right, I had four-and-a-half.
15 Q: Four-and-a-half.
16 A: They only let us get open like six months.
17 Q: Okay. So, all this that we're talking about that
18 happened to you in that business, happened in the first six
19 months ---
20 A: Six months.
21 Q: --- of you being open?
22 A: Yes.
23 Q: So, you had four-and-a-half years left on a contract with
24 Melvina Davis; is that correct?
25 A: That's right.

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1 Q: All right. And now, when -- when that contract was
2 entered into, what, if any -- well, let's go back. What, if
3 any, information that came from the City of Myrtle Beach to
4 Melvina Davis of your own personal knowledge caused you any
5 problems? What notices did you get from Melvina Davis after
6 the City started having problems with your business?

7 A: Well, Melvina Davis, she was -- she -- she went down
8 there agree with everything. She went down and write Natalie
9 her lease and everything, and everything supposed to be fine
10 with the transaction. And then Officer Robertson wanted to
11 talk to Natalie, and she talked Natalie out of the buying of
12 the place. And we was already in the lawyer office like that
13 Friday before that signing the papers and that's when the
14 phone call came, and then she said that Myrtle Beach told her
15 that she ain't gonna be able to rent no place to Natalie
16 either. So, they -- she wait till Monday and then supposed to
17 be waiting till Monday for resume this where we went in front
18 of our lawyer and her lawyer because she be giving me the rest
19 of the check of the \$10,000 and -- and -- and that supposed to
20 take place that Friday. Well, when this thing happened over
21 the weekend with the shooting, it was like everything on hold.

22 Q: Well, what -- what, if anything, did you hear anybody
23 from the City ask or tell Ms. Litsey that caused this problem?

24 A: It was Officer Robertson and talking to Natalie and
25 talked Natalie out of buying the place.

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1 Q: How did you hear that?

2 A: Because we had it on tape, and we had it on a three-way
3 conversation, and my wife had her on the speaker.

4 Q: All right. So, who was -- who was -- who was listening
5 in to the conversation between Officer Robertson and Natalie
6 Litsey?

7 A: Me and my wife, Virginia.

8 Q: Okay.

9 A: We call her Ginny for short.

10 Q: All right. And so, you heard what was said by Officer
11 Robertson, and you heard what Nancy Litsey was asking back; is
12 that correct?

13 A: That's right. I got her on tape, too.

14 Q: Okay.

15 A: I taped it.

16 Q: All right. When you say on tape, you mean you got a
17 recording ---

18 A: Recorded.

19 Q: --- on your telephone?

20 A: Yes.

21 Q: Okay. And so, what did Ms. Litsey do after those
22 conversations with Officer Robertson?

23 A: Well, she -- she -- she backed out, but right not that
24 day, but she did because she said also the landlord had called
25 her and tell her that she can't rent to Natalie neither.

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- 1 Q: Okay.
- 2 A: And she even had signed Natalie's contract, also.
- 3 Q: So, that was the other contract you had, the commercial
- 4 lease you had with Melvina Davis?
- 5 A: Yeah.
- 6 Q: It went away based on all this information, too?
- 7 A: Yes.
- 8 Q: Okay. Now, let's talk about damages. All right. Mr.
- 9 Battle said this was a failed business, you were losing money
- 10 and you weren't gonna make any money. Talk to us about your
- 11 business chances in this establishment?
- 12 A: When we first got to Myrtle Beach, we was losing money.
- 13 We even be taking store money and -- and pay the bills down
- 14 there. But at the end, I just wish I could've get money like
- 15 that for six months. This place when I started raising like
- 16 \$26,000 a night, and that was more money than I ever made in a
- 17 night, and I wouldn't have closed it down for nothing except
- 18 the police harassment. They -- they were harassing so much, I
- 19 just feared for me and my family life, I mean, our life,
- 20 because they was giving us so much hassle, I was scared for
- 21 them and me.
- 22 Q: What -- so, you had four-and-a-half years left and -- and
- 23 your testimony is you were making good money by the time this
- 24 all happened?
- 25 A: Yes.

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1 Q: All right.

2 A: I've got pictures in the phone that prove that, too, how
3 many people being there.

4 Q: Now, how much of this did you get back from -- you said
5 you invested 300,000. How much of that did you get back from
6 Natalie Litsey, Melvina Davis, the City of Myrtle Beach, or
7 anybody?

8 A: We ain't get -- we ain't get no money back.

9 Q: Okay. So, you lost everything you invested in the -- in
10 the place?

11 A: Yes.

12 Q: And you lost the value of the lease going forward?

13 A: Yeah.

14 Q: Is that correct?

15 A: That's right.

16 Q: Okay. Did the City ever try to come to you and say, hey,
17 we have an interest in this property for -- for the City of
18 Myrtle Beach, let us make you an offer on your business and
19 pay you back so you can make your money back and we can end up
20 with the property?

21 A: They never did that.

22 Q: Okay. Who owns that piece of property now?

23 A: The City of Myrtle Beach. They own the whole block
24 except one building on the corner. They tried to use eminent
25 domain to get that person out and all the people protest. I

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1 don't know if y'all see it on the news, but the people protest
2 and that's why the new mayor wouldn't go through with it.

3 Q: What -- you talk about this DVR. You talked about a DVR?

4 A: Yes.

5 Q: And you say that -- that -- where is that DVR?

6 A: The police department got it and they wouldn't give it
7 back. And they told me they would give it back in 24 hours.
8 Everything they told me so far was untruth.

9 Q: Okay. And -- and what was it a DVR of?

10 A: It's a DVR of the whole -- every night recorded. It
11 record pictures, we even had a mic to record the sound at the
12 door and back the bar, and got pictures, video of everything
13 going on in the club. They can bring the DVR here and we
14 could play the DVR, I wouldn't have to be talking because the
15 pictures is what more than I can say.

16 MR. BRITTAIN: That's all I have, Your Honor.

17 THE COURT: Cross-examination?

18 MR. BATTLE: Thank you, Your Honor.

19 CROSS-EXAMINATION OF HENRY BREWINGTON BY MR. BATTLE:

20 Q: Mr. Brewington?

21 A: Yes.

22 Q: Do you know who has the DVR?

23 A: The police department; that's who take it from me.

24 Q: Not the solicitor? Do you know the difference between
25 the solicitor and the police department?

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1 A: Well, I think they're all in cahoots together. I mean
2 one ain't doing without the other.
3 Q: Have you made any asks or requests for getting the DVR
4 back?
5 A: I have phone call of that to right in my phone and how
6 many times we begged for it back to get it.
7 Q: Well, now ---
8 A: I record that.
9 Q: You've talked about your recordings and that sort of
10 thing and I believe you testified with the DVR, it tapes back
11 over itself every 48 hours; is that correct? You don't store
12 ---
13 A: Not every 48 hours. You can get them things to record
14 weeks at the time or even by the month.
15 Q: Did you not testify that it records over itself again?
16 A: Yeah, after it go over about two weeks, it start
17 recording over, but you got proof there, just play it.
18 Q: And you say you -- all this stuff that you say you have
19 tapes of and you can prove and you have ---
20 A: Yes, I can.
21 Q: I'm looking at your lawyer's answers to interrogatories,
22 and I don't see anywhere in here anything about any tapes or
23 recordings ---
24 A: He said he forward them all to you, so you should have
25 them.

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BY THE COURT

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1 Q: He said in this list all the stuff that he had ---

2 MR. BRITTAIN: Your Honor, I object to that. These tapes
3 have been available to Mr. Battle; he knows about them.

4 THE COURT: All right, gentlemen. Mr. Battle?

5 A: We made sure you got them.

6 THE COURT: Mr. Battle, you know the difficulty this
7 witness has. Handing him a piece of paper and ask him to read
8 it; it's not proper.

9 MR. BATTLE: I understand that, Your Honor, but I don't
10 think he can read that well.

11 THE COURT: That's exactly what I'm saying.

12 MR. BATTLE: Right.

13 THE COURT: That you can't hand it to him and ask him to
14 read it when you know his difficulties.

15 MR. BATTLE: I apologize, Your Honor, and I apologize to
16 the jury.

17 May I publish the interrogatory answers?

18 MR. BRITTAIN: Objection, Your Honor. Those
19 interrogatories were provided at an earlier time. Mr. Battle
20 has seen a transcript of these tapes.

21 BY THE COURT:

22 THE COURT: All right. Madame Forelady, ladies and
23 gentlemen, go to your jury room please. Just leave your pads
24 and pens in your seat please.

25 (REPORTER'S NOTE: Jury exits courtroom @ 3:21 p.m. The

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1 following takes place outside the presence of the jury.)

2 THE COURT: All right. Mr. Battle, I'm assuming you're
3 arguing a violation of discovery. You sent out standard
4 interrogatories and request to produce to the plaintiff?

5 MR. BATTLE: That is correct, Your Honor, but I am more
6 or less impeaching the witness on the ground that these tapes
7 do not exist. The only tapes that do exist -- and we did some
8 arguing back and forth -- is some telephone conversations,
9 which Mr. Brittain has not offered into evidence. Those are
10 the only tapes that we're told that exist in any form, and now
11 you have the witness testifying that I've got everything under
12 tape. I've got this under tape, that under tape, and I can
13 prove it, and I want to make a point to the jury that that's
14 not the truth.

15 THE COURT: Did you take his deposition?

16 MR. BATTLE: Yes, sir.

17 THE COURT: Did you ask him those questions?

18 MR. BATTLE: Yes, sir.

19 THE COURT: All right. So ---

20 MR. BRITTAIN: Here's the question and here's the answer.

21 THE COURT: All right. Mr. Brittain ---

22 MR. BRITTAIN: Okay.

23 THE COURT: Since the witness has his difficulties, I'll
24 be glad for you, after the Court instructs what a deposition
25 is, to read the questions and the answers. And Mr. Brittain,

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1 then you may read any questions or answers that you believe
2 needs to respond to that without involving the witness trying
3 to read an answer.

4 MR. BRITTAIN: Okay.

5 THE COURT: All right.

6 MR. BRITTAIN: All right. Can I express my theory for
7 why this is ---

8 THE COURT: Yes, sir; I'll be glad to hear from you.

9 MR. BRITTAIN: The deposition of this witness taken by
10 Mr. Battle contains questions about his recording on the phone
11 and his testimony that he did record on the phone. So, our
12 position is that this deposition, after the interrogatory -- I
13 didn't know about the recordings at the time the interrogatory
14 was finished. Technically, I probably should've amended that,
15 but he had notice of it based on his deposition.

16 THE COURT: And I understand that. So, what I'm allowing
17 Mr. Battle to do is get the deposition of Mr. Brewington and
18 read whatever questions and answers he wants to read to the
19 jury, and then you can follow-up and read any questions or
20 answers that you would like to fully explain. So, like I
21 said, just work around the ---

22 MR. BRITTAIN: All right, sir.

23 THE COURT: --- the plaintiff's difficulty.

24 Ask the jury to come back in.

25 THE COURT: You have the deposition that you want to ---

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1 MR. BATTLE: Yes, sir. I have not anticipated the
2 publishing the entire deposition or any portions of it, but I
3 will -- I may reserve the right to call Mr. Brewington at a
4 later time.

5 THE COURT: Well, if you want, since y'all are going be
6 the ones publishing the questions and the answers, if you want
7 to then call him back at a later time, I'll be glad for you to
8 do that.

9 MR. BATTLE: I'm thinking ---

10 THE COURT: That will give you chance to go through it.

11 MR. BATTLE: --- pinning down that point.

12 THE COURT: That will be fine and that will give you time
13 to go through it.

14 MR. BATTLE: And save the Court time.

15 THE COURT: Well, and give you an opportunity to go
16 through it.

17 MR. BATTLE: Well, that's what I meant, rather than
18 watching me fumble through.

19 THE COURT: All right.

20 (REPORTER'S NOTE: Jury enters courtroom @ 3:26 p.m.)

21 THE COURT: All right. Go ahead, Mr. Battle.

22 BY MR. BATTLE:

23 Q: Mr. Brewington, one question, are you planning to publish
24 these tapes and stuff to the jury today?

25 A: Whatever they want us to give.

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- 1 Q: I'm sorry, what?
- 2 A: Whatever they want to hear.
- 3 Q: But are you planning to offer those into evidence; do you
- 4 know that?
- 5 A: Huh?
- 6 Q: Do you know -- are you prepared -- do you have the tapes
- 7 to offer to the jury today?
- 8 A: Yes.
- 9 Q: Where are they?
- 10 A: (Indicating.)
- 11 Q: Okay. I'd like to go ahead and ask you to let us examine
- 12 those tapes, what you want to have -- now, I recall that we
- 13 have transcripts of telephone conversations between you and
- 14 Ms. Brewington, and Ms. Robertson, and Natalie Litsey?
- 15 A: Yes.
- 16 Q: I have those kind; but any other conversations you have?
- 17 A: Do have I have any other?
- 18 Q: Do you have any others?
- 19 A: Yeah, I have other tapes, yeah.
- 20 Q: From what -- what are they?
- 21 A: From different things like from the police department
- 22 back to Officer Robertson.
- 23 Q: So, the tapes would be the ones you have with Officer
- 24 Robertson; that's all you have?
- 25 A: I have more than that.

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1 Q: Okay. But you have some other ones?
2 A: Yeah.
3 Q: Okay. Well, if you have them, at some point in time, you
4 and your attorney may get together and let us see them.
5 A: Okay.
6 Q: Now, let's go on with regard to -- you say you came in
7 and talked to ---
8 A: Your son.
9 Q: I'm sorry, what?
10 A: Your son.
11 Q: Yes, sir.
12 A: Your son, yes.
13 Q: You came in and you talked to him, and you said that the
14 attorney more or less convinced you to sign a document; is
15 that correct?
16 A: That's right.
17 Q: Okay. What document did he ask you to sign; do you have
18 it today?
19 A: No.
20 Q: Is your signature on this document?
21 A: It ain't my handwriting.
22 Q: This is not your signature, is it?
23 A: No.
24 Q: This is the order that the Judge signed closing your
25 business for a year, closing the building for a year; you

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1 understand that?

2 A: Saying that's -- that's another untruth because this says

3 -- since I was getting rid of the building, there wasn't gonna

4 be a problem. Lisa Robertson said that even.

5 Q: You said the Judge signed an order and didn't -- what's

6 on this order is not true?

7 A: I'm just telling you what Officer Robertson told us.

8 Q: Okay. Matter of fact, this order was a consent order

9 signed by John Prosser by -- with the permission of James

10 Battle?

11 A: Right.

12 Q: Okay. And your signature doesn't appear on there

13 anywhere, does it?

14 A: No.

15 Q: And it's also signed by Judge Culbertson?

16 A: Okay.

17 Q: He's the Administrative Judge for this time period, and

18 it's signed by James Battle, who was the attorney representing

19 the solicitor. Do you understand that?

20 A: Yes.

21 Q: Okay. You didn't sign any documents?

22 A: No.

23 Q: You don't have any documents that you signed, did you?

24 A: I didn't sign.

25 Q: Okay.

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1 A: I didn't sign because I didn't mean to close up the
2 building unless Natalie, I was selling it to her. They even
3 tried to pressure me into surrendering the license. Officer
4 Robertson did, she right there; she can tell you I'm telling
5 the truth.

6 Q: She will testify. Just to help us with the dates, I'm
7 gonna put up another demonstrative evidence statement of
8 writing saving me the trouble of writing it. And I'm going to
9 ---

10 MR. BRITTAIN: Your Honor, I don't believe, under the
11 circumstances of this witness, that that should be allowed as
12 part of his cross-examination. He can ask the questions.

13 MR. BATTLE: I'm gonna read the stuff from the thing and
14 ask him ---

15 THE COURT: Why don't you just ask him if he agrees with
16 the dates. Putting it up is not gonna help this witness.
17 Okay? All right? I mean, it's not gonna help with this
18 witness. He's not gonna be able to read those and agree with
19 them, so you're just gonna have to ask him. Okay?

20 BY MR. BATTLE:

21 Q: So, Mr. Brewington, on October the 18th, SLED cited you
22 for an alcohol violation; is that correct, 2014?

23 A: I take the blame for it because the business is in my
24 name. I didn't sell none of that. That's why you see me
25 behind the bar every night at five minutes till 2:00 after

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1 that incident on the DVR.

2 Q: On October the 1Ninth, Myrtle Beach Police observed and
3 arrested one of your patrons for a drug violation; is that
4 true?

5 A: I ain't never know nothing about that.

6 Q: On December 14th, SLED again arrested you for more
7 alcohol violations, is that -- not arrested you, but cited
8 you?

9 A: I only had one cited, one ticket.

10 Q: On December the 18th, 2014, you met with SLED and the
11 City and was told that about you had problems, and they tried
12 to help you take care of those problems; is that correct?

13 A: Nobody never tried to help us take care of no problems,
14 because we didn't have any problem. Believe me, we didn't
15 have no problem like that.

16 Q: January the 1st is when you added the Sunday night to
17 your being allowed to be open on Sunday night and that you
18 extended your hours past 2:00 A.M.; is that correct?

19 A: Well, it was the -- the seat permit. That mean you can
20 stay open until 4 o'clock.

21 Q: And on January the 1st, Levelz -- I'm sorry, January the
22 18th is there was a fight at your club and your wife, Virginia
23 Brewington, called the police but would not give her name;
24 just said there's a fight going on?

25 A: That's -- that's not true.

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- 1 Q: Okay. On January the 27th, that's when you entered into
2 your contract to sell your club or your business to Natalie
3 Litsey; isn't that correct?
- 4 A: That could be the date.
- 5 Q: And that contract was solely between you and Ms. Litsey;
6 is that correct?
- 7 A: That's right. That's right.
- 8 Q: Okay. Ms. Virginia Brewington was not a party to that
9 contract, and she did not have an interest in that contract?
- 10 A: She didn't want me getting rid of the club at all.
- 11 Q: She didn't -- you didn't even tell her?
- 12 A: No, I didn't tell her.
- 13 Q: Okay.
- 14 A: I didn't tell her up to that meeting we had and when they
15 blindsided us.
- 16 Q: And when they blindsided you, that was after you had
17 already sold the club to or at least entered into a contract
18 to sell the club to Ms. Litsey; is that correct?
- 19 A: It was before then, yeah. And I did that because all the
20 harassment we was having.
- 21 Q: Okay.
- 22 A: So, we had so much harassment, I don't know if you would
23 have take all I take. I take more than I ever take in my
24 life.
- 25 Q: And so, five days after you met with Ms. -- or actually

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- 1 entered into your agreement with Ms. Litsey, is when you met
2 with the city attorney and Ms. Robertson; is that correct?
- 3 A: Yes.
- 4 Q: Okay. Did you tell the City at that time that you had
5 sold the property, that you had sold your business?
- 6 A: No, they had me so upset I didn't -- I didn't -- we
7 called back later on in the day and after I tell my wife,
8 because she didn't even know. And she called back and that's
9 when she told Ms. Lisa Robertson.
- 10 Q: And then the matter was referred -- after you refused to
11 close and leave, then the matter was referred to the
12 solicitor; is that correct -- or a complaint was referred to
13 the solicitor?
- 14 A: Made the complaints, but we told Lisa Robertson -- she
15 wanted to know what's going on, so we -- we told her.
- 16 Q: And then you received a letter from James Battle on
17 February the 5th or at least its dated February the 5th; is
18 that correct? Could I show you the letter?
- 19 A: Honest, I don't know if we receive it. I don't know. It
20 could be.
- 21 Q: And stationary that this is written on and who it's from,
22 it says State of South Carolina, Office of the Solicitor 15th
23 Circuit, 15th Judicial Circuit; do you disagree with that?
- 24 A: No.
- 25 Q: Okay. There's nowhere in here, anything from the City of

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1 Myrtle Beach or the City of Myrtle Beach saying anything that
2 they're involved with what the solicitor is doing except other
3 than they've made the complaint?

4 A: Well -- of Myrtle Beach ain't going to do nothing except
5 Myrtle Beach Police do it. They the one who give all the
6 false ammunition to the solicitor. Solicitor never been
7 there. He don't know what's going on, but the Myrtle Beach
8 Police Department do. They the one who did all the damage.

9 Q: Well, now when the solicitor receives a case, he receives
10 this from the police, whether it's Horry County Police, Conway
11 Police, North Myrtle Beach ---

12 A: Myrtle Beach.

13 MR. BRITTAIN: Your Honor, I object to this question.
14 That's beyond the -- of this witness.

15 THE COURT: Let's just not testify Mr. Battle. You can
16 go ahead and ask him the question, but don't give your answer
17 with the question. Okay?

18 BY MR. BATTLE:

19 Q: All right. The solicitor receives his information and
20 his evidence from the various police departments; is that
21 correct?

22 A: Yeah, from the City of Myrtle Beach.

23 Q: Now, with regard to the -- when this particular contract
24 with Ms. Davis ended. When she received the notice from the
25 solicitor, she sent you notice that you had to be out; is that

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1 correct?

2 A: I never remember getting nothing from Mel Davis that we
3 had to be out, but she didn't -- she didn't want to lose our
4 business. She didn't want to lose renting her business. She
5 had signed the contract with Natalie and -- and Natalie was
6 supposed to been taking it over. Everything was fine until
7 Myrtle Beach got involved with it.

8 Q: I'm going to hand you a certified -- a copy of a
9 certified letter.

10 MR. BRITTAIN: Your Honor, I mean, he can't read it. I
11 don't think it's gonna be an issue, but he can't read that.

12 THE COURT: All right. Do you object to the document?

13 MR. BRITTAIN: I object to him showing it to this ---

14 THE COURT: Well, no, okay.

15 MR. BRITTAIN: I do not object to the document.

16 THE COURT: All right. So, let's have the document
17 marked please. What's the number, please?

18 MR. BATTLE: Number 5 -- she's got Defendant's Number 2.

19 THE COURT: Defendant's 2?

20 MR. BATTLE: Right.

21 THE COURT: All right. And if you want to publish it?

22 MR. BATTLE: Yes, Your Honor, it's only two lines.

23 THE COURT: You may do so.

24 DEFENDANT'S EXHIBIT NUMBER 2

25 ADMITTED INTO EVIDENCE

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1 BY MR. BATTLE:

2 Q: This is from Mel Devine Davis, February the 13th, 2015.

3 And I'm gonna ask you if you recall receiving this letter.

4 Henry, here is a copy of the notice about why you have
5 defaulted on your lease and will have to be out within ten
6 days. Mel. Do you recall that?

7 A: I -- I -- really, she probably sent it to my wife; I
8 didn't.

9 Q: The letter was addressed to Henry Brewington at 2635
10 Hemingway Highway; is that your address?

11 A: That's right.

12 Q: Okay. And it's certified.

13 A: Okay. My signature on it?

14 Q: I don't see it.

15 A: I didn't sign for it.

16 Q: Okay. But this is between you and Ms. Davis?

17 A: Yeah. Okay.

18 Q: The City of Myrtle Beach is not part of this letter or
19 anything, is it?

20 A: Well, Myrtle Beach had her practically crying when I was
21 talking to her, because she said they making it difficult for
22 her to rent her business. And she said, I sorry y'all have to
23 go, but I can't fight with the police.

24 Q: Okay. Now, on February the 13th when that letter was
25 dated, then on February the 15th of 2015, Lamar Vereen was

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- 1 murdered after leaving Levelz; is that correct?
- 2 A: That's right. And the reason he was murdered because we
3 had a no-smoking thing, just because Myrtle Beach had so much
4 pressure on us, so anybody smoke a cigarette, joint, anything,
5 the bouncer had orders to throw them out, and they throw him
6 out, and that's how he got killed, too. Otherwise, he would
7 have at least lived until the guy find him someplace else.
- 8 Q: And someone called you up and told you it was a contract
9 hit?
- 10 A: That's right.
- 11 Q: Did you have any conversations with the Ms. Robertson and
12 Ms. Litsey, or did you have any telephone conversations after
13 February the 2nd of 2015?
- 14 A: Yeah.
- 15 Q: When did you have those conversations?
- 16 A: Because she call us early that Monday morning after the
17 boy got killed and want to know what was our plan was and --
18 and we told her we was opening Friday.
- 19 Q: Okay.
- 20 A: And that's when they rushed all the paper to the house to
21 close us down and we couldn't open it on Friday.
- 22 Q: So, you were gonna open back up on Saturday the 21st?
- 23 A: No, that Friday.
- 24 Q: That Friday, the 20th?
- 25 A: Yeah, we only had opened on Friday and Saturday. We

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1 didn't open no other day.

2 Q: Well, you had permission to open on Sunday; I thought you
3 had added Wednesday to it, too?

4 A: We had. Sometimes we would have a thing on a Sunday and
5 then we open on that Sunday. But all the night we just opened
6 Friday and Saturday. We didn't open no other time, but
7 sometime we have a thing for Sunday. Like if we having
8 something or somebody having something with us.

9 Q: Then on March the 16th, which is well after your club is
10 closed, Ms. Davis indicated to Ms. Litsey that she was not
11 going to lease the property to her?

12 A: Yeah, but she been already signed her contract even.

13 Q: And then on March the 16th is when Ms. Litsey began
14 looking for a new building; she was planning on taking over
15 your business?

16 A: Yes, she was.

17 Q: Until March the 16th of 2015?

18 A: She would have had it ever since that Friday before if --
19 if Myrtle Beach Police Department hadn't called and said all
20 that stuff.

21 Q: And you have no personal knowledge of any conversations
22 between the City of Myrtle Beach and Melvina Davis?

23 A: Only what she told me.

24 Q: And then February the 2nd of 2017, almost two years
25 later, is when you bring suit against the City, Horry County,

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1 and Melvina Davis; is that correct?

2 A: That's right, but it been on the -- with our lawyer in
3 Johnsonville, Prosser, ever since the week, maybe two weeks
4 after they close our club down, and you can call him and ask
5 him that too because he know. And, at the end, that's when he
6 said he think the case is too big for him and he figured we'd
7 be better off getting a lawyer from Myrtle Beach or somewhere
8 down in Horry County.

9 Q: He didn't want to take it?

10 A: No. Well, he said he would the whole time and at the end
11 we was pressing him because we didn't want the whole two years
12 had expired, and they say after two years you couldn't take it
13 out or something.

14 Q: So, I'm looking at a -- the reason I used the date, March
15 the 16th, there's a release agreement between you and Ms.
16 Litsey, and it was handled by your attorney, Mr. Prosser?

17 A: That's right.

18 Q: So, y'all actually met together and you called off the
19 contract; it wasn't breached?

20 A: I didn't call off nothing.

21 Q: Well ---

22 A: She wanted ---

23 Q: You gave her back her money?

24 A: Yeah, like it's your money and you ain't getting what you
25 paying me for, I'd give you yours back, too. That's just me.

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- 1 I don't take nothing for nothing. I ain't never would take a
2 food stamp in my life.
- 3 Q: And she gave you a \$326.68 payment for reimbursement for
4 improvements and supplies that you put ---
- 5 A: She asked me to put the fan in, because I told them I
6 would have keep the place, that's what I was gonna do because
7 I don't -- well, you probably a smoker, I don't know, but I
8 can't take smoke. You smoking a cigarette, you see me hitting
9 the door.
- 10 Q: Okay.
- 11 A: I don't like being around it unless they got some kind of
12 ventilation to pull the smoke out. So, I know if I don't like
13 cigarette smoke, I ain't like the other stuff.
- 14 Q: Each of one you paid \$250 to Mr. Prosser for attorney's
15 fees to handle this closing?
- 16 A: That's right.
- 17 Q: And Mr. Prosser is not here today?
- 18 A: No; at least I ain't seen him.
- 19 Q: And basically, on February the 23rd is when you moved all
20 your furniture out of Levelz; isn't that correct?
- 21 A: Some -- some of the things.
- 22 Q: Okay. And there's no question you agreed to the nuisance
23 order that was signed by your attorney?
- 24 A: Till we know what was going on.
- 25 Q: Your attorney was the one who told you what was going on,

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1 isn't he? Doesn't that sound like what he would say?

2 MR. BRITTAIN: Your Honor, I object to what the attorney
3 might say.

4 THE COURT: Well, he's already testified to it already,
5 so -- whether or not it happened. So, if you want to ask the
6 question again, Mr. Battle, you can go ahead.

7 MR. BATTLE: I'll withdraw it, Your Honor. I don't think
8 it's that relevant to the ---

9 BY MR. BATTLE:

10 Q: But the order speaks for itself, doesn't it?

11 A: That's right.

12 Q: And you and your wife agreed to allow your attorney to
13 sign this order closing the club for a year?

14 A: Well, according to your sone, it wasn't supposed to be
15 closed for a year or no other days because it supposed to've
16 been going to Natalie in the first place.

17 Q: But you agreed to it, well before you ever came into this
18 courtroom because he already had the signature on the paper
19 when he came to the courtroom?

20 A: But that ain't the way I received it.

21 Q: That ain't the way you received it?

22 A: No.

23 Q: You mean you gave your attorney permission to enter your
24 name ---

25 A: They make it look like we was gonna be libel for the

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1 shooting and all this trouble that make it if we didn't sign
2 these papers; so, I signed it. And he said we wouldn't be
3 responsible for nothing after we signed the paper. So, I
4 didn't want to be -- have nobody killing on my hands, so I
5 signed the paper.

6 Q: You never signed the paper. Your attorney was the one
7 who was advising you and signing the papers?

8 A: Well, we -- we -- we -- we leave the courthouse because
9 he said we ain't have to stay; we just had to go. That's what
10 your son told us.

11 Q: You had a consent order that your attorney advised -- did
12 your attorney advise you as to that consent order?

13 A: He probably did.

14 Q: And you released Ms. Litsey from her contract that you
15 claim that you had -- well, the contract that you had with her
16 to buy your property. You gave her certain money back and
17 y'all both paid the attorney's fees, and she paid you back --
18 reimbursed you for some work that you had done for her?

19 A: Yeah.

20 Q: Okay. Now, with regard to your damages, on your tax
21 returns for 2014 that you produced, it shows that you had a
22 loss of \$92,307. Do you disagree with that tax return?

23 A: No.

24 Q: And for your tax returns for 2015, which was basically
25 the month of January, because I believe you closed at least

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1 ---

2 A: Middle of February.

3 Q: --- at least by the 20th of February. You're showing a
4 net profit of \$216; do you argue with that?

5 A: No.

6 Q: So, your gross receipts and sales for that whole month-
7 and-a-half was only \$34,295 cents -- I mean, \$34,295; do you
8 disagree with that?

9 A: No, I don't know for sure, but I don't disagree.

10 Q: You indicated that you were making \$26,000 a night?

11 A: We started to.

12 Q: Is that shown on any of these tax returns?

13 A: I don't -- it should be. I didn't do the tax.

14 Q: You didn't do the tax returns?

15 A: (Indicates negatively.)

16 Q: Now, with regard to the ---

17 A: I said we already had started to make it, but we didn't
18 make it every day.

19 Q: With regard to the contracts that were involved, they
20 were just between you and Ms. Davis and you and Ms. Litsey; is
21 that correct?

22 A: Huh?

23 Q: The contracts that we're talking about today were just
24 between you and Ms. Davis and you and Ms. Litsey?

25 A: Right.

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HENRY BREWINGTON - CROSS BY BATTLE

1 Q: And then there was -- there was -- we don't know what Ms.
2 Litsey, why she -- you know, we have statements, but we don't
3 have any contract between Ms. Litsey and Ms. Davis, do we?

4 A: Not as I know of.

5 Q: And in order for you to assign your lease or for her to
6 get a lease ---

7 A: We all been in there and agreed on it.

8 Q: Say what?

9 A: Me and Melvina Davis and Natalie David -- you know,
10 Litsey.

11 Q: Well, now ---

12 A: And Natalie got her funds back.

13 Q: Was all this before you agreed to close the club for a
14 year?

15 A: Yeah, we didn't ever agree to close it for a year. I
16 told you that.

17 Q: Isn't that what the order says?

18 A: Yeah.

19 Q: That's all I have.

20 Thank you, Your Honor.

21 Thank you, Mr. Brewington.

22 A: All right.

23 THE COURT: Redirect?

24 MR. BRITTAIN: Yes.

25 REDIRECT EXAMINATION OF HENRY BREWINGTON BY MR. BRITTAIN:

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HENRY BREWINGTON - REDIRECT BY BRITTAIN

1 Q: You're -- do you know, Henry, whether or not -- this
2 order says that you don't admit to doing anything wrong; isn't
3 that what this order says that the Judge signed?

4 A: I didn't -- I didn't -- I can't see I did nothing wrong.
5 I searched my own soul and I don't see I did anything wrong.

6 Q: Okay. And you were gonna close your business down; is
7 that correct?

8 A: Exactly, and Natalie was supposed to be taking it over.

9 Q: And that's what this order deals with is your business;
10 isn't that correct?

11 A: Right.

12 Q: And that's the way you understood this; isn't that
13 correct?

14 A: Yeah.

15 Q: Now, about these tapes that they say they never heard
16 anything about. Did Mr. Battle take your deposition? You
17 remember when Mr. Battle sat you in his office and asked you
18 questions?

19 A: Yeah, that's right.

20 Q: All right. I'm gonna read some of that deposition here?

21 A: Okay.

22 Q: Instead of handing it up to you to read.

23 A: Okay.

24 Q: Were you able to get through all the hoops? asked Mr.
25 Battle. Yeah, we finally got through them; we did what they

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HENRY BREWINGTON - REDIRECT BY BRITTAIN

1 said. I always find a police department -- we don't know
2 anything, so we go ask them.

3 A: That's right.

4 Q: And I record them, too, on my phone.

5 A: That's right.

6 Q: That's what you told Mr. Battle, right?

7 A: Still got them right here.

8 Q: He asked you, You recorded them on your phone? Uh-huh.

9 A: Yes.

10 Q: Okay. And did you -- because we didn't know all the
11 rules, that's why we go to the precinct, talk to the cops and
12 they tell us what to do just like our first night we got that
13 ticket. We asked them why don't you stop selling liquor or
14 alcohol beverage at 2 o'clock we would have no problem. Their
15 own words, said don't you stop selling at 2:00, their own
16 words. If you want to look at it, you can listen to it
17 yourself.

18 A: That's right.

19 Q: That's what we done. What we had to do. I would have
20 never did it because, believe it or not, they didn't give us a
21 list of things to do. They let us do each individual thing
22 separate.

23 A: Yeah, one at the time.

24 Q: So, did you or did you not inform Mr. Battle that you had
25 recordings of police conversations on your telephone?

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HENRY BREWINGTON - REDIRECT BY BRITTAIN

1 A: I did it right then.

2 Q: Under oath; is that correct?

3 A: Exactly. He knowed about it, and I always talk about it.
4 Anybody know me, they know I record people because people
5 won't tell the truth today. So, if you don't record them,
6 they -- it's like the baby putting their hand in the cookie
7 jar and you don't slam the lid on it until you own it; it
8 ain't in their hand.

9 Q: So, what question exists as to whether or not Mr. Battle
10 knew you were recording these conversations?

11 A: Sir?

12 Q: What type of question is there whether or not you told
13 Mr. Battle you were recording these conversations?

14 A: I told him in every deposition we went into. I always
15 said I recorded. I tell everybody that, if it's important.

16 MR. BRITTAIN: All right, sir. Your Honor, I'd like to
17 move to introduce into evidence, just to make sure Plaintiff's
18 Exhibit Number 1, which is the commercial lease?

19 THE COURT: Will you show that to Mr. Battle?

20 MR. BRITTAIN: Yes.

21 THE COURT: Plaintiff's 1 is in evidence already.

22 COURT REPORTER: It's in.

23 THE COURT: Yeah, Plaintiff's 1 is into evidence without
24 objection.

25 MR. BRITTAIN: Okay. I was just making sure I got them

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HENRY BREWINGTON - REDIRECT BY BRITTAIN

1 all. Plaintiff's Exhibit Number 2, which is an order granting
2 permanent injunction.

3 A: Mr. Brittain?

4 THE COURT: Just a second, sir.

5 Is there any objection to Plaintiff's 2, Mr. Battle?

6 MR. BATTLE: No, Your Honor, it's in evidence.

7 THE COURT: All right. Plaintiff's 2 is in evidence
8 without objection.

9 PLAINTIFF'S EXHIBIT NUMBER 2

10 ADMITTED INTO EVIDENCE

11 MR. BRITTAIN: Plaintiff's Exhibit Number 3, which is a
12 certified mail notice. I think you might have put that in. I
13 introduce that.

14 THE COURT: All right. So, is that already in?

15 MR. BRITTAIN: No, sir.

16 THE COURT: All right, sir. So, Plaintiff's 3, any
17 objection to that?

18 MR. BATTLE: No, sir.

19 THE COURT: All right, sir. Plaintiff's 3 is into
20 evidence without objection.

21 PLAINTIFF'S EXHIBIT NUMBER 3

22 ADMITTED INTO EVIDENCE

23 MR. BATTLE: Your Honor, I probably would like to have a
24 clean copy. That one has been highlighted. Let's clean up a
25 copy.

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HENRY BREWINGTON - REDIRECT BY BRITTAIN

1 THE COURT: All right. Very good. So, I'll let you
2 substitute in a clean copy before it goes to the jury.

3 MR. PLAYER: It's double-sided, but it's clean. I think
4 that's ---

5 MR. BRITTAIN: And Plaintiff's Exhibit Number 4?

6 THE COURT: Just a second.

7 MR. BRITTAIN: I'm sorry.

8 MR. BATTLE: Let's substitute this.

9 MR. PLAYER: And it's just -- the new one is double-
10 sided; it's not two pages.

11 MR. BRITTAIN: All right. Very good. I'll give you
12 time to mark that. You ready?

13 COURT REPORTER: Uh-huh, (affirmative response).

14 MR. BRITTAIN: And I move to introduce Plaintiff's
15 Exhibit Number 4.

16 THE COURT: I believe that one is already into evidence
17 without objection.

18 MR. BRITTAIN: All right, sir. Bear with me one second
19 please, Your Honor.

20 THE COURT: Yes, sir.

21 MR. BRITTAIN: That's all I have, Your Honor.

22 A: Mr. Brittain, can I say one thing?

23 MR. BRITTAIN: You can't ask me anything. I'm sorry.

24 THE COURT: All right, sir. You can talk to your lawyer
25 after you step down. Go ahead and step down, sir.

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BY THE COURT

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1 BY THE COURT:

2 THE COURT: All right. Ladies and gentlemen, we're going
3 to stop for the day. I'm gonna have you come back a little
4 bit later tomorrow. I have to finish a matter that was from
5 last week in a criminal case. So, I'm gonna do that tomorrow
6 morning.

7 I want y'all to be back at 10:30 tomorrow. So, the
8 clerk's office will have something for you. The bailiff may
9 tell you to be here just a little bit earlier, so y'all can
10 come in the courtroom at 10:30.

11 Now, when you go home, you see your husband, wife,
12 boyfriend, girlfriend, person down the street, do not talk
13 about the case with them. Intentionally or unintentionally,
14 they'll give you their opinion; they don't have one. I don't
15 want you to have an opinion or to discuss this matter among
16 yourselves until I give it to you at the very end. At that
17 point in time, you'll have all the time you deem necessary to
18 talk about it, but until then, don't talk about it among
19 yourselves, don't allow anybody to talk to you about it, I'll
20 see you back tomorrow morning at 10:30.

21 Leave your pads and pens in your seat, please.

22 (REPORTER'S NOTE: Jury exits courtroom @ 4:00 p.m. The
23 following takes place outside the presence of the jury.)

24 THE COURT: I didn't want to start another witness, Mr.
25 Brittain, so you'd have time ---

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BY THE COURT

1 MR. BRITTAIN: You're very kind, Your Honor.

2 THE COURT: No, that's all right. That's something you
3 need to do.

4 Anything that y'all need to talk about just before we
5 leave?

6 MR. PLAYER: Just one question, Your Honor, about
7 charges. I had a trial a month ago and I understand that
8 y'all have access to Anderson's online so we can give you the
9 citation or would you rather have hard copies.

10 THE COURT: I would rather have hard copies if you don't
11 mind.

12 MR. PLAYER: Yes, Your Honor.

13 THE COURT: All right.

14 Mr. Battle, if you have any ---

15 MR. BATTLE: I have mine now, if you would like to look
16 at them.

17 THE COURT: All right. Well, obviously y'all are going
18 to exchange whatever ones you suggest to the Court.

19 MR. BATTLE: Very good.

20 THE COURT: Okay?

21 MR. PLAYER: And we very well could have the same ones.

22 THE COURT: Very good. So, I'll see y'all tomorrow
23 morning at 10:30.

24 MR. PLAYER: Thank you, Your Honor.

25 THE COURT: All right. Thank you very much.

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1 RECESS - 4:01 P.M. - END OF DAY 1

2 *****OFF THE RECORD*****

3 JUNE 22, 2021 - DAY TWO

4 ON THE RECORD - 10:33 A.M.

5 THE COURT: All right. Is the plaintiff ready for the
6 jury to come in?

7 MR. PLAYER: Yes, Your Honor.

8 THE COURT: And the defense?

9 MR. BATTLE: Yes, Your Honor.

10 THE COURT: All right. Ask the jury to come in, please.

11 (REPORTER'S NOTE: Jury enters courtroom @ 10:36 a.m.)

12 THE COURT: All right. Mr. Brittain or -- yes, sir?

13 MR. PLAYER: Yes, sir. At this time, we would like to
14 bring Diane Parker to read the deposition excerpts for Natalie
15 Litsey.

16 THE COURT: All right. Very good. If you'd come around,
17 ma'am.

18 All right. Ladies and gentlemen, the rules of procedure
19 that we operate under allow the taking of a witness' testimony
20 under oath in cases where they may not be able to come to
21 court; sometimes it happens with doctors in some cases or
22 other witnesses, who might be unavailable at time of trial.
23 So, the witness is placed under oath, they are questioned by
24 both sides. The attorneys ask them whatever questions they
25 deem necessary on both sides and then it's reduced to a

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 written form called a deposition. And what we're gonna have
2 here is this lady here is going to read the testimony of the
3 witness. You will take this testimony as if the witness was
4 right in front of you giving you this information. They were
5 under oath to tell the truth at the time they gave this
6 information. And so, then you will take that evidence as you
7 deem proper and give it the weight you believe it should have.
8 You may proceed.

9 MR. PLAYER: May it please the Court?

10 THE COURT: Yes, sir.

11 (REPORTER'S NOTE: Excerpts of the deposition of Nancy Litsey
12 published to the jury and transcribed as read. Questions read
13 by Mr. Player and answers read by Ms. Parker.)

14 DIRECT EXAMINATION OF NANCY LITSEY BY MR. PLAYER:

15 Q: All right. Ms. Litsey, full name?

16 A: My name is Natalie Trota Litsey.

17 Q: Can you spell that middle name for me?

18 A: T-R-O-T-A.

19 Q: And was that your maiden name?

20 A: Yes and no.

21 Q: Explain that to me.

22 A: When I was born in the Philippines, my name was
23 Natalie Trota, and then my dad adopted me, so it was
24 Natalie Trota Sullivan, but the Trota dropped off
25 throughout my childhood years and so I was just

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 recognized as Natalie Sullivan until I got married.

2 Q: Okay.

3 A: And when I got married, I didn't add the Trota,
4 I just added Natalie Litsey and when I got divorced,
5 I added the Trota back again recently.

6 Q: Who was your father?

7 A: Ronald Sullivan.

8 Q: And what was he doing when he was your father?

9 A: He was in the Army, retired master sergeant in
10 the U.S. Army.

11 Q: And who was your mother?

12 A: Virginia Sullivan.

13 Q: All right. And were -- what was the
14 nationality of your father?

15 A: He was black, black African American.

16 Q: And was he from the United States, a United
17 States Citizen?

18 A: Yes.

19 Q: What about your mother?

20 A: She is Filipino, but she is now a citizen, a
21 United States citizen.

22 Q: At the time of your birth, was she a citizen of
23 the Philippines?

24 A: Yes.

25 Q: And where were you born?

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

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1 A: I was born in the Philippines.
2 Q: In the Philippines?
3 A: Yes.
4 Q: And at that ---
5 A: I'm sorry.
6 Q: --- and at that time, was your father in the
7 military?
8 A: Yes.
9 Q: Active duty?
10 A: To my knowledge, yes.
11 Q: And so, give me a little history of where you
12 spent your early childhood years?
13 A: I was born in the Philippines. I was six years
14 old, and my dad got us and moved us to the United
15 States. He was stationed in Kentucky. There he
16 served and we moved a lot from Kentucky to
17 California to Texas to Germany, wherever, you know,
18 the military told him to move to.
19 Q: Let me stop you there. You said us, did you
20 have siblings?
21 A: Yes, I have two younger sisters; I'm the
22 oldest.
23 Q: And they had the same father and mother?
24 A: Yes.
25 Q: And your father adopted all three of you?

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 A: He adopted me.
2 Q: He adopted you?
3 A: Yes, because he was in the -- to my knowledge.
4 Q: Okay. And the other two were his natural
5 children?
6 A: Yes.
7 Q: And so, you were in Fort Knox?
8 A: Yes.
9 Q: And you were just a child of a military ---
10 A: Brat.
11 Q: --- okay. I gotcha.
12 A: That's what we call it.
13 Q: And so, the family unit stayed together as one?
14 A: Yes.
15 Q: And that progressed up through high school?
16 A: Yes.
17 Q: Where did you go to high school?
18 A: To -- as I can recall, three different high
19 schools.
20 Q: Okay.
21 A: Was Germany, Nurnberg High School.
22 Q: Okay. All right.
23 A: And then a little bit in California. I don't
24 recall the high school. And then Fort Knox,
25 Kentucky where I graduated.

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 Q: From high school?

2 A: From high school, yes.

3 Q: Now my understanding is that you're the oldest
4 of the siblings?

5 A: Yes.

6 Q: And as you graduated from high school, what
7 happened to you next; did you go to college, did you
8 go in the service, what did you do?

9 A: I went into the Air Force because I wanted to
10 go to school and my parents didn't have the money to
11 send me to school. So, and that was from my dad's
12 background, I was traveling. I loved traveling and
13 I know that the Air Force would pay for my
14 education. So, that's the route I went.

15 Q: So, what year was this?

16 A: 1995.

17 Q: 1995?

18 A: Yes, actually ---

19 Q: You entered the United States Air Force?

20 A: Yes, actually on my birthday, so I will never
21 forget.

22 Q: And where were you first -- tell us a little
23 bit about the beginning of your Air Force career?

24 A: I got stationed in -- before I got stationed to
25 Germany, I was in tech school in Texas, and I got

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 married along there and then ---

2 Q: What was your husband's name?

3 A: My husband -- my ex-husband's name is Andre
4 Pierre Litsey.

5 Q: Can you spell that please?

6 A: A-N-D-R-E; and Pierre is P-I-E-R-R-E; and then
7 Litsey, L-I-T-S-E-Y.

8 Q: Thank you. And was he a member of the United
9 States Air Force?

10 A: Yes.

11 Q: Okay.

12 A: When we got married, he was in the process of
13 becoming Air Force.

14 Q: And you were already a member of the United
15 States Air Force?

16 A: Yes.

17 Q: Okay. Where did you meet him?

18 A: I met him in Fort Knox, Kentucky.

19 Q: And so, what year were you married, if you can
20 remember?

21 A: If I remember correctly, it was 1996, February
22 12th, 1996.

23 Q: '96?

24 A: I think so, '96 or '97, but I think '96.

25 Q: And you were -- where were you, quote,

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 stationed at the time?

2 A: I was stationed at Shepherd Air Force Base,
3 which is in Texas, Wichita Falls.

4 Q: And that's in San Antonio?

5 A: In Texas. It's up further up in the panhandle,
6 Wichita Falls.

7 Q: What were you doing there; what was your MOS?

8 A: I was a medical technician, and I was going
9 through school to get training to become a medical
10 technician.

11 Q: And once you were married, he became a member
12 of the United States Air Force as well?

13 A: Yes.

14 Q: Where was he stationed?

15 A: He went to basic in San Antonio.

16 Q: Okay.

17 A: And after that, if I remember correctly, he was
18 stationed at Keesler Air Force Base for training,
19 further training for his career field, which was
20 computers.

21 Q: So, you were separated during the early part of
22 your marriage?

23 A: Yes.

24 Q: What was your next station assignment?

25 A: My next duty assignment was Germany Medical

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 Center. I was there for a while; and then when he
2 finished his school, my husband followed me to
3 Germany.

4 Q: So, eventually both of you were assigned at the
5 same Air Force post?

6 A: Yes.

7 Q: In the same area?

8 A: In the same area, yes.

9 Q: What was -- what were you doing; you said your
10 MOS was a medical tech, so what were you doing when
11 you first went to Germany?

12 A: When I first went to Germany, I worked in an
13 inpatient unit taking care of retirees and their
14 family members with chronic diseases or coming back
15 from surgery that needs to be monitored more than 24
16 hours. That was what I did my first. When I was
17 there in Landstuhl, and then later on I got switched
18 to pediatric clinic taking care of the dependents of
19 the active-duty members in that area and all around
20 actually. Landstuhl was the main hub, the medical
21 center for Europe.

22 Q: How long were you stationed -- how long were
23 you stationed at this station?

24 A: At this period, three years for this duty
25 station, because later on, I did come back several

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 times, but this time it was three years.

2 Q: And when you left this duty station at this
3 time, where did you go next?

4 A: I went to Holloman Air Force Base in New
5 Mexico, and I was stationed there for two years.

6 Q: What about your husband?

7 A: My husband was stationed there for two years,
8 but he was deployed, so I was -- I had my first
9 child already, and I was pregnant with my second
10 one.

11 Q: How many children do you have?

12 A: I have two young men.

13 Q: How old are they now?

14 A: They are 19 and 21.

15 Q: Where is the 21-year-old?

16 A: The 21-year-old is in Coker College up in
17 Hartsville, South Carolina.

18 Q: And the 19-year-old?

19 A: The 19-year-old is in San Antonio at University
20 of -- sorry -- Texas, San Antonio.

21 Q: So, you were in New Mexico. How long were you
22 in New Mexico?

23 A: For two years.

24 Q: Now, I know it's not comfortable to talk about
25 any awards or anything you received, but during this

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 time period in the United States Air Force, did you
2 receive any kind of notoriety or awards for your
3 performance?

4 A: Yes. When I was in Landstuhl for my first duty
5 station, I was recognized for commendation for doing
6 a great job to contribute to the mission as well as
7 the unit, too, if I recall correctly. We also got a
8 unit award for contributing to the mission with the
9 soldiers and families overseas.

10 Q: Did you ever receive a citation as Airman of
11 the Corp?

12 A: I did. And when I was in Holloman Air Force
13 Base I got recognized as one of the top airmen in
14 the clinic and now to get this award, you have to do
15 -- you have to be above and beyond everybody else.
16 You have to lead by example, as well as going to
17 school, doing the right thing, taking extra duties,
18 taking the initiative to accomplish to complete the
19 mission for the clinic. It's taking care of --
20 giving good customer service to the -- I say
21 customer, but patients that we take care of day in
22 and day out, and also volunteering outside of work,
23 which I love. I volunteer on things that I want to
24 do, and I usually help out in the community.

25 Q: When you left Holloman, what was your next post

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 assignment?

2 A: My next assignment was back to Landstuhl,
3 Germany. I then worked at, if I remember correctly,
4 I was working at the OBGYN Clinic and again, we took
5 care of the spouses that was about to give birth as
6 well as do procedures for the non-pregnant women.
7 The GYN took care of on a monthly basis, like -- I'm
8 sorry, I can't recall how many patients, but we took
9 care of a lot of patients.

10 Q: Were you like a nurse; is that what ---

11 A: I was not a nurse. I was somewhat equivalent
12 to an LPN, but I did not have a license as an LPN,
13 but I could do as much as an LPN with the
14 supervision of the nurse and the doctors in my
15 clinic.

16 Q: While you were in Germany, were you ever
17 deployed to Afghanistan?

18 A: No.

19 Q: Where did you go after this posting in Germany?

20 A: After this posting in Germany, I got stationed
21 at -- before I left Germany, I did receive some
22 awards for being an outstanding airman.

23 Q: Okay.

24 A: And that's going above and beyond what my
25 duties are. When I went to Hickam Air Force Base,

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 that was in Hawaii on Oahu, Oahu, Island of Oahu.

2 And here I worked in flight medicine, where we took
3 care of the flyers and navigators and also worked
4 very -- worked alongside with the security forces,
5 the fire department and the community for our
6 exercises.

7 Q: You were in Hawaii, but you were divorced by
8 this time, right?

9 A: No, not yet.

10 Q: Not yet?

11 A: Not yet.

12 Q: So, he's at Hickam and he's in Hawaii too?

13 A: Yes, also we're there as a family.

14 Q: So, where do you go after Hickam?

15 A: After Hickam, went back to Germany.

16 Q: And that's the kind of place you go to; you've
17 already been there twice?

18 A: Yes. So, this is the third time and
19 shockingly, because we were trying to get to Japan.
20 In the military, wherever they need us, that's where
21 we go.

22 Q: Okay.

23 A: So, I went back to Landstuhl and each time we
24 went to Germany, he had a different station. He
25 went in the same area, but we were still close

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 enough to live together in one household.

2 Q: So, what were your duties in Germany this third
3 time?

4 A: If I recall correctly, this time I worked at
5 same-day surgery and when I worked in the same-day
6 surgery, we had ---

7 Q: Let me ask you this, were you ever deployed to
8 Afghanistan?

9 A: Yes, I was deployed in 2008/2009.

10 Q: And what did you do in Afghanistan in 2008 and
11 2009?

12 A: We took care of the Afghans in the area, gave
13 them medical treatment as far as training them with
14 the Afghan police, and I worked closely with the
15 sailors -- and sorry, forgive me, sorry.

16 Q: Okay.

17 A: There was a lot. We worked with the Army, the
18 Air Force, the Navy, and the Marines, and also the
19 German military; they were all there.

20 Q: But you were actually in Afghanistan?

21 A: Yes.

22 Q: For how many months?

23 A: Seven months.

24 Q: During war time; I mean you're in combat?

25 A: Yes.

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NANCY LITSEY (DEPOSITION) - DIRECT BY PLAYER

1 Q: Were you in -- you were in a combat zone?
2 A: Yes.
3 Q: What type of lodgings were there?
4 A: It was plywood. I want to say a house, plywood
5 cabins.
6 Q: Okay.
7 A: Thin plywood and just to keep yourself warm.
8 Q: Okay.
9 A: And my room was maybe this big here from there.
10 Q: 12 to 25 feet or 30 feet?
11 A: If that.
12 Q: Okay.
13 A: Enough for a bed and ---
14 Q: When you left Afghanistan, what was your next
15 assignment?
16 A: I was stationed in Germany, so I went back to
17 my permanent duty station, which was Landstuhl, and
18 there they moved me to ICU, where we worked
19 alongside with the soldiers that was wounded from
20 Afghanistan, Iraq. We had to take care of them and
21 get them ready to come back here to United States to
22 get them to their family and get them ready for
23 treatment and get them back to health, which ---
24 Q: What significant battle, if any, took place
25 over there during that time period that put a lot

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1 people in front of you?

2 A: We -- I remember when I was working in the
3 same-day surgery, the Fauda (spelled phonetically)
4 hit, and we were working 24 to 48 hours that I can
5 recall and it was working straight, taking care of
6 the Marines; it was mainly the Marines that came in.
7 They got hit and we were just taking care of them.

8 Q: Okay.

9 A: All their -- their arms and legs, I mean, they
10 were really in bad shape, most of them.

11 Q: So, you had 20 years in the United States Air
12 Force?

13 A: Yes, that's correct.

14 Q: And you're now retired?

15 A: That's correct.

16 Q: And what year approximately did you retire?

17 A: I retired the 1st of November 2015.

18 Q: Okay.

19 A: That's my official retirement date.

20 Q: And what kind of connection did you have during
21 this period or after that time period to the very
22 fine city of Myrtle Beach; what brought you to
23 Myrtle Beach and how did you get connected to Myrtle
24 Beach?

25 A: Me and my ex-husband was divorced then already,

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1 and he was stationed in Charlotte Air Force Base and
2 I asked to be stationed somewhere close to my sons.
3 They were teenagers so I thought it would be best
4 for them to be with their father, and I got
5 stationed at Charleston Air Force Base two to two-
6 and-a-half hours away from them and this is where I
7 retired was in Charleston. But in the meantime, I
8 do have family here in Myrtle Beach from my dad's
9 side.

10 Q: Okay. Who is that?

11 A: Their name is Michelle Johnson, one of my
12 cousins; Kevin and Keith, they are twins; and my
13 aunt -- it's been a while -- Belinda.

14 Q: And their last name is Johnson?

15 A: If I remember correctly, yes.

16 Q: And that brought you to Myrtle Beach?

17 A: Yes.

18 Q: Okay.

19 A: To Myrtle Beach, and I saw how tourists and the
20 businesses were doing and it seemed to be doing
21 well. And I had my bachelor's in health
22 administration and business and was very interested
23 in having any owned business. So, I thought that
24 was a good opportunity to come here.

25 Q: So, walk me through your decision making, vis-

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1 a-vis, the businesses of Myrtle Beach; what you
2 looked into, what you ended up trying to do, that
3 sort of thing?

4 A: Okay. I wanted a bar & grill. I wanted
5 something already established, and I don't recall
6 how I looked into Levelz first, but I went in there
7 on the thought that they were going to sell. So, I
8 was interested in purchasing Levelz at the time.

9 Q: Okay. Was this your first business or
10 potential business venture in Myrtle Beach?

11 A: Yes.

12 Q: And did you ever put any money down or agree?

13 A: I did. If I remember correctly, I put down
14 \$10,000 with him, and then the landlord some money
15 as well. I don't recall what that amount was, but
16 it was two separate things. I had to do one with
17 Henry and I had to do one with the landlord that
18 owned the building. I had to put something down
19 with her as well.

20 Q: And did you complete that contract purchase?

21 A: No.

22 Q: And why did you not complete that contract
23 purchase?

24 A: Well, on my -- in the process of trying to do
25 the contract, I had things that I had to do within

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1 the Myrtle Beach city, sorry, within the Myrtle
2 Beach, which was my license and meet with the police
3 department because they needed a business plan. To
4 my knowledge, if I remember correctly, this was not
5 the ordinary, this was -- they didn't -- they did
6 not ask for a business plan from all the businesses
7 but they did with this one. And when I met with the
8 police department, I can't recall the other two, but
9 the only one I can recall is meeting up with Officer
10 Robertson. And when I met up with him, they were
11 telling me how Levelz has been a problem and what's
12 -- what type of business am I trying to open up and
13 I told them the business I'm trying to open up, pool
14 tables, food, serving food, someplace, you know,
15 that the community can come and watch sports, play
16 pool, you know, and relax. And I don't know who
17 told me while we were sitting there, but they were
18 saying that Levelz would not be open that long, so
19 they advised me not to invest in Levelz or to think
20 about it a little more.

21 Q: Okay. You don't know who did it; were you
22 talking to people from the City of Myrtle Beach?

23 A: Yes, I was talking to the cops I met that day.

24 Q: Okay. And so, what made you quit from going
25 forward with the purchase?

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1 A: With that conversation, when I had to meet with
2 them at my business, I'm sorry, correction, not my
3 business; it was a safety plan.

4 Q: Okay.

5 A: That pretty much told me that Levelz would not
6 -- they are closing that place down because of all
7 the trouble that they had caused. They didn't tell
8 me any other -- they didn't specify what it was,
9 they just said that it would be to my best business
10 interest not to invest in Levelz because they are
11 shutting the building down.

12 Q: Did you end up investing in any other property
13 in the area?

14 A: Yes.

15 MR. PLAYER: I beg the Court's indulgence for one quick
16 second, Your Honor? It's a little jumpy, Your Honor, but at
17 this point we're gonna do cross and then I'll come back and
18 finish up ---

19 THE COURT: Very good. Go ahead, Mr. Battle?

20 MR. BATTLE: Thank you, Your Honor.

21 MR. BATTLE: Okay. If you would turn to page 7 in the
22 deposition.

23 MS. PARKER: Page 7?

24 MR. BATTLE: You had it marked.

25 MR. PLAYER: Yeah, it's only half-way through. You might

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1 want to use this one; it's a little different. Only the
2 highlighted lines are what's to be read.

3 MR. BATTLE: Okay. That's not what you ---

4 MR. PLAYER: I thought it got -- I apologize. This is
5 ---

6 MR. BATTLE: That's okay.

7 MR. PLAYER: This is the ---

8 MR. BATTLE: I beg your pardon, Your Honor, I'm having to
9 ---

10 THE COURT: That's all right. It's not a problem.

11 MR. PLAYER: Here you go, Mike, do this -- just read
12 this, because it's -- right there.

13 MR. BATTLE: If you would go to the Henry Brewington
14 deposition in your Brewington versus Melvina Davis.

15 MR. PLAYER: It should be immediately after that ---

16 MS. PARKER: The smaller?

17 MR. PLAYER: Yes, ma'am.

18 MS. PARKER: This. Okay. Okay. So, I start off saying
19 yes, right, is that where you're reading?

20 MR. BATTLE: I'm sorry, what?

21 MS. PARKER: I start off saying yes; is that where you're
22 starting.

23 MR. BATTLE: No, I'm going to ask you the question ---

24 MS. PARKER: Okay.

25 MR. BATTLE: --- on page 7, top of the line?

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1 MS. PARKER: Okay.

2 (REPORTER'S NOTE: Excerpts of the deposition of Nancy Litsey
3 published to the jury and transcribed as read. Questions read
4 by Mr. Battle and answers read by Ms. Parker.)

5 CROSS-EXAMINATION OF NANCY LITSEY BY MR. BATTLE:

6 Q: Okay. So, now we're going to be focusing on
7 the contract between you and the Brewingtons and see
8 what testimony you have as to why that contract was
9 not performed. Do you understand that?

10 MR. BATTLE: Line 10

11 MS. PARKER: I'm trying to find it. Tyler, is it
12 highlighted, the green ---

13 MR. PLAYER: No, this part is not highlighted.

14 MS. PARKER: Oh.

15 MR. PLAYER: Just start at 1 on page 7, the first --
16 Your Honor, may I approach the bench?

17 THE COURT: Yes, sir.

18 MR. PLAYER: The witness? Go back to where it changed.
19 He started here, I believe, right here. He starts at line 5
20 and your answer is exactly what you said.

21 MS. PARKER: Got you. Got you. Okay. Thank you.

22 Okay. Yes.

23 MR. BATTLE: For the sake of clarity ---

24 THE COURT: You want me to read it again, go ahead, sir.

25 MR. BATTLE: Yeah, let me ask the question again.

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1 MS. PARKER: Sure.

2 BY MR. BATTLE:

3 Q: So, now that -- now what we're going to be
4 focusing on is the contract between you and the
5 Brewingtons and see what testimony you have as to
6 why that contract was not performed; do you
7 understand that?

8 A: Yes.

9 Q: Okay. Good. The first thing I want to do is
10 ask you is this a copy of the contract that you've
11 entered into with the Brewingtons?

12 A: Okay.

13 Q: Does that appear to be your signature on the
14 contract?

15 A: Yes.

16 Q: And this is a contract that's three pages long
17 and is numbered page 1 of 3, 2 of 3, and 3 of 3, and
18 there are initials at the bottom of each page; are
19 those your initials on those pages?

20 A: Yes.

21 Q: Are there any other provisions to this contract
22 that have not been given to you today, anything
23 outside of this document -- was there any contract
24 agreement you had with the Brewingtons that was not
25 part of the writing here?

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1 A: Not that I can remember at this time.

2 MR. BATTE: We'd like to go ahead and introduce that into
3 evidence?

4 MR. BRITTAIN: No objection.

5 MR. PLAYER: No objection, Your Honor.

6 THE COURT: All right.

7 MR. PLAYER: I think it's in the designation itself,
8 so...

9 MR. BATTLE: This is the whole package; I can go ahead
10 and do that at once?

11 MR. PLAYER: Yeah.

12 COURT REPORTER: Do you mind if I put it over here?

13 MR. BATTLE: No, not at all.

14 THE COURT: So, what document is it?

15 MR. BATTLE: I'm sorry. This is the contract of sale.
16 Included with it is the release of the contract of sale, the
17 checks that were paid by the Prosser Law Firm and an email
18 from the paralegal, I believe, from the Prosser Law Firm.

19 THE COURT: All right. The document number is?

20 MR. BATTLE: 3. Defendant's Exhibit Number 3.

21 THE COURT: Any objection?

22 MR. PLAYER: No, Your Honor.

23 THE COURT: All right. Defendant's 3 is in evidence
24 without objection. You may proceed.

25 DEFENDANT'S EXHIBIT NUMBER 3

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1 ADMITTED INTO EVIDENCE

2 (REPORTER'S NOTE: Excerpts of the deposition of Nancy Litsey
3 published to the jury and transcribed as read. Questions read
4 by Mr. Battle and answers read by Ms. Parker.)

5 BY MR. BATTLE:

6 Q: In this agreement, you were going to purchase
7 the property, or purchase the business for \$150,000
8 and you made a down payment or an earnest money
9 deposit of \$10,000 that was paid when you signed the
10 contract; is that correct?

11 A: Yes, that's correct.

12 Q: Now, I'm going to show you another document,
13 which I don't see your signature on, but I want to
14 ask you, is that a document that represents your
15 agreement to end the contract?

16 A: This document looks familiar.

17 MR. BATTLE: And that would be part of Exhibit 3, that
18 was introduced into evidence.

19 BY MR. BATTLE:

20 Q: All right. Ms. Litsey, you entered into the
21 contract of sale on January the 27th; is that
22 correct?

23 A: Yes.

24 Q: And before you entered into that contract, did
25 you have any conversations with anyone from the City

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1 of Myrtle Beach?

2 A: I have to look at my dates.

3 Q: Is your answer I don't know?

4 A: I don't recall at this time.

5 Q: That's fine. There's nothing wrong with that.

6 A: Okay.

7 Q: Do you recall having a telephone conversation

8 on February the 4th, 2015, which involved you, Ms.

9 Virginia Brewington, and Ms. Lisa Robertson?

10 A: I don't recall a phone call conversation.

11 Q: You don't recall any phone conversation?

12 A: With the three of us? No.

13 Q: Yes.

14 A: I don't recall the three-of-us conversation.

15 Q: Now, you put in an application for a business

16 license with the City of Myrtle Beach for Blazian

17 Promotions; is that correct?

18 A: Yes.

19 Q: And that was to operate Brewington -- I mean,

20 Levelz business?

21 A: Yes.

22 Q: Were you going to call it Levelz?

23 A: I was still deciding. I was going to change

24 the name.

25 Q: Okay.

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1 A: And I was getting advice from the City of
2 Myrtle Beach where I had to sign in and try to get
3 my business license through Myrtle Beach.

4 Q: What did they tell you about having to have a
5 business license?

6 A: Can you clarify that question?

7 Q: Okay. Well, first of all, who did you talk to
8 in the business license office?

9 A: I don't recall their name, but they were
10 working at the front desk.

11 Q: With regard to the application, did you, at any
12 time, believe you could use the business license
13 that had been issued to Levelz to operate your
14 business?

15 A: I asked the question, but I forgot what they --
16 the answer they gave me.

17 Q: Okay.

18 A: But I did ask that question.

19 Q: And ultimately, you put in a separate
20 application for a business license to operate
21 whatever business was going to go into Levelz store
22 at 815 Main?

23 A: Yes, that's what they advised me to do, Myrtle
24 Beach.

25 Q: Did you ask anyone or did anyone -- let's just

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1 say, did you ask anyone about any nuisance activity
2 at Levelz before your business license was issued or
3 processed?

4 A: I asked what the nuisance meant for that
5 business, so I did ask the question.

6 Q: And did you -- who did you ask that question
7 of?

8 A: I asked the police department, and I asked the
9 people at the front desk of Myrtle Beach.

10 Q: Who did you ask at the police department; who
11 do you recall talking to at the police department?

12 A: I talked to Lisa Robertson.

13 Q: And what did she tell you about the effect of a
14 nuisance on a new business?

15 A: If I remember correctly, I remember that she
16 told me that it would not look good and I would have
17 a hard time getting customers and have a hard time
18 with the City of Myrtle Beach.

19 Q: Did she -- what else did she tell you, if
20 anything?

21 A: She told me that Levelz is not going to be
22 open; they would not be -- they wouldn't last. So,
23 she advised me to look somewhere else.

24 Q: When did she tell you that, can you give me the
25 exact date?

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1 A: I cannot give you the exact date. I would have
2 to look in my records or my sign-in sheet for Myrtle
3 Beach.

4 Q: Was it before or after you pulled your business
5 license application for Levelz business, not the
6 business license -- not the Levelz business license,
7 but your application to do business as Levelz?

8 A: I pulled my business license because I had a
9 ten-day window and Lisa, Officer Lisa Robertson
10 informed me that things weren't going to be, they
11 weren't going to be open much longer. And in lieu
12 of that, I pulled my -- and I talked to Henry about
13 pulling through the contract before my ten-day -- I
14 had a ten-day window, so that was one of the
15 pressing as well.

16 Q: You had a ten-day window on what?

17 A: To go through the purchase or not. So, I had
18 to make a decision within the ten days.

19 Q: Is that in this particular contract; is that
20 written in the contract?

21 A: Yes.

22 Q: Would you tell me where it is, what paragraph?

23 A: It would be paragraph 8.

24 Q: Do you mind if I publish that; I'm going to
25 read this out loud and then ---

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1 A: Okay.

2 Q: In case the personal property herein referred
3 to is destroyed or wholly or partially by fire or
4 other casualty, purchaser shall have the option for
5 ten days hereafter of proceeding hereunder with an
6 agreed adjustment in purchase price or terminating
7 this agreement and being repaid all amounts paid
8 hereunder. Is that what it says?

9 A: Yes, that's what it says.

10 Q: Was the property destroyed wholly or partially
11 by fire or other casualty?

12 A: Other casualty, yes.

13 Q: What was the other casualty?

14 A: I consider other casualty as the City of Myrtle
15 Beach interfering stating that they are not going to
16 reopen that building for any other business.

17 Q: All right. Now, at that time, had they closed
18 the business?

19 A: Not -- let me see, there was a door I want to
20 -- there was a letter on the door as well as Mel,
21 Ms. Davis informed me that she is having a hard time
22 with the City to reopen it to a business, and they
23 told her that she needed sprinklers in there as
24 well, which would cost her over \$50,000 or more.

25 Q: And Ms. Davis is a white woman; is that right?

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1 A: Yes.

2 Q: But they were requiring her to have sprinklers?

3 A: For her to rent it out again, since I am a
4 minority, I felt she was getting -- they were giving
5 her a hard time.

6 Q: Did you pull your business license application
7 on February 16th of 2015?

8 A: If that's what the records show, yes.

9 Q: You don't have any reason to dispute that?

10 A: If that's what the records show.

11 Q: And on February the 15th, the day before is
12 when Mr. Vereen had been shot outside of the
13 business; is that correct?

14 A: Yes, that's correct.

15 Q: And then on February 20th, there was a consent
16 order, which allowed them to close the business or
17 have it declared a nuisance allow the solicitor's
18 office in doing a nuisance action; is that correct?

19 A: That's correct, but I believe my ten-day window
20 was in question as well, so I had to make a decision
21 because money was involved.

22 Q: I understand that, but when you say you pulled
23 your business license, there was something posted on
24 the door?

25 A: I was told that if I went through -- the

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1 business license at Myrtle Beach costs money. So,
2 the money also drove the decision because if I
3 proceeded on, that was more money to put in there
4 for the business license.

5 Q: Okay. And then you had a closing scheduled for
6 some time in March for your purchase of Levelz; is
7 that correct?

8 A: Can you ask me that question again?

9 Q: Do you know when you were supposed to complete
10 the transaction of the purchase of the Levelz
11 business or Mr. Brewington's business?

12 A: I have to look back in the contracts, but I
13 believe maybe we did set a date.

14 Q: You set a date?

15 A: Yes.

16 Q: Tell me the date you set?

17 A: I do not see it on here, but I know we agreed
18 on a date at the time.

19 Q: What date did you agree upon?

20 A: We based it on how long it was going to take us
21 to get everything as far as my business license and
22 getting the contract for the lease of the place, so
23 I believe we estimated about 30 days for that to
24 happen.

25 Q: So, you were thinking it was going to be around

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1 February 25th that you were going to close?

2 A: Yes.

3 Q: Okay. Did you not close -- okay. And you did
4 not close on February 26th?

5 A: That's right.

6 Q: And on March the 16th, which is Exhibit 2, you
7 were released from your contractual agreement?

8 A: If that's the date there, yes.

9 Q: You can look.

10 A: Yes.

11 Q: Do you know why you were released from your
12 contract?

13 A: I was released from my contract because they
14 were going to close the -- Ms. Mel Davis told me
15 that they weren't going to reopen the building for
16 any other business, at least not for me.

17 Q: And when did Ms. Davis tell you that?

18 A: In the timeframe of when getting the contract
19 completed and when they did the -- they released the
20 funds back to me and she did partial of the -- if I
21 recollect correctly, she did partial of the rent
22 because I gave her a check of the rent for a certain
23 amount and got some of that money back.

24 Q: I'm seeing here that of the \$10,000 you
25 deposited, they charged you \$250; is that correct?

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1 A: If that's what the form shows, yes.

2 Q: And then she charged Mr. Brewington \$250?

3 A: Yes.

4 Q: And then she charged -- Mr. Brewington was
5 charged again \$326.68 it looks like for
6 reimbursement for improvements and supplies to Mr.
7 -- they charged that against your -- they charged
8 that against your 100,000 -- your \$10,000 earnest
9 money?

10 A: We agreed on it, yes.

11 Q: And so, the end -- so, in the end, you got
12 \$9,173.32; is that correct?

13 A: If that's what the record shows, yes.

14 Q: You have no reason to doubt that?

15 A: No.

16 Q: Where was any money paid to Ms. Davis for rent?

17 A: I met with her personally and she had a
18 contract of the lease and we signed. I signed the
19 lease with her as well as a deposit.

20 Q: So, you had a lease and a deposit with Ms.
21 Davis; when did that occur?

22 A: Same timeframe as -- and in lieu of the
23 contract.

24 Q: I'm not following you.

25 A: The same timeframe as the contract. I had to

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1 talk to her and make sure that she was going to be
2 okay with releasing the -- transferring the lease to
3 me.

4 Q: Did you talk with her before January 27th or
5 after January 27th?

6 A: Both.

7 Q: Both?

8 A: Yes.

9 Q: And do you have a copy of that lease?

10 A: I may still have a copy of the lease in my --
11 at my other files.

12 Q: Did you get a release from that lease from Ms.
13 Davis?

14 A: Yes, I did.

15 Q: And when did that occur?

16 A: I'd have to look at my records for the actual
17 date.

18 Q: When was it?

19 A: March.

20 Q: March?

21 A: Yes.

22 Q: Do you know when Mr. Brewington's business was
23 closed for being a nuisance?

24 A: As the records show, I would say February --
25 end of February.

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1 Q: It wasn't in November or January?

2 A: Not that I recall those dates, no.

3 Q: And that would have been 2015?

4 A: Yes.

5 Q: Do you know who it was, who instigated the

6 action to close Mr. Brewington's business?

7 A: There is a lot of factors. Can you narrow it

8 down?

9 Q: I'm not asking you for factors. I'm asking you

10 who the party on the pleading that alleged that his

11 business was a nuisance and who -- and with whom he

12 entered into a consent agreement; do you know who

13 that was?

14 A: I thought Lisa, Officer Robertson, was a

15 contribution to that.

16 Q: Was she a party to the lawsuit?

17 A: I don't know.

18 Q: Was the solicitor the moving party?

19 A: I don't know.

20 Q: With regard to the statements that were given

21 to you by Ms. Robertson, did she tell you anything

22 that was not true?

23 A: Not that I know of at this time.

24 Q: So, everything she told you was true?

25 A: Which you would think police officers would

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1 tell you the truth.

2 Q: I understand that.

3 A: Yeah, working along them for a long time, for
4 20 years, that's what you think they will do.

5 Q: Now, was there anything that any other employee
6 of the City of Myrtle Beach told you that was not
7 true?

8 A: Can you clarify the question?

9 Q: Was there any statement that was made by an
10 employee, someone who worked for the City of Myrtle
11 Beach, that you believe was not true in connection
12 with the property of Mr. Brewington's business?

13 A: No, I can't recall at this time.

14 Q: And in fact, his business was closed by a
15 consent order; isn't that correct?

16 A: Can you ask me that question again?

17 Q: His business was closed by an order of the
18 Court; is that correct?

19 A: I don't know if it was ordered by the Court,
20 but his business was closed eventually.

21 Q: And then you entered into -- you found other
22 property in the area?

23 A: Yes, which I didn't realize it was in the
24 Superblock.

25 Q: Okay.

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1 A: Yes, sir.

2 Q: And when did you start looking for that other
3 property?

4 A: After we closed, after I realized that Levelz
5 wasn't going to go through.

6 Q: And that would have been in March of 2015?

7 A: Yes, because I was still waiting for Ms. Mel
8 Davis to see what she was able to do with the City.

9 Q: And were there any statements made to you in
10 connection with Ms. Davis' statement from the City
11 of Myrtle Beach?

12 A: Can you clarify that question?

13 Q: Did anyone talk to you from the City of Myrtle
14 Beach regarding your lease with Ms. Davis?

15 A: I don't understand that question.

16 Q: All right. Did any person discuss the subject
17 of the lease agreement that you had with Mel Davis;
18 did anyone from the City of Myrtle Beach discuss
19 that lease agreement with you?

20 A: Not that I can recall right now.

21 MR. BATTLE: And that was all my questions.

22 MR. PLAYER: A few more in follow-up, Your Honor.

23 THE COURT: Yes, sir.

24 (REPORTER'S NOTE: Excerpts of the deposition of Nancy Litsey
25 published to the jury and transcribed as read. Questions read

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1 by Mr. Player and answers read by Ms. Parker.)

2 REDIRECT EXAMINATION OF NATALIE LITSEY BY MR.

3 PLAYER:

4 Q: You were buying it and were going to start a
5 brand-new business, right?

6 A: Yes.

7 Q: It was going to be what you did, you were
8 getting ready to start a business?

9 A: Yes.

10 Q: Paid them, they made improvements, that sort of
11 thing?

12 A: Yes.

13 Q: And you were gonna take over the lease?

14 A: Yes.

15 Q: And then you would start a business?

16 A: Yes.

17 Q: So, what problems they had in the past, why
18 would that be a problem for you?

19 A: That was my question, and I didn't understand
20 why that would have been a problem for me.

21 Q: Did you have conversations with the City of
22 Myrtle Beach officials?

23 A: Yes.

24 Q: Concerning this property?

25 A: Yes.

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1 Q: And what types of things did they tell you
2 about purchasing this property, this closing
3 business from Mr. Brewington; what were they telling
4 you?

5 A: She was -- Robertson, Officer Robertson was
6 informing me that the business is going to be -- the
7 building is going to be closed regardless of me
8 opening a different business.

9 Q: So, you were -- you had conversations with them
10 about that you were gonna open a different business?

11 A: Yes.

12 Q: And they still told you it wasn't gonna happen?

13 A: Correct.

14 Q: So, based on what they told you, what did you
15 do with this contract you signed with the
16 Brewingtons?

17 A: With my ten-day window, I told them that I
18 don't feel comfortable going through with the
19 contract.

20 Q: And why was that?

21 A: Because of the conversation that I had with the
22 police department.

23 Q: About the property?

24 A: About the property, yes.

25 Q: Thank you.

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1 MR. PLAYER: Thank you, Ms. Parker.

2 COURT REPORTER: I'm sorry; what was your name again?

3 MS. PARKER: Diane Parker.

4 MR. BRITTAIN: Thank you, Diane.

5 MS. PARKER: You're welcome.

6 THE COURT: All right. Your next witness, Mr. Brittain?

7 MR. PLAYER: Yes, Your Honor. At this time, the
8 plaintiff would call Virginia Brewington.

9 THE COURT: All right. Please come around, ma'am.

10 THE CLERK: If you would raise your right hand and put
11 your left hand on the Bible.

12 VIRGINIA BREWINGTON, HAVING BEEN DULY
13 SWORN TESTIFIES AS FOLLOWS:

14 THE CLERK: Thank you. If you'll please state your first
15 and last name and spell it for the record.

16 MS. BREWINGTON: Virginia Brewington, V-I-R-G-I-N-I-A
17 Brewington, B-R-E-W-I-N-G-T-O-N.

18 THE COURT: Go ahead.

19 DIRECT EXAMINATION OF VIRGINIA BREWINGTON BY MR. PLAYER:

20 Q: How we doing, Ginny?

21 A: Doing good.

22 Q: Nervous?

23 A: Sleepy.

24 Q: Introduce yourself officially to this jury.

25 A: I'm Virginia Brewington, but everybody calls me Ginny.

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- 1 Q: And where were you born, Ginny?
- 2 A: Jersey City, New Jersey.
- 3 Q: Ginny from the block, huh?
- 4 A: Yeah, some of my customers call me that.
- 5 Q: Where did you go to school?
- 6 A: In Jersey City.
- 7 Q: How far did you get?
- 8 A: I graduated high school.
- 9 Q: What did you do -- what was your first real job?
- 10 A: Well, my first real job, I started working when I was
- 11 about 14; I was cashier in a grocery store. Out of high
- 12 school, I started as a short-order cook. I -- my brother,
- 13 Randy, was the short-order cook there, and he was moving to
- 14 California to go live with one of my other brothers. So, I
- 15 kind of like just took over his job, you know, just helping
- 16 prep first, and then actually being the grill person.
- 17 Q: Okay. When did you meet Henry?
- 18 A: I met Henry in maybe 1989, 1990. I was working part-
- 19 time. Well, I wasn't always a short-order cook. I stayed
- 20 there for a few years, then I got a job at the post office.
- 21 Q: Okay.
- 22 A: And I would cook on the weekends, and I worked at the
- 23 post office, and then I started working one night a week at a
- 24 lounge, and that's where I met Henry.
- 25 Q: Okay. How long did y'all date before you got married?

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1 A: We dated six months before we got married. When you
2 know, you know.

3 Q: I assume since it was only a six-month courtship, you got
4 to know Henry better after you got married?

5 A: Yeah.

6 Q: Henry said something yesterday in direct, he was talking
7 about what he did when he was a boy. Has he ever talked to
8 you about that?

9 A: Yeah, I hear a lot of the stories.

10 Q: It sounded an awful lot like sharecropping?

11 A: It was. It was. I mean, we got married after only
12 dating for six months. So, as we took trips down to South
13 Carolina to his family, because we lived in Jersey, there was
14 actually a building right down the street from the store we
15 own now that still had a sign on the door that said whites
16 only. And from hearing the stories, then I was like, oh, my
17 God, I actually married a man who I learned about in my
18 history books, because up north, we -- I'm 20 years younger
19 than him, but still you never heard of segregation and you
20 only heard it in the history books. I didn't know anybody
21 that actually lived it. My husband actually lived it.

22 Q: So, y'all get married in New Jersey, right?

23 A: Yes.

24 Q: How long were y'all there?

25 A: We came down to South Carolina and got married.

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1 Q: Oh, okay.

2 A: His family was way bigger than mine. So, it was just
3 convenient.

4 Q: And where was his family?

5 A: In Hemingway, South Carolina.

6 Q: Okay. So, what did y'all do in Hemingway?

7 A: Well, we got married in Hemingway.

8 Q: Right.

9 A: Then we went back to New Jersey.

10 Q: Gotcha.

11 A: We moved down to Hemingway in 2000.

12 Q: All right. So, what -- when you got married and went
13 back to New Jersey, what were y'all doing for a living up
14 there?

15 A: I worked for the post office and my husband was an auto
16 mechanic.

17 Q: Okay. What made you come back to South Carolina?

18 A: We wanted to have our own business, and I wanted to get
19 my boys out the city.

20 Q: Okay. And how many kids do y'all have?

21 A: I have two. Through the marriage we have six.

22 Q: Okay. I guess ---

23 A: And we have one together.

24 Q: Okay, one together. So, you wanted to come down to
25 Hemingway and start a business; what -- what business did

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1 y'all start?

2 A: Well, my husband had already had his own business. He
3 built a club from the ground; it was called Studio 261. He
4 built that in the early 80s, but he had other family members
5 running it because he lived in New York at that time. He only
6 moved to Jersey when we got together. So, when we first moved
7 down, we were running the club, and we had opened a beauty
8 supply store. My husband had bought the business -- the
9 building two years prior to us moving down. So, all of this
10 was in the working and the planning. So, then when we came
11 down, I left my job up there and started the business down
12 here, the beauty supply store ---

13 Q: So ---

14 A: --- and the nightclub.

15 Q: That's a lot of businesses?

16 A: Yeah, yeah, but we were young. We were young and, you
17 know, motivated. The club was only open two nights, but it
18 was still kind of tiresome. So, eventually we closed the club
19 and just ran the hair salon and then opened a restaurant.

20 Q: Now, are we talking about Club 261?

21 A: Studio 261; uh-huh, (affirmative response).

22 Q: How did Henry's Starlight Lounge come into play?

23 A: Well, we originally bought that property -- it was a
24 house and we were living in it, but it was right on the corner
25 of Tupperware Road and Highway 261. So, I'm not a light

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1 sleeper; he is. And then there was a gas station right across
2 the street diagonally. So, every morning you would here the
3 gas beep, beep, the pumps beeping, the trucks turning the
4 corner going down to Tupperware, and he just couldn't never
5 get no sleep. So, we closed Studio 261 and made that our
6 house.

7 Q: Okay. Did Hemingway, the City of Hemingway, did they
8 close it down?

9 A: No.

10 Q: The County of Williamsburg?

11 A: Never had a problem with anybody.

12 Q: Did the police ever come cite you for being a nuisance in
13 Hemingway?

14 A: No, we had one -- when we opened Henry's Starlight
15 Lounge, we had one ticket, and that's because we were not
16 aware of the fact that people under the age of 18 cannot be
17 around pool tables without permission from their parents,
18 written permission.

19 Q: So, how did you rectify that when they notified you of
20 that discretion?

21 A: I sent home permission slips. If they needed to come,
22 their parents had to come to the hair store and bring me the
23 permission slip, sign it in front of me, and then we had it on
24 file. So, anytime the cops came back or SLED came back, we
25 would pull the file, pull their name, and if it was there, it

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1 was fine for them to be there.

2 Q: So, if law enforcement asked you to do something to

3 comply, you did it?

4 A: Always.

5 Q: All right. So, what about Henry's Starlight Lounge, did

6 y'all have trouble over there?

7 A: That was the incident at Henry's Starlight Lounge.

8 Q: Okay. All right. So, you never had one at 261?

9 A: No.

10 Q: All right. Did y'all have a lot of gang activity in the

11 club?

12 A: None.

13 Q: Okay. And a shooting?

14 A: Once in a while outside when they driving to go home,

15 they shoot up in the air, but nothing bad, no.

16 Q: Okay. But nothing that ever caused the cops to come out

17 there and just arrest anybody?

18 A: Well, people got arrested, but not for shootings.

19 Q: Okay. What about drugs; what's your policy on drugs in

20 the clubs?

21 A: We didn't allow any drugs in the club, but you can't

22 police these people better than the police. Basically, if

23 they can't keep it off the street, it's hard for me to keep it

24 out of the club.

25 Q: Okay.

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- 1 A: But openly, we would not allow them to just smoke in
2 front of me, no. Treat me like I'm your mother; do not smoke
3 in front of me; don't do none of this in front of me. I don't
4 go for it. But what they did in the bathroom or behind closed
5 doors, you can't control all that.
- 6 Q: Were any of your employees ever arrested, cited, accused
7 of selling drugs that you know of?
- 8 A: Oh, no. We wouldn't go for that, and we mostly worked
9 family.
- 10 Q: Well, what about weapons; they had to have weapons in the
11 club, right?
- 12 A: Oh, no; we always had security.
- 13 Q: What did security do?
- 14 A: They would search everybody coming in and out.
- 15 Q: Okay.
- 16 A: Well, not out, but in.
- 17 Q: Did you ever a weapon incident inside your club?
- 18 A: Which club? Henry's Starlight Lounge?
- 19 Q: Any of them?
- 20 A: We had a couple of people try to come in and they had a
21 gun on them. Like they're dumb; they just forget they had it
22 on them and once our security guard searched them, they went
23 to jail.
- 24 Q: So, you stopped them at the door of your club?
- 25 A: That's right.

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1 Q: Okay. How about prostitution? I remember the City in
2 this case had prostitution running rampant, that's why they
3 needed this nuisance clause; what -- how much prostitution did
4 y'all do in your club?

5 A: None. Never.

6 Q: All right. So, you didn't sell drugs, you caught the
7 weapons at the door, there wasn't any prostitution ---

8 A: The weapon at the door was at Henry's Starlight Lounge.
9 At Levelz, we never had none -- we never had a weapon at the
10 door, not to my knowledge. None.

11 Q: All right. So, you get to Hemingway, you open a beauty
12 supply, you've got Henry's Starlight Lounge, and let's -- to
13 back up. Did y'all ever stop working from the time you were
14 14?

15 A: No.

16 Q: What about Henry?

17 A: Oh, no, he's still working. He's 75, and I can't get him
18 to stop. He's my Superman.

19 Q: All right. So, I take it y'all -- were you able to save
20 any money in Hemingway?

21 A: We did.

22 Q: What was your intentions for that money?

23 A: Good retirement, travel.

24 Q: But at some point, you decided to chase a dream and come
25 to Myrtle Beach? Why?

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1 A: Chase my son's dream. Because we raised him in a club.
2 Q: Who you talking about?
3 A: Henry II.
4 Q: Okay.
5 A: My baby.
6 Q: All right.
7 A: When my oldest son had to go to Afghanistan, at 11 years
8 old, we just pushed the baby right in the DJ booth. So, it's
9 in his blood. And he loves it, and he still does it today.
10 So, him and another DJ found this property 515 Ninth Avenue
11 North in Myrtle Beach, and my husband went down a couple of
12 times with him first. He's the easier one; I'm the hard one
13 to convince. So, when I went down there and finally looked at
14 the property, I just saw all the potential; this was a big
15 building, it had high ceilings. I mean, the light show, you
16 know, the -- what you can do in there it was just, okay, let's
17 -- let's try it. So, our main thing was, okay, we're gonna do
18 it for a couple of years and then turn it over to our son.
19 Six months was all we had. That's all they let us have.
20 Q: Okay. So, approximately how much in savings did you have
21 when y'all made the decision to come to Myrtle Beach?
22 A: Close to 300,000.
23 Q: And how much did you spend getting in Levelz or getting
24 it fitted up?
25 A: We spent all of it, plus we were using money that we were

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1 making every day from the hair store once we opened.

2 Q: So, it was over 300,000 in it; is that fair to say?

3 A: Yeah, to get it open and while we were open those first
4 slow months.

5 Q: I'm gonna hand you something just to refresh your
6 recollection?

7 A: Okay.

8 Q: If you can break down that money and this is something
9 that was produced in discovery. Can you kind of delineate for
10 the jury what did you do with the clubs and the other business
11 and what did Henry do; what were your respective roles with
12 the business as a couple?

13 A: Well, Henry could fix anything. He could do anything;
14 plumbing, electrical. I remember when my parents gave me
15 their brownstone up in Jersey and we were remodeling it, we
16 had to get a plumber to come sweat two pipes, and I think he
17 charged \$125 a pipe. Henry stood there and watched him; we
18 ain't never hired a plumber after that. Henry was sweating
19 pipes. He could just see something and do it. He's gifted
20 that way; and then what he can't do, I can do.

21 Q: So, he's the hands-on guy?

22 A: Uh-huh, (affirmative response).

23 Q: And you're the lady in the back with the books; is that
24 accurate?

25 A: Pretty much, yeah.

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1 Q: So, that sheet of paper I asked you to look at ---
2 A: Uh-huh, (affirmative response).
3 Q: --- does that remind of you of the kind of split of the
4 money that you had to pay to get into Levelz?
5 A: Yeah.
6 Q: So, how is it broken down?
7 A: It's \$183 spent for fixtures, furniture, hood system,
8 kitchen equipment, DJ lighting, all the material needed to run
9 the business.
10 Q: I'm a little deaf; did you \$183?
11 A: Thousand, 183,000.
12 Q: Okay.
13 A: And then it was 115,000 in labor and services. That's
14 where the -- we had people coming in, because, you know, this
15 place was -- it was a shell. It was -- it was really, really
16 bad. It was moldy and nasty. And the first thing you have to
17 do is put in a whole kitchen in order to get the license, a
18 liquor license. So, we were spending a lot of money straight
19 in. We had to do hood system, everything. So, it was a big
20 job.
21 Q: Okay. So, what about the landlord, did she approve of
22 the improvements that you made to the space?
23 A: Well, the first time I met her was when we were getting
24 ready to open. It was the beginning of July. And she did a
25 walk-through and she said, I never knew my building could look

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1 so good. She was very pleased with all the work we did, very
2 pleased.

3 Q: All right. Now, there was a little bit of this in
4 Henry's testimony and there was something in the City's
5 opening argument about 300 feet away from the church. What's
6 that?

7 A: Well, in order to get your liquor license, you have to be
8 300 feet away from a church. But see, it's not our job to go
9 out and measure anything. When you apply, SLED is supposed to
10 do all of that. So, they did bring it up in my deposition
11 that did you know you were 300 feet away from the church and I
12 told them, then you need to take that up with SLED, not with
13 me.

14 Q: So, SLED ---

15 A: But there was a bar there before I even -- we opened the
16 bar there. So, it wasn't an issue until Myrtle Beach wanted
17 that property.

18 Q: So, South Carolina Law Enforcement Division told you you
19 could sell alcohol in that location ---

20 A: Yes, sir.

21 Q: --- regardless. Did the church just pop up?

22 A: No, the church was already there.

23 Q: You can see it, right?

24 A: Yeah.

25 Q: Okay. The SLED folks could see it, right?

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1 A: Yeah, that's their job.

2 Q: All right. Just making sure. So, you mentioned you were
3 opening in July, I guess that's 2014?

4 A: We truly, truly wanted to open Memorial Day Weekend, but
5 the -- the owner had to put in a sprinkler system. The
6 sprinkler system was already in there and that's what was
7 holding a lot of things up. So, then our next goal was July
8 4th. And if Myrtle Beach would have given us a list of
9 everything we had to do, my husband would've probably walked
10 away. He would've had to convince me, but he would've walked
11 away. I mean, first, okay, now when we opened the club in
12 Williamsburg County, we got the kitchen; we did that
13 inspection; we got the A on the door; you get your license;
14 the fire marshal comes and looks; and you open up. Myrtle
15 Beach, it's -- it's such a different ballgame and they don't
16 give you a list. You go there and you think you're getting a
17 license, oh, no, now you got to go to zoning. So, you go to
18 zoning, and then you have to actually hire an architect to
19 draw the safety plan and -- I mean, you spend a lot of money
20 to open a business in Myrtle Beach, but you know you're gonna
21 make a lot of money. So, it's an investment, but ---

22 Q: But an investment to who and who are you paying that
23 money to?

24 A: Well, we paid it to the City.

25 Q: Oh.

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1 A: And then the landlord put in the sprinkler system and
2 we're like, okay, we getting ready to open now, everything is
3 done. They came and inspect, we go to get the license again,
4 nope. Now we have to pay to get a tap put from two feet from
5 the sprinkler system, that thing that comes on the outside of
6 the building, to the City. We had no idea we had to do that
7 either, but they said we had to do it, so we ran over there
8 before they closed to try to get that done. We didn't open
9 until like July 11th or July 12th. And we spent a lot of
10 money; two radio stations over \$1,000 each just for airtime.
11 We had little guys putting out flyers everywhere, social
12 media. I mean we just knew we was opening July 4th; nope,
13 bust our bubble again.

14 Q: So, when you opened, what happened on the first night?

15 A: On the first night, the cops were outside our door at ten
16 minutes to 2:00 and they gave us a citation because everybody
17 wasn't out the building by 2 o'clock. They said we had to
18 stop selling at 2:00, which we did, but we didn't know the
19 building had to be completely empty by 2:00. That means you
20 got to start putting people out at 1:30 because they drag and
21 they get out -- well, they didn't want to leave. All our
22 people from Williamsburg, Hemingway, was there supporting us,
23 and they used to us being open till 4:00. Even after 2:00,
24 the cops in the building writing a ticket. They like, come
25 on, Ginny, come on, we don't want to go home. I said, hey,

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1 that's how it is down here; that's the law. So, you got to
2 go.

3 Q: Okay. And what happened -- let's back up just a little
4 bit and explain something and make sure the jury understands
5 about the Superblock. Were you the only club in the
6 Superblock?

7 A: Oh, no. No, they had Club There, Club Global, Pure;
8 those are the only three clubs that I know of.

9 Q: So, they featured all the clubs in the same area called
10 the Superblock?

11 A: Just like everybody's back door is -- and this is the
12 parking lot, so we all share it.

13 Q: You all share the parking lot?

14 A: Even Midnight Bingo.

15 Q: Even Midnight Bingo. So, what happens at 2 o'clock when
16 you go to leave the club?

17 A: Well, we're trying to get in the car; it's not exactly
18 even 2:00, but we're trying to get in the car close to 2:30 --
19 you know, we cleaned up and everything -- and we're trying to
20 get out the parking lot to go home and everybody is coming in
21 the parking lot; we can't even get out.

22 Q: What are they coming the parking lot for?

23 A: Because they're going to Club Global and There, other
24 clubs.

25 Q: How are they open?

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1 A: Well, they have a seat permit; the afterhours permit.
2 We didn't have it then. They didn't give it to us right away,
3 and they were actually trying to not give it to us. Because,
4 basically, if you're not open after 2 o'clock, you ain't
5 making no money. The young people don't come out till 1 or
6 1:30 in the morning. So, if you're closing up at 2:00, it's
7 slim pickings.
8 Q: Okay. Now, in the club -- are you and Henry at home or
9 are y'all working?
10 A: Oh, no, we're working.
11 Q: What do you do?
12 A: I was at the door every night. Every night that club was
13 open, I was at the door scanning IDs. We were the only club
14 on the beach that had an ID scanner. Every person came in
15 that club had an ID and I scanned it.
16 Q: What's Henry doing?
17 A: Henry is doing anything that needs to be done; watching
18 the cameras, watching the workers, doing whatever needs to be
19 done.
20 Q: What about after hours; when you close down, y'all just
21 shut it up and go home?
22 A: No, we clean inside the club. All the workers help clean
23 the club; Henry cleaned outside the club.
24 Q: Cleaned up outside the club?
25 A: Uh-huh, (affirmative response).

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1 Q: Where is he cleaning up outside the club?

2 A: In the front, in the back, anywhere there was garbage, he
3 picked it up.

4 Q: In the parking lot you shared with all those other clubs?

5 A: Yeah, if it's close enough to us, yeah, he'll pick it up.
6 Sometime I have to stop him in Sam's Club parking lot; I'm
7 like, Henry, this ain't your parking lot. He walks across
8 garbage, he's picking it up; he ain't walking over it.

9 Q: So, you mentioned earlier you got a security company.
10 Did you have any problems with your security company
11 protecting the club?

12 A: No. We had -- we had private bouncers and we had APS.
13 APS was SLED certified security.

14 Q: So, you said the first night you got a citation that
15 everybody is not out. When's the next time you run into a
16 City of Myrtle Beach policeman?

17 A: I think it was in October.

18 Q: Yes, October. The truly dangerous behavior by you and
19 Henry?

20 A: Yeah.

21 Q: Tell me about the sparkler?

22 A: Well, my son frequented the Club Heat, and anytime
23 somebody bought a bottle of wine or bottle of champagne and
24 they were in the VIP, they would get their bottle served by
25 the girl with the sparklers on it, so everybody could see them

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1 and, you know, they kind of like boast, yeah, I'm in VIP; I
2 got a bottle. We had no idea ---
3 Q: Not to cut you off, a sparkler; the little thing we give
4 the five-year-olds on 4th of July?
5 A: A sparkler.
6 Q: Okay. So, keep going. There's a sparkler on the bottle?
7 A: Yeah.
8 Q: And what happened?
9 A: Well, apparently somebody took a picture, maybe one of
10 their chief checks they call it; their many walkthroughs we
11 got on a regular basis. Somebody took a picture of it and
12 gave it to the fire marshal. So, the fire marshal contacted
13 us, and we got a ticket. But when my husband went to court,
14 he owned up to it because we did it, but we didn't know it was
15 illegal. So, they -- they threw it out.
16 Q: What was the ticket for?
17 A: Having a sparkler inside city limits.
18 Q: Okay. Anybody get hurt?
19 A: No, sir.
20 Q: Do you know of anybody ever getting hurt from a sparkler?
21 A: No.
22 Q: Okay.
23 A: All the other clubs did it, so we just figured it was
24 okay.
25 Q: So, October the devastating sparkler incident?

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1 A: Uh-huh, (affirmative response).

2 Q: It probably sent shutters of fear to the citizens of
3 Myrtle Beach. When did you meet or when did you have another
4 run-in with the City of Myrtle Beach?

5 A: Maybe in December.

6 Q: Do you remember what happened in December?

7 A: In December, I believe that's when they alleged that one
8 of our bartenders sold a drink after 2 o'clock.

9 Q: Alleged; what you mean?

10 A: I say alleged because the report says that he ordered a
11 Jim Beam and we never sold Jim Beam. They can look at our
12 account at Green's Liquor, that's where our account was, and
13 we've never bought Jim Beam. So, how did he order Jim Beam; I
14 just don't understand that.

15 Q: But what it was is SLED said you served -- what did you
16 do, what was the actual violation?

17 A: It was after 2 o'clock. So, to alleviate that, my
18 husband then every night we were open at five of 2:00, he
19 would sit behind that bar to make sure them girls didn't do
20 anything wrong.

21 Q: Anything else happen in December?

22 A: I think December might've been when they -- we had a
23 little fist fight.

24 Q: No.

25 A: No? Let me think, December.

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- 1 Q: Maybe having to do with smoking?
- 2 A: I spoke to Lisa Robertson on a regular basis. I was
3 telling her everything. She was pretending to be my best
4 friend.
- 5 Q: No, smoking, another violation?
- 6 A: Oh, the weed?
- 7 Q: Yeah, was there a weed violation in December?
- 8 A: Yeah. Yeah, I believe they found somebody in the
9 bathroom.
- 10 Q: Okay. So, we got October -- well, actually go back to
11 July. The day you open, they say shut down at 2:00; what did
12 you do after that?
- 13 A: We closed at 2:00.
- 14 Q: You shut down at 2:00?
- 15 A: Yeah.
- 16 Q: Right. So, you did what they asked; you abated the
17 problem. In October, the devastating sparkler, what did you
18 do after that, did you keep selling sparklers?
- 19 A: No, we never sold one.
- 20 Q: You abated that, too?
- 21 A: We stopped giving them out with the drinks.
- 22 Q: Okay. So, now we get to December and the mysterious
23 drink that you don't even stock being served to a SLED agent,
24 what did you do to make sure that didn't happen again?
- 25 A: My husband sat behind the bar at five till 2:00 every

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1 night we were open.

2 Q: So, every time they came to you, you did what they asked?

3 A: Yes, sir.

4 Q: Let's get to January. Do you remember what happened on
5 January 18th of 2015 at your club?

6 A: January 18th, I think that's when the fist fight
7 happened.

8 Q: What fist fight?

9 A: Two guys started fighting in the first VIP booth and it
10 -- it went out. APS came in, our bouncers, they grabbed
11 everybody; it went to the outside. It went to the outside in
12 the back, so I didn't really see anything that was going on,
13 but I was already told by Ms. Robertson, if you call in an
14 incident, it will not be held against you. But, if one of
15 your patrons call in, then that's gonna be held against you in
16 a file. So, I called and told them that there was a fight
17 outside with a couple of gentlemen that we needed assistance.
18 And by the time the police came, everybody had done gone and
19 went home. We was already cleaned and getting ready to go
20 home ourselves. So, it took them forever to come to that
21 call.

22 Q: Where is -- where is the nearest police station in
23 reference to your club?

24 A: The police station is two blocks away. When we first
25 opened, we was like the police station is only two blocks

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1 away; this is a good thing, you know. They're local. They're
2 gonna be right here if anything happens, no. When we didn't
3 need them, they were always there; but when we needed them
4 that one time, one time, they weren't there.

5 Q: I want to back up to something you just said to make sure
6 the jury understands. When you called about the fight and
7 they showed up too late to find any evidence of it ---

8 A: Uh-huh, (affirmative response).

9 Q: --- what did Ms. Robertson tell you?

10 A: She told me it wasn't gonna be held against us.

11 Q: Huh. Did she?

12 A: Yes, she did.

13 Q: Uh-huh, (affirmative response).

14 A: That's in our very thick nuisance letter.

15 Q: So, not only did she tell you it wouldn't be held against
16 you, she said if you let somebody else call, that will be held
17 against you?

18 A: Right.

19 Q: So, she's encouraging you to make calls, right?

20 A: Yeah.

21 Q: And then she used it against you?

22 A: Yes, she did.

23 Q: Okay. So, that's the 18th. And you didn't call her --
24 on the 18th is when you made the call complaining of the
25 fight, right?

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1 A: Right.

2 Q: The cops didn't show up in time?

3 A: No.

4 Q: You didn't call Ms. Robertson until later, correct?

5 A: Right, but she had told me that it wouldn't be held

6 against us in the very beginning before we even opened. She

7 was explaining things to us.

8 Q: Okay. Now, coming up on what you like to call Armageddon

9 weekend. Tell me about it.

10 A: Well, I was ---

11 Q: It's on a Friday night, January 23rd, what happened?

12 A: We had four cop cars in the front of our building with

13 all their lights on.

14 Q: For how long?

15 A: All night.

16 Q: All night?

17 A: Just about; hours.

18 Q: Okay.

19 A: The beginning of the night when there was nobody there,

20 they weren't there. The prime of the business between like

21 1:00 and 3:00, because at 3:00 people start going home. The

22 cop cars were there. We had four cop cars in the front; there

23 was two in the back, and they all had their lights on like --

24 like there was a big shootout or somebody got killed, and

25 there was nothing. Everything was peaceful. And I was

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1 pissed because that's harassment.

2 Q: So, what did you do?

3 A: Well, on Saturday night, a sergeant pulled up in a little
4 golf cart and he said, the reason there's such heavy police
5 presence is because something went down in Conway and then
6 word on the street is there was gonna be retaliation at our
7 club. So, Saturday night was the same thing.

8 Q: Okay. Well, hold on now. A cop shows up and says
9 there's gonna be a hit at your club?

10 A: Some kind of retaliation.

11 Q: Some kind of retaliation.

12 A: Something's going down at Levelz.

13 Q: Did he give you a name?

14 A: No.

15 Q: Did he give you a picture?

16 A: No.

17 Q: Did he give you a description?

18 A: No, didn't know if they were going to be white, black,
19 nothing; female, male, nothing.

20 Q: A cop pulls into your parking lot and says today somebody
21 is gonna come up here and shoot and then drives off?

22 A: Yep.

23 Q: How -- did that assist you in anyway?

24 A: We didn't know what kind of retaliation. But, you know,
25 we just made sure the guards were on alert, you know, aware,

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1 and search everybody extra good, you know, stuff like that.

2 Q: So, that's between late 24th and 25th. Cops are in the
3 parking lot with all the lights on all night?

4 A: Yeah.

5 Q: What did you do on the 26th, which is the following
6 Monday?

7 A: The first thing I did was call Lisa Robertson and
8 complain, raised a little -- complained good.

9 Q: What did you complain about?

10 A: I complained about the harassment because they're not
11 doing that nowhere else. When we leave, when we close at 2:00
12 and we leave, we drive by all the other clubs. We took video
13 because they kept telling us on Saturday night, you have to be
14 closed at 2:00, not just stop selling liquor, doors closed.
15 But on Saturday night, There, Global, Pure -- when they're
16 open because they weren't open on a regular -- Third Avenue
17 Bar & Grill, Heat, everywhere was open; we were the only ones
18 that had to close and we couldn't understand that.

19 Q: You said Global?

20 A: Uh-huh, (affirmative response).

21 Q: That's in the Superblock?

22 A: Global, There, uh-huh, (affirmative response); they're
23 both in the Superblock.

24 Q: And Pure?

25 A: And Pure, but their patrons were a different nationality.

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1 We were a urban club, so we had black patrons; they had white.
2 Q: Gotcha. All right. So, you mentioned the Heat Lounge?
3 A: Yeah.
4 Q: What's that?
5 A: That was a club maybe 15 blocks from us. Basically, it
6 was the other urban club, so they were our competition.
7 Q: Huh, competition, huh?
8 A: Uh-huh, (affirmative response).
9 Q: They were bigger than you?
10 A: Well, they were in business before us. They had two
11 levels, so, you know, maybe square footage they were bigger,
12 but they had great business.
13 Q: I want you to think hard and remember back to the 22nd,
14 when you called or the 26th, when you called Officer
15 Robertson.
16 A: Uh-huh, (affirmative response).
17 Q: Did you complain about being treated differently than the
18 other clubs?
19 A: I did.
20 Q: Did you specifically mention any of those clubs?
21 A: I mentioned the Heat.
22 Q: You mentioned the Heat Club?
23 A: Uh-huh, (affirmative response). Because the people at
24 Global and There, they wasn't coming to us anyway, because we
25 didn't play their type of music.

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1 Q: So, what exactly did you complain about with regards to
2 Heat?

3 A: Well, I complained about we weren't being treated like
4 everybody else, and I felt like maybe some of the cops was in
5 the Lad's pocket, that was the owner of the Heat, because any
6 time you drive by you see the cops hanging out with them
7 outside.

8 Q: So, what happened when you mentioned that to Ms.
9 Robertson?

10 A: Well, she didn't stay on the phone with me too long. She
11 said she would call me back.

12 Q: Then what happened?

13 A: She called me back.

14 Q: And what did she do?

15 A: She told us that she wanted us to come in for a meeting,
16 but the very next day ---

17 Q: Hold on. I got -- she set the meeting. When did she set
18 that meeting?

19 A: February 2nd.

20 Q: February 2nd. Now, we're jumping the gun a little bit,
21 now you can go there.

22 A: Okay.

23 Q: What happened the very next day after you said you're
24 treating Heat differently and they got cops on their payroll?

25 A: She started the nuisance letter.

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1 Q: Thank you. The next day?

2 A: The very next day.

3 Q: And in that nuisance letter, the call from January 18th
4 that she told you was not gonna be held against you, was one
5 of the nine calls that they were using to shut Levelz down,
6 correct?

7 A: Yes, it was.

8 Q: Right?

9 A: Yes.

10 Q: Okay. So, there's gonna be a hit at your club on the
11 23rd, 24th, 25th?

12 A: Uh-huh, (affirmative response).

13 Q: Are the cops back the next weekend?

14 A: No, the next weekend it was -- it wasn't that much. We
15 didn't have no cop cars parked out front. Matter of fact, two
16 cops came by and they spoke to me right at the door. They had
17 told me that a young lady was gonna come, supposedly come to
18 Levelz. She had up on the social media that she was partying
19 at Levelz that night. They told me exactly what she was
20 wearing, and he gave me his business card, and he told me when
21 she shows up, give them a call?

22 Q: Did that make you nervous?

23 A: Well, you try to do what the cops ask you to do, but at
24 this point, we was being treated so badly by the cops, I was
25 like, well, do I help them or do I not. So, I was like, the

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1 right thing to do was to do what they asked.
2 Q: Sounds like Henry.
3 A: His goodness rubs off on me.
4 Q: So, they said here's the person's name, here's a picture,
5 this is what she looks like; she's got a warrant in North
6 Carolina for something.
7 A: Yeah.
8 Q: And they were able to give all this to you?
9 A: Yeah.
10 Q: And what did you do?
11 A: I called them when she got there.
12 Q: And they came and arrested her?
13 A: They did, and she was standing outside and she wouldn't
14 give them the ID, and of course they couldn't prove anything.
15 So they called me outside, and I was like, look, sweetie, just
16 go ahead and give them your ID because you -- I had to scan
17 your ID for you to get in this club. So, let's not play this
18 game; just go ahead and do what you got to do.
19 Q: And your security system is actually how the police were
20 able to arrest this woman and take her back to North Carolina?
21 A: Yeah.
22 Q: But you're the nuisance?
23 A: How about that.
24 Q: All right. So, now we get to February 2nd, the meeting
25 with Tom Ellenberg, and Police Chief Gall, and Ms. Robertson.

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1 What did you think that meeting was going to be about?

2 A: I thought they were going to call us in and we were gonna
3 sit down and have a civil conversation about all this
4 harassment, because we didn't want nothing special; don't
5 treat us special; don't do nothing extra for us; just let us
6 do what you're letting everybody else do. That's it. We just
7 wanted to be treated like everybody else. If they get to run
8 their business and stay open to after 2:00, or whatever; if
9 they get to have sparklers -- what -- whatever y'all letting
10 them do, if we want to do it; let us do it. That's all. We
11 didn't want nothing special. But when we got in that meeting,
12 we were blindsided.

13 Q: What happened?

14 A: They gave us this two-page nuisance. And I'm looking
15 through it and I see the call that I made -- which they said I
16 refused my name; I didn't refuse my name. Nobody never even
17 asked me what my name was. I was so busy trying to tell them
18 what was going on so they could get there, they never asked me
19 my name. Why would I have to refuse my name; I don't have any
20 warrants. I'm one of the owners of the club. I'd give them
21 my name, but they never asked so I didn't tell them.

22 Q: So, they give you this nuisance paper; what did they tell
23 you about your business?

24 A: That we're a nuisance, like we're a bad seed; and there's
25 nothing bad about us.

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1 Q: So, y'all talked about fixing everything, right?

2 A: Well ---

3 Q: I mean, there's ---

4 A: Well, the worse thing they had on the nuisance ---

5 Q: Is that what ---

6 A: --- all they had on the nuisance, out of the nine items,
7 I think five of them have to do with weed. One was out in the
8 back parking lot, it could've been anybody. Basically, my
9 feel -- I feel if -- if Myrtle Beach can't keep the drugs out
10 the city, how you expect me to keep it out the club. You
11 expect me to police the club better than you can police the
12 city, and I'm just one person, two people. You have a whole
13 police force and you can't keep ---

14 Q: Well, my question is, did you discuss what you and Henry
15 had to do to keep the club open?

16 A: Yes, we did. We knew we had ten days to fix this
17 problem. So ---

18 Q: Whoa. Okay. So, you did do some stuff to fix it?

19 A: Oh, sure we did.

20 Q: Did Mr. Ellenberg -- what did -- did he say something
21 that ---

22 A: Oh.

23 Q: What did he say?

24 A: That man was like Boss Hog, but ten times worse. He --
25 he talked to us like we was -- I wouldn't even talk to my dog

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1 like that, but he talked to us like we was just trash, low
2 lifes, like we was the worse people in the world. He -- he --
3 he basically threatened us. He said if you don't leave, pack
4 up your stuff and leave and voluntarily give in your license,
5 you're gonna lose everything. He said, I've closed many clubs
6 down, have never lost a case, and I'm not going to lose this.
7 So, I'm giving you fair chance to leave. So, I asked him let
8 us stay open one season because, see, we opened in July, but
9 nobody really knew about us. So, we didn't really start
10 having people come until like December and January and
11 February; that's off season, it's freezing at the beach. All
12 we had was the locals. We just wanted one -- if you don't
13 want us here, give us one season where it's vacation season
14 and the beach is packed, and let us make our money back and we
15 would've left. That's what we said, just let us make our
16 money back, we'll leave. No, we want you out of town now, as
17 my husband says, before sundown. So, my husband told them no,
18 we can't leave because we invested too much money, all of our
19 money.

20 Q: You said they gave you a sheet of paper about the
21 nuisance and there were nine things on it?

22 A: Uh-huh, (affirmative response).

23 Q: Five of them were joints?

24 A: Uh-huh, (affirmative response).

25 Q: And one was that devastating sparkler?

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1 A: Yeah.

2 Q: One of them ---

3 A: Was my call.

4 Q: --- was your phone call that they had actually -- they

5 didn't have a name of who was fighting. The only thing they

6 had was your phone call?

7 A: Yeah, and they got there when it was done.

8 Q: And they used it against you and said it was your fault;

9 that's what they popped you with, five joints, a sparkler and

10 rest of ---

11 A: And I asked them, I said, wow, is the Heat nuisance this

12 little, too; do they have a nuisance? Because I know there

13 was a shooting at the heat in July.

14 Q: July 14th?

15 A: We was just opening and there was a shooting there, but

16 they didn't get closed down. It was ridiculous how they was

17 treating us.

18 Q: What did Mr. Ellenberg do when you mentioned the Heat?

19 A: Oh, he got indignant. I accused him of his cops taking

20 bribes from the Heat, and he got real, real nasty.

21 Q: But you were repeating the same thing that you had said

22 to Ms. Robertson?

23 A: Yeah, because I believed it my heart, and I mean, I talk

24 to people. I'm a friendly person; I'm a talker. Henry thinks

25 I flirt a lot, but I'm talking; I'm getting ammunition. I'm a

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1 talker, so I mean, I've heard stories of other promoters at
2 the Heat and what they seen, and, you know, it's hearsay, but
3 I know them cops was getting some money. Little -- little
4 behold, not a month later, the Heat owner get locked up for
5 racketeering, money laundering, drug trafficking. Oh, but
6 what I said held no wait, but he gets locked up in -- in late
7 February, sometime in March, and still his club don't get
8 closed down. It don't get closed down until like October.
9 Q: And what ---
10 A: A hundred and eighteen charges and his club is still
11 open.
12 Q: And were you ---
13 A: My customer smokes weed; we get shut down.
14 Q: Well, he didn't have that sparkler?
15 A: Well...
16 Q: Now, we're talking about -- I lost my train of thought.
17 A: I'm sorry.
18 Q: So, you know the City wants you out ---
19 A: Uh-huh, (affirmative response).
20 Q: --- on February 2nd? What does Jenni say?
21 A: Oh, we're not going. We can't; how can we just walk away
22 from all of that, all the money we spent; we can't. So, the
23 worst thing they really had on there -- we had already stopped
24 with the sparklers. My husband was already sitting behind the
25 bar every night at 5 till 2:00 to make sure that nothing is

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1 sold after 2 o'clock. So, the only thing they really had was
2 the people smoking the weed, if it was weed. You know, some
3 of it was, but you know, I can't tell black and mild from
4 because I don't smoke. I don't smoke nothing, so they all
5 smell the same to me. They got these sweet-smelling things.
6 Well, we hired five extra APS guards to be in ---

7 Q: That cost money, did it not?

8 A: Oh, of course it did. We was spending 7, \$800 a night,
9 just in guards. We hired five extra ones just to patrol
10 inside the club; it was now a smoke-free club.

11 Q: A smoke-free club.

12 A: You couldn't even smoke a cigarette because we can't tell
13 the difference. I mean, they undo black and milds and, you
14 know, so, just to be safe with everything, smoke-free club.
15 So, of course that's gonna bust your business, too. So, now
16 everybody has to go outside to smoke or they just don't come,
17 because when some people drink, that's the only time they do
18 smoke cigarettes. I got people in my family, they don't
19 smoke, but if they have a drink, they might smoke a cigarette.

20 Q: So, your plan was to fight it?

21 A: Of course it was, but before we got a chance to fight it,
22 a young man -- we had a Valentine's Day party and the young
23 man was thrown out of the club because he was smoking. So, he
24 walked out the backdoor, down the -- up the alley, across the
25 front. He had two other friends with him, they were walking

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1 in front of him. And he walked in front of our club, in front
2 of the building next door, and then a gentleman jumped out
3 between two cars and shot him and walked over to him and
4 continued to shoot him. And our security guard chased the
5 shooter and shot him and the cops picked him up two blocks.
6 Q: So, this did not happen in Levelz?
7 A: No, it had nothing to do with Levelz; there was no fight
8 inside.
9 Q: Not your parking lot?
10 A: No, Levelz don't have a parking lot; the city has a
11 parking lot.
12 Q: Okay. And it wasn't even in front of Levelz?
13 A: No, it was not.
14 Q: And the reason the man was there is because you kicked
15 him out of the club for smoking, which you did because the
16 City was making you?
17 A: Yes, he -- he started -- he was kind of a regular. I got
18 familiar with his name; he as a nice young kid.
19 Q: Now, did the shooter come to your club?
20 A: Never.
21 Q: Do you know the shooter?
22 A: No. I ran his name through the ID scanner, and he had
23 never been in our club, never.
24 Q: So, the City then uses that ---
25 A: They used that to close us immediately.

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1 Q: Immediately. So, did they ever tell you what you were
2 supposed to do; were you supposed to send every person that
3 leaves your club home with an armed guard ---

4 A: No.

5 Q: --- to make sure they don't get shot?

6 A: No.

7 Q: What were you supposed to do; did they tell you?

8 A: No, we just put him out because he was smoking, and we
9 didn't want to get closed down because somebody was smoking in
10 the building.

11 Q: I'm talking about the shooting?

12 A: Oh.

13 Q: If they're gonna hold a shooting next door against you
14 for a guy -- when the victim was in your club, how -- what are
15 you supposed to do? How is that your fault? Did they ever
16 explain it to you?

17 A: No.

18 Q: They just shut you down?

19 A: Yeah. The Monday after the shooting, Lisa Robertson
20 called me and she said, what are your intentions. And I told
21 her we intend to open Friday night, and we were gonna have a
22 fundraiser. All the proceeds that we collected at the door,
23 we were gonna give to the family to help pay for the funeral,
24 because that's what we do. We done it at Henry's Starlight
25 Lounge, a young boy was racing and got killed; we bought his

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1 tombstone. Another boy in a car accident got killed; we
2 raised money and helped pay for his funeral. That's just --
3 that's what we do. If these people spend money with us, how
4 can we not do something back for them, you know, especially if
5 they really need it. A young lady who was coming to Levelz
6 got burned out; everything the door made that night, we gave
7 to her. I mean, that's just -- that's how we are.

8 Q: It's a Good Samaritan?

9 A: Yeah.

10 MR. PLAYER: Your Honor, may I approach the witness?

11 THE COURT: Yes, sir.

12 BY MR. PLAYER:

13 Q: Do you recognize, and it's two separate documents; do you
14 recognize what they are?

15 A: Yes, 2014 tax return.

16 Q: And ---

17 A: 2015.

18 Q: So, you came to Myrtle Beach to make a lot of money. It
19 doesn't look like you made a lot the first year; is that
20 unusual -- I mean, you owned a lot of businesses?

21 A: No, when you own a business -- actually, the first couple
22 of years sometimes you're in the red because you spend so much
23 to get it up and going and started, and we spent a lot of
24 money at Levelz. And so, in 2014, we were really, really in
25 the red. But 2015 ---

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1 Q: How long did you operate in 2015?

2 A: In 2015, we were only open six weeks.

3 Q: Six weeks.

4 A: Two nights a week.

5 MR. PLAYER: All right. So, at this time, Your Honor, I
6 think without objection, we'd like to enter -- we'll just do
7 them all in one exhibit and I think it's number 5 -- is that
8 right, Tommy -- Plaintiff's 5 will be the tax returns?

9 THE COURT: Any objection?

10 MR. BRITTAIN: Without objection.

11 THE COURT: All right. Plaintiff's 5 is into evidence
12 without objection.

13 PLAINTIFF'S EXHIBIT NUMBER 5

14 ADMITTED INTO EVIDENCE

15 BY MR. PLAYER:

16 Q: Did you remember how much y'all made in January of 2015?

17 A: 34,000.

18 Q: \$34,000 in a month. What did you make the six months
19 between July -- just the gross, obviously not what you put in,
20 but what did you gross in July to December of 2014?

21 A: From July to December, it's 51,000.

22 Q: So, six months, the first six months, you only take in 51
23 at the door?

24 A: Uh-huh, (affirmative response); well, 51 bar and all.

25 Q: Okay. But January, those six weeks, you made 34,000?

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1 A: Yes, sir.

2 Q: And this is off-season now?

3 A: Yes, it's freezing.

4 Q: Actually, I'm from Columbia. You say the off-season, I
5 think that's when my kids out of school during the summer and
6 they drive me crazy?

7 A: No.

8 Q: What does it mean to a business owner at Myrtle Beach,
9 what does the season?

10 A: The good season in Myrtle Beach is from Labor Day
11 weekend, that's like when the summer starts till -- no, no. I
12 get them holidays mixed up all the time. It's Memorial Day in
13 May, right? Okay. Memorial Day weekend to Labor Day
14 weekend, that's the prime season because that's when everybody
15 is vacationing; that's when the beach is busy. That's prime
16 season. In the wintertime, that's the slow season.

17 Q: How much did you expect revenue to increase during the
18 good season in Myrtle Beach?

19 A: If you just go by the 34,000 we made for the first six
20 weeks, I mean, if you -- if you do the math, that first year
21 if we just did and that's -- mind you, we only opened on
22 Friday and Saturday -- if we did that, we would have made over
23 \$400,000.

24 Q: So, you would've made your money back if they had left
25 you in there for the summer?

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1 A: Oh, yeah, we would have made our money back. Now, and
2 then in the summer, we could have been open more days. This
3 was only two nights because it's off season. During the
4 season, people party every night at the beach. They're there
5 to vacation; they're not waiting till Friday. If they're
6 there on Wednesday, they want to have fun. So, we had the
7 potential of making a lot -- a lot of money.

8 Q: But the City weren't gonna have it, were they?

9 A: No, huh-uh, (negative response). They had plans for that
10 property long before we opened it.

11 Q: So, at what point did the landlord say that's it?

12 A: I got a certified letter from the landlord shortly after
13 they gave us the nuisance, the nine-item nuisance.

14 Q: Well, what did she send you a letter for?

15 A: She sent me a certified letter telling me that we had ten
16 days to get out. So, now we got to fight the landlord and
17 fight the City.

18 Q: So, why is she telling you to get out?

19 A: Because the City scared her and told her that she would
20 not be able to rent her building out for a year.

21 Q: Did they tell you that, the City?

22 A: Well, they told us if we was closed down with the
23 nuisance, that it would have to be closed a year, but we had
24 already -- we knew we already did what we needed to do to fix
25 it. We had the five extra guards making it a smoke free

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1 building.

2 Q: So, Ms. Davis canceled your lease before the shooting or
3 after?

4 A: Before.

5 Q: Before the shooting, you don't have a lease anymore?

6 A: No.

7 Q: Can you operate a club if you can't go in the building?

8 A: No.

9 Q: So, essentially, the shooting was an afterthought?

10 A: But they used the shooting to close us immediately; they
11 wouldn't even allow us to open up to raise money for the
12 family. I mean, that's just -- that's just cold. They made
13 sure we were in court that Friday after the shooting and the
14 gentleman that was there, which I know was Mr. Battle's son,
15 we didn't really know what was going on, because this was like
16 a second nuisance. We still spinning from the first nuisance,
17 but we knew we did what we needed to do to fix that but,
18 before we could even stand up in court and say this is what we
19 did to solve this problem, they served us again and brought us
20 in court. And the attorney that we had never had to deal with
21 a nuisance before. I don't think he fully understood, but
22 from what I heard on the phone from Mr. Prosser and the
23 gentleman, whoever he was speaking to at the solicitor's
24 office, said that we will not be held accountable for
25 anything. So, they made us feel like the shooting was our

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1 fault, like we could be sued because this young man got
2 killed. So, basically ---

3 Q: What did that do to you?

4 A: Oh, we were scared. I mean, we're hardworking people,
5 but you know, people can sue you and take everything you got.
6 So, and I mean, we already knew the shooting really had
7 nothing to do with our business, but that's not gonna stop
8 somebody from suing you. His parents -- his mother tried to
9 sue us. So, I got a letter -- we got a letter from an
10 attorney in Florida and it took like a few days, we played
11 phone tag. I called him; he called me. When we finally got
12 on the phone and I explained to him -- he was like, oh, he got
13 killed in your parking lot; I said no, he did not. He got
14 killed in front of the building next-door to us on a city
15 street, and it had nothing to do with our business. There was
16 no fight inside. He wasn't even in an argument with anybody.
17 Basically, he was put out the building because he was smoking,
18 and the two gentlemen that was with him walked him around to
19 the front of the building. He didn't have a car; he wasn't
20 driving. They led him to that ambush; and it is sad. Nobody,
21 you know, we don't want nobody to lose their life. It's sad,
22 but it had nothing to do with our business, but they used that
23 as ammunition to close us for good. When we got to the Court
24 ---

25 Q: Go ahead.

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1 A: --- because our lawyer said we didn't have to go, but we
2 still wasn't fully understanding of what was going on. You
3 know, you can show me the paper and -- it's lawyer terms. I
4 didn't go to school for that. I didn't fully understand what
5 was going on, and I knew if I didn't understand it, neither
6 did he. So, we went, even though they said we didn't have to
7 go, we went. And I got up and I asked the gentleman, I said,
8 I don't understand what's going on. He said, well, basically,
9 you've been deemed a gang club, and you don't have a right to
10 fight.

11 Q: All right.

12 A: And we left.

13 Q: But your lawyer wasn't there?

14 A: No.

15 Q: Okay. Had the conversation on the conference call
16 occurred before or after that?

17 A: The conference call was before that in the lawyer's
18 office.

19 Q: So, your lawyer -- you heard the conference call with the
20 guy from the solicitor's office and that's when the decision
21 was made that you were gonna sign the consent order?

22 A: Uh-huh, (affirmative response).

23 Q: Okay. So, you had already ---

24 A: We weren't fully knowing what we was consenting to.

25 Q: Correct. It was never explained to you?

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1 A: Not fully.

2 Q: Okay. Did you believe you were a nuisance?

3 A: Oh, I knew we weren't a nuisance.

4 Q: Is there anything, Ginny, -- and you know, you got to be

5 honest; you're under oath. What could you have done to

6 prevent these problems at the club?

7 A: Well, the problems that we had in the club, we already

8 did everything to prevent that. We had the five extra guards

9 to stop -- it was a smoke-free club. There's no way we could

10 have prevented what happened to that gentleman on the outside

11 of the street. I mean, Myrtle Beach is the one that told us a

12 couple of weeks prior to that, that something was going down

13 at Levelz, and if they really wanted to prevent anything from

14 going down at Levelz, they need -- all they have to do is put

15 one cop car in the front, no lights, and one cop car parked in

16 the back, and that guy wouldn't have sat and waited for this

17 gentleman to be lead to his death.

18 Q: So, you don't know ---

19 A: They weren't there.

20 Q: So, your problem with the cops being there is not the

21 cops being there, right?

22 A: No, huh-uh (negative response). I don't have a problem

23 with cops.

24 Q: Well, what ---

25 A: It's the harassment, it's the ---

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1 Q: Well, what's the difference if the cops are there with,
2 you know, what's the difference between the good cops that you
3 like to be there and the cops that you think is harassment;
4 what's the difference?

5 A: Well, you can't tell the difference between a good cop
6 and a bad cop; they're all just cops. But I mean, if cops
7 hanging outside and stuff like that, nobody cares about that,
8 but it's when you got ten cops walking in the building
9 harassing customers, asking for ID and things like that;
10 that's harassment.

11 Q: Well, what -- what effect does a police vehicle or any
12 emergency vehicle with its lights on at your business; what
13 does that do to business?

14 A: Well, it looks like something bad is happening. So, who
15 wants to a business where something bad is happening?

16 Q: On Armageddon weekend, was it just one car?

17 A: Oh, no it was four cop cars on the front and two in the
18 back.

19 Q: And they all have the lights on?

20 A: All the lights are on and then all -- it's nothing but
21 businesses right there, so all the lights were reflecting off
22 all the glass; it looked like -- it looked like it was may
23 more than four; it was ridiculous.

24 Q: So, what would you have preferred -- I think you just
25 said it, but let's reiterate -- what would you have preferred?

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1 A: There could've been a cop car in the front -- there was a
2 median on Ninth Avenue North. A cop car could've been right
3 in the middle of the street; a copy could've been there
4 sitting in it. I don't have a problem with that. It could've
5 been a cop car in the back parking lot; no problem with that.
6 Four cop cars with their lights blaring when there ain't
7 nothing happening, that's ridiculous. That's sending a
8 message don't come here; something bad is happening. But if
9 one cop car would've been there, that boy wouldn't have got
10 killed.

11 Q: All right. Now, you're the fighter ---

12 A: Since they knew something was gonna happen.

13 Q: You're the fighter. What was Henry doing in all this;
14 did he decide it was time to leave?

15 A: Oh, Henry wanted to leave even before it was time to
16 leave. He was scared.

17 Q: So, what happened?

18 A: Not scared in the cowardly way, but he -- he's nowhere
19 near a coward, but he was -- he was scared for our lives, and
20 I truly didn't even understand that until after that fact.
21 And I think so much because of my mouth, you know, when I
22 started accusing the cops of taking, you know, of them taking
23 bribes from the Heat and stuff like that, that's something he
24 would never say, but ---

25 Q: So, what did Henry do?

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1 A: Oh, he tried to sell the business and I didn't know -- I
2 didn't even know any of that was happening until after we got
3 ambushed in the meeting with the nuisance. That's after we
4 left the meeting, that's when he told me that he had a
5 potential buyer for the building. And I called Lisa Robertson
6 and I -- I asked her, because we didn't really know all the
7 legal, you know, things about any of this. And she so acted
8 like I'm there for you, we don't want to close you down, you
9 know, we're there for you; just call us and let us know what's
10 going on, and we'll help you every step of the way.

11 MR. PLAYER: May I approach the witness, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. PLAYER:

14 Q: This has been entered as Plaintiff's Exhibit 4. Do you
15 recognize what that document is?

16 A: Yeah, it's the contract between my husband and Natalie.
17 I didn't even know her name when I first was talking to Lisa
18 Robertson?

19 Q: Did Henry sign that before you knew about?

20 A: Let me look at the date. The 27th day of January, yeah.
21 He signed it right after the weekend of Armageddon.

22 Q: Okay. And incidentally, the same day he said he filed
23 the papers ---

24 A: Actually, yeah, it is.

25 Q: What happened with that contract? I mean, Natalie just

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1 told us, but ---

2 A: Yeah, he let her off the contract.

3 Q: Why did she want to get out of it?

4 A: Well, actually, they were at the closing, which I think
5 was on February 12th before the shooting. The closing was at
6 the law firm, Prosser Law Firm, and the landlord called during
7 the closing and told Natalie that she wasn't gonna rent the
8 building to her. So, therefore, she didn't have a reason to
9 buy our business because now she doesn't have the building to
10 keep it in. Who is gonna buy a business to move it?

11 Q: Well, you also had a signed contract; what didn't you
12 hold Natalie to it?

13 A: That's just not the right thing to do. I believe
14 strongly in karma. And, we're good people and we don't mind
15 doing things to help people, because if you let it more will
16 come back in. If you -- if you hold your fists tight on
17 money, it's tight it's closed, ain't nothing else coming in,
18 but if you're free -- and he's way more free than me -- but if
19 you're free, you have potential to come back in, and it would
20 have been wrong. I mean, the beach already screwed us over.
21 We weren't gonna screw her over; that's just not who we are.

22 Q: Did you notify the City of the contract with Natalie
23 Litsey?

24 A: I didn't notify them of a contract, because I didn't even
25 know the contract existed. At that point, all I knew was my

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1 husband had somebody interested in the business. So, I called
2 Lisa Robertson and I told her that, if we sell the business,
3 would the new owner inherit our nuisance, because that was the
4 main, you know, reason. We didn't want the new person to have
5 our problems. So, she said no, they would start over;
6 everything would be fresh. So, Lisa Robertson told -- asked
7 me that she needed to know who this person was and speak to
8 her and I found that a little odd, so I got us on a three-way
9 call, and I told her this is Nellie, because that's what my
10 husband told me her name was and her name wasn't Nellie, it
11 was Natalie. So, this is the first time I'm speaking to her
12 on the phone, and I explained to her that the Myrtle Beach
13 police officer wanted to speak to her, and they spoke back and
14 forth a little bit. And Officer Robertson acted like she was
15 having a hard time hearing what Natalie was saying, so they
16 exchanged numbers. So, they hung up. Then Natalie called me
17 and then called her so she could have a better connection, and
18 we listened to everything.

19 Q: One last thing I want to talk about and I think might be
20 done. Henry talked a lot about a DVR.

21 A: Yeah.

22 Q: What's a DVR?

23 A: A DVR is -- it was our security camera system. It came
24 with, I think, 16 cameras, and these cameras record everything
25 in the club and we had cameras outside also, outside the club.

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1 And it gets stored on the DVR just like a hard drive and all
2 that gets stored on that.

3 Q: So, that's video proof of everything that went on in the
4 club?

5 A: Oh, yeah.

6 Q: Where is it?

7 A: It's -- the police have it. They came the night of the
8 shooting or maybe the next day with a warrant, Detective
9 Sutton, I remember him well, because -- not well enough to
10 know him like that, but I remember him because he said I knew
11 when I heard it over the radio, it was something at Levelz, I
12 knew my job was going to be easy, because he knew we had state
13 of the art security equipment there. And he came and he had a
14 warrant and he needed the DVR. He said we would get it back
15 within 48 hours and this DVR cost \$1,000. It was only six
16 months old, so we kind've wanted it back. So, that never
17 happened.

18 Q: Did you pay for it?

19 A: Yeah, we paid for it.

20 Q: And this was in 2015?

21 A: Yeah.

22 Q: Was the gentleman who did the shooting convicted?

23 A: He was.

24 Q: Where is your DVR?

25 A: They still have it.

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1 MR. PLAYER: No further questions, Your Honor.

2 THE COURT: Cross-examination?

3 MR. BATTLE: Your Honor, they've been going for an hour
4 and 15.

5 THE COURT: I appreciate it; just go on with your cross-
6 examination.

7 CROSS-EXAMINATION OF VIGINIA BREWINGTON BY MR. BATTLE:

8 Q: Good morning, Ms. Brewington?

9 A: Good morning.

10 Q: Now, this is a lawsuit about interference with a contract
11 and you were not a party to any of the contracts that you're
12 claiming was interfered with; is that correct?

13 A: I'm not on the paperwork, but I'm married to the
14 contract.

15 Q: You manage the contracts?

16 A: I'm married.

17 Q: You're married to them?

18 A: That's right.

19 Q: Okay. But you're not on the paperwork?

20 A: Huh-uh, (negative response).

21 Q: It's between Henry Brewington and Melvina Davis?

22 A: Okay.

23 Q: And it's between Henry Brewington and Natalie Litsey?

24 A: Okay.

25 Q: You don't disagree with that?

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1 A: No.

2 Q: Now, you indicated that you had a hookah on 261; is that
3 correct, Club 261, a hookah lounge at 261 or you had hookah
4 pipes and stuff that you use there?

5 A: Nobody said nothing about no hookahs.

6 Q: I'm sorry, what?

7 A: Nobody said nothing about hookahs.

8 Q: I thought I heard you say that; maybe just my ears are
9 bad.

10 A: They bad.

11 Q: Okay. Now, with regard to the fireworks thing that came
12 up ---

13 A: The sparkler, uh-huh, (affirmative response).

14 Q: I'm sorry, what?

15 A: The sparkler?

16 Q: Yes, ma'am.

17 A: Yeah.

18 Q: It was a SLED officer that took the picture; is that
19 correct?

20 A: I don't know who took the picture.

21 Q: And your husband went down and plead guilty?

22 A: He pleaded guilty, and they dropped the charges, and
23 there was no fine.

24 Q: Right.

25 A: Uh-huh, (affirmative response).

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1 Q: And didn't he in his deposition say that was a fair thing
2 to do?

3 A: He's a fair man. It was just as fair as them not
4 charging him; that was a fair thing to do, too.

5 Q: Now, with regard to Armageddon ---

6 A: Yeah, that's what I called it.

7 Q: All right. The police were trying to prevent a gang
8 shootout for retaliation in that area; is that correct?

9 A: You tell me. You're telling me to say, yeah, there was
10 gonna be a gang shooting; how would I have that knowledge?
11 I'm not in a gang.

12 Q: Didn't the police officer come to you ---

13 A: He never said anything about a gang. What that police
14 officer said was, that something went down in Conway and
15 retaliation was going to be at Levelz; that's what he said.

16 Q: Okay. And they put extra people in the area to try to
17 prevent anything like that from happening at Levelz, didn't
18 they?

19 A: For one weekend; but two weekends later, that's when it
20 happened.

21 Q: And you said Heat was -- Club Heat was open and that you
22 felt like they were being -- they had police on the payroll
23 and Club Heat?

24 A: Yeah, I felt like that. Uh-huh, (affirmative response).

25 Q: Okay. And you do know Club Heat was closed for being a

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1 nuisance?

2 A: Sure, I know that.

3 Q: Okay. And as a matter of fact, Natalie's bar that she
4 opened shortly after the contract ended between you and -- and
5 her, she opened a bar there for a while and stayed open for a
6 while, and she had two shootings there and some other problems
7 and her club was closed?

8 A: Okay. So, you allowed her to have two shootings at her
9 bar before you closed her, and we had none. So, but that's --
10 that's what you do; that's what Myrtle Beach does. It's in
11 the Superblock, you know.

12 Q: I understand that.

13 A: Yeah.

14 Q: And she's being represented by this firm right here; is
15 that correct?

16 A: I don't know.

17 Q: Okay. And as far as the other clubs in there, there have
18 been shootings in other places in the Superblock area; is that
19 correct?

20 A: I watch the news; there's been shootings there.

21 Q: And those clubs have been closed because Myrtle Beach
22 wants to make the area safe, doesn't it?

23 A: Myrtle Beach wants to put a museum there. Myrtle Beach
24 now owns all of that property pretty much.

25 Q: Is there a museum there?

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1 A: Not yet.

2 Q: And that was five or six years ago?

3 A: They still working on it. Drive by, they're working on
4 it.

5 Q: There's a brewery there now, isn't there?

6 A: I don't know.

7 Q: Microbrewery?

8 A: I don't come to the beach that much because of bad
9 feeling and the bad way I was treated.

10 Q: Now, with regard to the tax records that Mr. -- do you
11 have the exhibit for the tax records? Thank you. You said
12 you were talking about gross income in 2015 ---

13 A: Uh-huh, (affirmative response).

14 Q: --- and in fact, you made \$34,000 in gross income?

15 A: Uh-huh, (affirmative response).

16 Q: All right. And you also had expenses of \$34,000 in '79;
17 isn't that correct? 3479?

18 A: Uh-huh, (affirmative response).

19 THE COURT: You need to say yes or no, please, ma'am.

20 A: Yes.

21 BY MR. BATTLE:

22 Q: And so, what's important is the net profit. If your
23 expenses are expending or going beyond your income, then
24 that's when you're having problems; you're going out of
25 business?

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- 1 A: No, we're not going out of business.
- 2 Q: I understand.
- 3 A: Anytime a business opens, within the first year you're
- 4 gonna be in the red because you've spent so much money.
- 5 That's common knowledge that anybody has opened a business.
- 6 By the end of that year, we would've been way in the green, by
- 7 June we would have probably been out of the red.
- 8 Q: And you had -- for the six weeks, you had a profit of
- 9 \$216; is that correct?
- 10 A: That's what the tax return says.
- 11 Q: And ---
- 12 A: We had to add extra guards and everything.
- 13 Q: And you talked about your -- you talked about your gross
- 14 income in 2014 of \$51,444?
- 15 A: For Levelz, yes.
- 16 Q: But your expenses were \$143,751?
- 17 A: That we put down, yes.
- 18 Q: And is that true or not; did you put the truth?
- 19 A: That we actually paid people, yes.
- 20 Q: Okay. And so, you had a \$92,000 loss?
- 21 A: That's right.
- 22 Q: In 2014. Now, when you had the conversation with Ms.
- 23 Litsey, Ms. Robertson, and you, and your husband, I believe
- 24 that conversation was recorded, correct?
- 25 A: Yes.

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1 Q: And in that conversation, I've got a transcript of it, I
2 do not have the ability to play it back ---

3 A: Oh, I can play it back, it's right on my phone; you want
4 me to play it?

5 Q: Sure.

6 A: Bring me my phone.

7 Q: And I want to play that conversation, not the whole hour;
8 I don't think the jury needs to hear the whole hour?

9 A: It's buffering. If my phone rings, don't yell at me.

10 THE COURT: Yes, ma'am. I'm going to allow it.

11 MR. PLAYER: Not usually a good idea to tell a man in a
12 robe what to do.

13 A: Oh, I'm sorry. I'm sorry.

14 THE COURT: I understand what you're trying to do. Do
15 you get on the Wi-Fi?

16 A: Yeah, 'cause I don't have any bars, but it's in my
17 videos.

18 THE COURT: Ladies and gentlemen, go to your jury room
19 for about five or ten minutes. We'll get that phone on the
20 Wi-Fi system. Thank you.

21 (REPORTER'S NOTE: Jury exits courtroom @ 12:15 p.m. The
22 following takes place outside the presence of the jury.)

23 THE COURT: All right. We'll take a short break for
24 about ten minutes. My clerk will try and help you get on the
25 Wi-Fi system.

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1 RECESS - 12:27 P.M.

2 *****OFF THE RECORD*****

3 ON THE RECORD - 12:37 P.M.

4 THE COURT: All right. Mr. Battle you ready for the jury
5 to come back in?

6 MR. BATTLE: Yes, Your Honor.

7 THE COURT: Plaintiff?

8 MR. BRITTAIN: Yes, sir, Your Honor.

9 THE COURT: Ask the jury to come back in, please.

10 (REPORTER'S NOTE: Jury enters courtroom @ 12:38 p.m.)

11 THE COURT: All right. Mr. Battle, you may continue.

12 BY MR. BATTLE:

13 Q: Do you have a conversation between you and Ms. Robertson?

14 A: I do.

15 Q: Okay. Would you go ahead and play it?

16 (REPORTER'S NOTE: Recording from cellphone published to jury.
17 Audio not transcribed herein.)

18 A: This is the next one.

19 (REPORTER'S NOTE: Recording from cellphone published to jury.
20 Audio not transcribed herein.)

21 BY MR. BATTLE:

22 Q: Do you recall, you may not, but your attorneys -- a
23 transcript of all the conversations you taped that y'all have.
24 Would you look through that and see if you can identify that?

25 A: What that?

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1 Q: No, this transcript.

2 A: Oh.

3 Q: And I'm doing this because the jury may not have heard
4 exactly what took place.

5 THE COURT: Mr. Battle?

6 MR. BATTLE: I'm sorry.

7 THE COURT: You're testifying. You're not asking
8 questions.

9 A: Okay. It looks like it.

10 MR. BATTLE: I'd like to introduce this into evidence.

11 THE COURT: Any objection?

12 MR. PLAYER: No, Your Honor.

13 THE COURT: All right. Have it marked as a defendant's
14 exhibit.

15 COURT REPORTER: Defendant's 4.

16 THE COURT: 4?

17 COURT REPORTER: Yes, sir.

18 THE COURT: All right. Defendant's 4 is in evidence
19 without objection.

20 DEFENDANT'S EXHIBIT NUMBER 4

21 ADMITTED INTO EVIDENCE

22 BY MR. BATTLE:

23 Q: Now, in one of your conversations with Ms. Robertson, she
24 explained to you, and this would've been around February the
25 3rd, when you were calling to say you felt like you had been

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1 blindsided by the meeting or after you had received notice of
2 the nuisance, that you asked her to assist you in
3 communicating to the ---

4 A: Show me where it says I want you to assist me.

5 Q: I'm sorry; what?

6 A: I never asked her for assistance. I called and told her
7 my husband had a sale for the business, would they inherit our
8 nuisance. I never asked her for her help; we sold a club
9 before.

10 Q: I would like to read part of this exhibit.

11 A: Go ahead.

12 Q: But you could run this by him and let us know definitely
13 that it's okay or by what you're saying is, you know, going to
14 be okay?

15 A: What you just said makes entirely no sense to me; what's
16 before that and what's after it.

17 Q: Okay. Well, the question was -- actually, it's not a
18 question; it's a statement, a conversation going on between
19 ---

20 (To the Court.) Your Honor, may I explain?

21 THE COURT: No, sir.

22 A: How about let me see the paper.

23 BY MR. BATTLE:

24 Q: I'm sorry, what?

25 A: Let me read it.

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1 THE COURT: All right. Let's just stop right now. The
2 job of a witness is to answer questions. The job of the
3 lawyer is to ask the questions. If you want her to read,
4 since it's into evidence without objection, I'll be glad for
5 you to do so.

6 BY MR. BATTLE:

7 Q: Well, let me just ask a question. Do you recall making
8 that statement?

9 A: No.

10 Q: Okay.

11 A: She might've been saying that; I need to see it.

12 Q: You see the mark and you see the name?

13 A: Where the attorney is not calling us back; I left him two
14 messages?

15 Q: Yes -- well, then, the next answer down below that, what
16 is that?

17 A: I was asking Officer Robertson. Okay. Me: Oh, the
18 papers are at the lawyer's. Officer Robertson: Just --
19 that's fine. You can just, that's fine, you can just get it
20 to me when you get the papers but, yeah, I need to be kept in
21 abreast of this. Me: Well, is, I mean, I've been calling the
22 attorney; he's not calling back. I left him two messages
23 yesterday. I don't want to act like I'm stalking somebody,
24 but could you run this by him and let us know definitely that
25 it's okay or by what you're saying, you know it's going to be

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1 okay.

2 And what that is in reference to is us being able to sell
3 the business to Natalie and her not adopting our nuisance, not
4 asking Officer Robertson for her assistance. I'm asking her
5 for her knowledge, because she's the one that gave us the
6 nuisance.

7 Q: You weren't asking her to find out from the lawyer what
8 would be okay?

9 A: No, she asked me to call the lawyer, but what -- if I'm
10 asking her to find out from a lawyer is from a Myrtle Beach
11 lawyer, not our lawyer.

12 Q: I know, but the question is, do you know which lawyer
13 she's referring to and who you're asking Ms. Robertson to run
14 the information by so that you can find out whether it would
15 be okay?

16 A: At that time, I was assuming it was Tom Ellenberg,
17 because that's the only lawyer that was in the room that day
18 with us.

19 Q: So, you were asking her to run something by Tom
20 Ellenberg?

21 A: To see if it was okay for us to sell the business and she
22 would acquire the nuisance, yes, that's what I asked her, not
23 to call our buyer.

24 Q: Not to call who?

25 A: Our buyer. She called Natalie; she wanted to talk to

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1 Natalie. I didn't ask her to talk to Natalie.

2 Q: I thought you set up the call with Natalie?

3 A: No. Did you listen?

4 Q: I listened.

5 A: Oh. Did you hear Officer Robertson saying I need to
6 speak to Nellie, because I told her her name was Nellie,
7 because at that time, I didn't know it was Natalie. She said
8 she needed to speak to Nellie. I didn't say I need you to
9 speak to Nellie; she said she needed to speak to Nellie. You
10 can't switch it around.

11 Q: Ms. Brewington?

12 A: Yes.

13 Q: Did you make the call between ---

14 A: I made the call because I wanted ---

15 Q: That's what ---

16 A: --- to know why she wanted ---

17 THE COURT: All right. Stop. Again, you have to let the
18 attorney get his question out. If the question requires a yes
19 or no, you need to respond yes or no; then you may fully
20 explain your answer.

21 A: Yes, sir.

22 THE COURT: All right.

23 A: Yes.

24 THE COURT: So, y'all don't interrupt each other. Thank
25 you.

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1 MR. BATTLE: Yes, sir.

2 BY MR. BATTLE:

3 Q: And did Ms. Robertson, in that same conversation, said --
4 or do you agree that this is what she said? Let me run it by
5 him. I'm pretty sure -- well, I know they're not -- when you
6 sell a business and somebody else comes in, they don't adopt
7 your case; they start anew. What you don't want to get done
8 is found a nuisance and then that -- the whole building is
9 shut down for a year and your response was, right. Do you
10 recall that?

11 A: Yes.

12 Q: And then she -- Ms. Robertson says not just your
13 business, the whole building. And did you say, yeah, I
14 understand that?

15 A: Yes, I understand that, but the building was never shut
16 down for a year.

17 Q: I'm sorry; what?

18 A: But the building was never shut down for a year.

19 Q: Like -- Ms. Robertson says, like Jim Edge, they were
20 found a nuisance. Guess what, we put court orders on their
21 doors and they couldn't take anything out of there, and that
22 was a problem. That building is shut down for a whole year.
23 Whoever owns that building cannot reopen anything in there. I
24 don't care if it's a store, anything, they can't open nothing
25 in that building. And your answer to that was, okay, well

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1 hopefully all of this will be done before that happens. Do
2 you recall that?

3 A: Yes.

4 Q: Okay.

5 A: The closing was the following week.

6 Q: And then you and your husband consented to actually
7 closing down the building for a year within a few days?

8 A: I don't recall consenting to close the building down for
9 a year. The building was never closed for a year.

10 Q: This is an order -- and I'm gonna read to you -- this is
11 from -- Judge Culbertson signed this order, it is Plaintiff's
12 Exhibit Number 2, your plaintiff's exhibit. Wherefore,
13 pursuant to the petitioner's motion -- and the petitioner was
14 State of South Carolina on relation of Jimmy A. Richardson,
15 Solicitor for the -- of the Fifteenth Judicial Circuit.
16 Pursuant to the petitioner's motion and the parties consent,
17 this Court orders the following: Respondents Henry Brewington
18 and Virginia Brewington doing business as Levelz Bar & Grill,
19 their agents, servants, subordinates, and employees are
20 enjoined and restrained from operating, using, maintaining,
21 and assisting in the using and maintaining of Levelz Bar &
22 Grill located at 515 Ninth Avenue North, Myrtle Beach, South
23 Carolina in Horry County as provided by Section 15-43-10 for a
24 period of one year and then goes to say that the sheriff is
25 ordered to post copies of this order on the bar, and you, your

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1 agents and servants, subordinates and employees are enjoined
2 and restrained from operating, using, maintaining, and
3 assisting in the using and maintaining of any place in the
4 State of South Carolina where a public nuisance exists in
5 violation of Section 15-43-10 and that was signed by John M.
6 Prosser through his authorization of James Battle; is that
7 correct. Did I read that correctly?

8 A: I don't know if you read it correctly. I'm assuming you
9 read it correctly.

10 Q: Okay. Do you have any disagreement with what I have
11 read?

12 A: I didn't consent to close the building for a year. The
13 building was never closed a year.

14 Q: So ---

15 A: In October of 2015, Oasis Lounge was trying to open, but
16 you made sure the church didn't let them get their liquor
17 license. The building was never closed a year; I don't care
18 what that paper says, and you know it. I can show you a
19 document with your name on it.

20 Q: Wherefore, pursuant to the petitioners' motion and the
21 parties' consent -- are you saying that's not true?

22 A: I didn't agree to close the building a year. I didn't
23 even want to sell. When we went to court that day, we still
24 was not fully understanding what was going on, and it was your
25 son that told us that we were deemed a gang club and we didn't

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1 have a right to fight. And then all these little innuendos,
2 like Ms. Robertson saying, oh, we closed down this club, and
3 they was closed down for a year, and they couldn't get none of
4 their stuff back. Those are small little scare tactics.

5 Q: Now, with regard to your conversation with James Battle,
6 he already had this in his possession; is that correct?

7 A: I don't know what he had in his possession.

8 Q: Okay. And this was handed up to the Judge on September
9 -- I'm sorry -- February 20th of 2015, and he already had that
10 done. Are you aware -- your husband said he had it on tape,
11 do you have any these tapes?

12 A: No, I was the one that recorded that.

13 Q: You don't have it?

14 A: But unfortunately, it was erased from my phone.

15 Q: Erased from your phone. Okay.

16 A: I would've loved to still have had that.

17 Q: Well, he's going to testify later.

18 A: Good for him.

19 Q: And do you -- are you -- would you be surprised that
20 there's a difference between his recollection and yours?

21 A: I'm not surprised. Ninety percent of your opening
22 statement was a lie. I'm not surprised. The leaf don't fall
23 far from the tree.

24 Q: Now, do you believe that a person buying a business and
25 starting a new business has any right, any obligation to do

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1 any due diligence to find out what the ordinances and the
2 requirements are before they enter business in that -- in that
3 area, in that city?

4 A: You're asking me to think for somebody else?

5 Q: I'm sorry, what?

6 A: You're asking me to think for somebody else? Say that
7 question again?

8 Q: Do you believe that a person who is purchasing a business
9 or starting a new business in an area, a municipality, has any
10 obligation to find out what the requirements are of that
11 municipality are before they buy the business, or they start
12 the business?

13 A: Yes, but we've opened other businesses, and one of the
14 first things you have to do in Myrtle Beach is to go get the
15 business license, correct? Is that one of the first things
16 you do?

17 THE COURT: Ma'am, you can't ask questions.

18 A: Okay. One of the first things that Officer Robertson
19 just told Natalie on that recording was you have to go get a
20 business license. So, in all fairness, you have to go get a
21 business license, when you go and apply for that business
22 license, they should you give you a list of everything you got
23 to do, not allow us to do one thing and then we go and there's
24 another thing we have to do. As she said, you've got to jump
25 through all these hoops. She told Natalie the same thing;

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1 you've got to jump through all these hoops. But when we sold
2 our business, when we sold our nightclub in Williamsburg
3 County, the gentleman that bought the nightclub from us, since
4 we was already open and established, and we were open for like
5 maybe five or six years, if not more, all he had to do as take
6 our licenses down to the Department of Revenue and get
7 temporary 90-day licenses and open up with those temporary
8 licenses the very next weekend until he got his own. Now,
9 we'd only been open six months. We done did zoning, fire,
10 everything you wanted us to do we do -- we did, but yet, you
11 told her she would have to do it all over again. I don't
12 think that's true; I just don't. If we passed everything in
13 six months' time, but, you know...

14 Q: So, it's your belief that Ms. Litsey, should not have
15 been required to get her own business license?

16 A: No; she should have got her own license.

17 Q: I'm sorry, what?

18 A: But I'm not understanding why she would've had to get
19 fire, and all that other stuff. Safety plan, yes, but those
20 inspections that we just did, they didn't go away.

21 Q: Well, it would seem, does it make sense to you that a
22 business license process and procedure shouldn't apply to
23 everyone?

24 A: Yeah. But it also seems to me ---

25 Q: And the same process ---

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1 A: --- that it's not the job of the police to get involved
2 with our sale. Once she bought the business, you could've ran
3 her through all them hoops you ran us through. But you made
4 sure you talked to her prior to that.

5 Q: So, the same process that applied to you, was applied to
6 Ms. Litsey, correct?

7 A: No, because Ms. Robertson, told Ms. Litsey all the hoops
8 she had to go through; nobody told us all the hoops we had to
9 go through. We had to learn the hard way and just jump and
10 keep jumping and keep spending money.

11 Q: You -- did you talk with Ms. Robertson or with anyone to
12 give you a safety plan requirement and having to have the
13 police ---

14 A: She said we needed a safety plan; she didn't give us one.
15 I made one up.

16 Q: And so, you were informed of what you had to do, you're
17 just saying you should've gotten it on a sheet of paper
18 printed and handed to you ---

19 A: We were not informed.

20 Q: Excuse me, ma'am. May I ask my question?

21 A: Yeah.

22 THE COURT: Mr. Battle, if you have a problem with the
23 witness, direct it to the Court. You don't instruct the
24 witness.

25 MR. BATTLE: Thank you.

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1 THE COURT: Thank you.

2 MR. BATTLE: Would you ask Ms. Robertson to let me ask

3 ---

4 THE COURT: All right. Let's go over this again. You
5 don't interrupt each other. You let the attorney ask the
6 question completely, you get to answer it completely, and then
7 he asks another question. All right? Thank you.

8 BY MR. BATTLE:

9 Q: So, your issue with the City is they did not give you a
10 printed sheet stating everything you should do?

11 A: My issue with the City is they got involved in our sale
12 and cost us our sale. My issue with the City is that we were
13 harassed, and we were not treated like anyone else. That's my
14 issue.

15 Q: Now, in your -- you recall giving your deposition?

16 A: Yes, I gave a deposition.

17 Q: And do you recall testifying that Ms. Robertson was
18 trying to cooperate you and assist you?

19 A: Ms. Robertson pretended to assist me and cooperate with
20 me, where basically she was just gathering ammunition; that's
21 how I feel about that.

22 Q: Okay. And on February the 5th, you were served with
23 notice of the nuisance?

24 A: Around that time, I don't know if that's the exact date,
25 it's when we went in for the meeting.

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1 Q: And on February the 10th, the landlord asked you to leave
2 the building?

3 A: Right.

4 Q: And the closing that we're talking about where Ms. Davis
5 told Ms. Litsey that she would not rent the building to her
6 was in March ---

7 A: No, it wasn't.

8 Q: -- March 16th of 2015?

9 A: No, no, it wasn't.

10 Q: You indicated it was when they did the closing; is that
11 correct?

12 A: They were at the closing when the landlord called and
13 told her she could not rent her the building because the City
14 of Myrtle Beach sent her a copy of the nuisance, and she
15 thought her building was going to be closed down for a year.
16 Now, that paper dated March 16th, that might be the day they
17 actually met at the office to sign her out of the contract,
18 but that's not the day of the closing.

19 Q: All right. This is when -- isn't this when they decided
20 to not have it -- I mean, did they meet twice or did they just
21 meet once?

22 A: This is the day that she was released from the contract;
23 this is not the day of the closing. The day of the closing
24 was February 12th. It was actually before the shooting. If
25 you recall, in the video I just played when she said that she

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1 was gonna take it over next week, that was before the
2 shooting. The closing was before the shooting, but the
3 closing didn't happen because the landlord called during the
4 closing -- it wasn't finalized -- and told her she was not
5 gonna rent to her. So, it was a done deal. She walked out.
6 She's not gonna buy a business if she can't rent the building.
7 Then she tried, I guess, to work things out with the landlord
8 to see what was going on, and by March 16th, that's when she
9 signed that paper to get out of that contract, that's the date
10 of closing. The closing was before the shooting.

11 Q: Do you recall Ms. Litsey's testimony on that point?

12 A: I haven't seen Ms. Litsey. I don't recall anything.

13 Q: Okay. Now, in your phone conversations, you called Ms.
14 Davis ---

15 A: Uh-huh, (affirmative response).

16 Q: --- and I'm gonna ask you do you call this conversation.

17 MR. PLAYER: It's on the front, Mike, starting looks like
18 page 9.

19 Q: In this conversation between you and Ms. Davis ---

20 MR. PLAYER: Mike, can I give this to her so she can read
21 along?

22 MR. BATTLE: Sure.

23 MR. PLAYER: May I approach, Your Honor.

24 BY MR. BATTLE:

25 Q: Page 42, start at the top. You have a situation where:

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1 Melvina Davis answers: Hello.

2 And your response was: Hi, Mel.

3 Melvina Davis: Yes.

4 Your response was: This is Ginny Brewington.

5 Melvina Davis: Okay.

6 Virginia Brewington: Natalie told us that you were
7 putting us out of the building.

8 Henry Brewington: By what date?

9 Virginia Brewington: By what date?

10 Melvina Davis: You know, at this point, y'all have
11 totally poisoned that business down here. The City is not
12 going to let me reopen it. There's no date. It doesn't
13 matter because y'all have ruined it. I have no business
14 there; I have no business down there now.

15 And your answer was: Well, we didn't ruin it.

16 Ms. Davis says: Well, you did; I'm sorry. So, I think
17 that's the end of our conversation. So, obviously, get out as
18 fast as you can, because you ruined it, and I can't rent it
19 again, if you took at -- if you look at the law. Okay.

20 And then your response was: Well, that's all I ---

21 Ms. Davis said: That's all I have to say.

22 And something that wasn't intelligible.

23 And then she said: You totally ruined it for me.

24 There's no way I can open a business down there.

25 And then your response was: I don't see how we ruined

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1 it.

2 Ms. Davis: Look at the law. Look at the law.

3 Virginia Brewington: We would have been -- we would have
4 had it sold, but because you were calling Natalie and
5 reporting to Natalie, she backed out of the sale. We were ---

6 Ms. Davis said: You did not have it sold to anybody; you
7 couldn't. The City wasn't gonna let you reopen it. Y'all had
8 a nuisance down there. Nobody could go in there. Before the
9 killing this weekend, nobody could go in there for at least a
10 year.

11 And then you say: That's only if we didn't fight the
12 nuisance. What they had was nothing.

13 Ms. Davis says: Well, I'm through. I'm sick and tired.
14 Y'all ruined it, absolutely ruined it, so please don't call me
15 again. It's ruined. Good bye.

16 Do you recall that conversation?

17 A: Yes, I recall it, but her building was never closed a
18 year. And the reason she was saying all of that is because
19 the City of Myrtle Beach was sending her paperwork and it
20 scared her thinking it was gonna be closed a year.

21 Q: Are you familiar with the nuisance law, 15-43-10?

22 A: No.

23 Q: Are you aware, under that section, that the remedy that's
24 allowed that a judge may allow a property to be opened if the
25 property owner and whatever uses to be made of the property is

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1 presented to the judge and then the judge, in his discretion,
2 can allow the property be reopened under the circumstances and
3 the limitations that he may put in an order? Were you aware
4 of that fact?

5 A: No.

6 Q: Okay. Did you -- anybody ever suggest to you that perhaps
7 you could go and request that it be reopened?

8 A: We couldn't reopen it. The landlord put us out, the City
9 didn't want us in Myrtle Beach. Why in anybody's right mind
10 would they want to go down there and deal with all that
11 harassment again? But the building was never closed for a
12 year. Six months later there was a ADL sign on the door for
13 Oasis Lounge, same type of business. So, the building was
14 never closed a year. You just scared the landlord and then
15 she put us out.

16 Q: Okay. Do you know whether that building, that ABL license
17 was ever -- that Oasis Club was ever opened?

18 A: No. It never opened, because at that time, at that point,
19 City of Myrtle Beach was letting the church know, okay, now
20 you got to go fight this so it wouldn't get open. Because all
21 before us, everything was open, we opened. Now, nothing else
22 opened after us, and now the City of Myrtle Beach owns that
23 property.

24 Q: Okay.

25 A: So, they made sure it didn't get opened.

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1 Q: So, the church stepped in and wouldn't let the new club
2 open?

3 A: That's right. And the church stepped in and was trying
4 to stop Natalie from opening, too.

5 Q: And did the church ---

6 A: Except they blew it and didn't make it to the hearing, so
7 Natalie got to open.

8 Q: And did the church also make a complaint against your
9 business? Did you hear the testimony of ---

10 A: Not for us to get the license, no, but they complained.

11 Q: Afterwards about being a nuisance, after you opened for a
12 period of time?

13 A: They complained about our business. We were never a
14 nuisance to nobody. The church had homeless people living on
15 their property, but the trash in their lot was ours. The
16 feces in their lot was from our patrons. Why you gonna leave
17 a clean club with bathrooms and bathroom attendants and go --
18 go to the bathroom in somebody's parking lot? That was their
19 homeless issue. Now, that was the one thing that Lisa
20 Robertson did tell us when we first met her, there's a
21 homeless issue in the area. Please be aware of that. We saw
22 one homeless guy, and we gave him a job.

23 Q: And you are aware that the church was complaining and
24 doing the objecting was Mr. Brittain's church?

25 A: I know it's Mr. Brittain's church.

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VIRGINIA BREWINGTON - REDIRECT BY PLAYER

1 MR. BATTLE: Just a minute, Your Honor. That's all I
2 have. Thank you.

3 THE COURT: Redirect?

4 MR. PLAYER: Briefly, Your Honor. Thank you.

5 REDIRECT EXAMINATION OF VIRGINIA BREWINGTON BY MR. PLAYER:

6 Q: Ginny, look at that transcript. I think I found the
7 portions you were trying to do earlier. Go to page 27 of that
8 transcript.

9 MR. PLAYER: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. PLAYER:

12 Q: You see on the side of the page it's got lines? I want
13 you to read line 10 to line 17 and do the different parts?

14 A: Okay. Officer Robertson ---

15 Q: Officer Robertson says this, right?

16 A: Yes.

17 Q: Read it for me.

18 A: Okay. Okay. And what I'm going to need is her last
19 name, her phone number, so I can speak to her to I can see
20 what kind of business she is going to put in there and this
21 and that.

22 And then I replied: Okay. All right.

23 And then Officer Robertson: If you could get that to me
24 ASAP.

25 And then I replied: Okay. All right.

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VIRGINIA BREWINGTON - REDIRECT BY PLAYER

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1 And then Officer Robertson: Okay. Thank you.
2 And then I say: Okay.
3 And she says: Okay, bye.
4 And I say: Bye.
5 Q: All right. So, did you ask her to call Natalie?
6 A: No, I did not.
7 Q: What did that just say?
8 A: She asked for Natalie's information ASAP.
9 Q: Turn one page, same section. This is going to be page 31
10 and then lines 14 to 16. What did you say to Ms. Robertson?
11 This is when you initiated the three-way call with Natalie.
12 A: Right. I said: Okay. Y'all can talk to each other.
13 Officer Robertson, tell her what you would like -- what you
14 need.
15 Q: What she needs, right?
16 A: Right.
17 Q: Not what you need?
18 A: No.
19 Q: What she needs?
20 A: Right.
21 Q: Okay. Now, Mr. Battle went over your taxes. Do y'all do
22 your own taxes?
23 A: I do.
24 Q: Okay. And the point I think we tried to make earlier in
25 the six months in '14, six months ---

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VIRGINIA BREWINGTON - REDIRECT BY PLAYER

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- 1 A: Right.
- 2 Q: What was your gross?
- 3 A: \$51,441.
- 4 Q: And that's money you got coming in the door, right?
- 5 A: Yes, that's money the club made.
- 6 Q: Well, it brought it in, but if you're paying more than
- 7 you're getting; were you not making nothing?
- 8 A: Well, we laid out a lot of money before it opened.
- 9 Q: So, in six months it's 51?
- 10 A: Right.
- 11 Q: And then in January, it's six weeks.
- 12 A: Right.
- 13 Q: It's how much?
- 14 A: 34,000.
- 15 Q: What does that tell you about the business?
- 16 A: It's growing.
- 17 Q: It's growing. Is your money increasing?
- 18 A: Yes, it is.
- 19 Q: And this was when? What season?
- 20 A: Off season.
- 21 Q: Off season.
- 22 A: In the winter.
- 23 Q: It was improving?
- 24 A: Yes.
- 25 Q: Then what happened?

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BY THE COURT

1 A: They shut us down.

2 Q: Thank you.

3 BY THE COURT:

4 THE COURT: Anything on those questions just asked?

5 MR. BATTLE: No, Your Honor.

6 THE COURT: All right. Ma'am, you may step down. Just
7 leave the exhibits there.

8 Counsel, y'all come up and talk to me for just one
9 second, please.

10 (REPORTER'S NOTE: Bench conference is held off the record in
11 the presence of but outside the hearing of the jury.)

12 THE COURT: All right. So, which -- what exhibit would
13 that be now?

14 MR. PLAYER: Defendant's 4.

15 MR. BRITTAIN: No, he's already got five exhibits. Oh,
16 you talking about ---

17 MR. PLAYER: Okay. So, he put the transcript in; would
18 that be number 4 or number 5?

19 THE COURT: Ms. Kay?

20 COURT REPORTER: It's defendant's -- I mean, I'm sorry.
21 Defendant's 4.

22 THE COURT: The transcript.

23 COURT REPORTER: Mr. Battle, did you take that back?

24 MR. PLAYER: This is Defendant's 1.

25 COURT REPORTER: This is ID only.

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BY THE COURT

1 MR. PLAYER: Then yes, the official would be 4.

2 THE COURT: Okay. All right. So, the disc is gonna be
3 Defendant's 5; is that correct?

4 MR. BATTLE: I'll get it; I don't have it right here at
5 my hand.

6 THE COURT: All right. So, but the parties in agreement
7 that the disc, which will be defendant's 5 will be in evidence
8 without objection. Is that correct?

9 MR. PLAYER: Correct, Your Honor.

10 THE COURT: Mr. Battle?

11 MR. BATTLE: No objection.

12 THE COURT: All right. Very good. So, Defendant's 5,
13 the disc, will be in evidence without objection.

14 DEFENDANT'S EXHIBIT NUMBER 5

15 ADMITTED INTO EVIDENCE

16 THE COURT: Now, as far as the plaintiff, does the
17 plaintiff rest at this time?

18 MR. BRITTAIN: Yeah, the plaintiff rests, Your Honor.
19 That concludes our case, those witnesses and exhibits that
20 have been introduced into evidence.

21 THE COURT: All right. Very good.

22 All right. Ladies and gentlemen, we're going to stop.
23 Where we are right now is the plaintiff has finished the
24 presentation of its evidence. Obviously, defense will have to
25 do that, but in the interim, there are matters of law that I

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1 have to take up outside of your presence. So, looking at the
2 time, I probably need for you to come back at 3 o'clock and
3 we'll work for a couple of hours before we leave. So, you're
4 excused. Be back in your jury room by 3 o'clock, please.

5 Just leave your pads and pens in your seat, please.

6 Remember, don't talk about the case.

7 (REPORTER'S NOTE: Jury exits courtroom @ 1:25 p.m. The
8 following takes place outside the presence of the jury.)

9 MOTIONS:

10 THE COURT: All right. Motions from the plaintiff?

11 MR. BRITTAIN: No motions from the plaintiff, Your Honor.

12 THE COURT: All right.

13 Mr. Battle?

14 MR. BATTLE: Yes, Your Honor. With regard to the
15 lawsuit, the first motion is to have Ms. Brewington dismissed,
16 her claims dismissed. She was not a party to any of the
17 contracts and this is a lawsuit based solely on tortious
18 interference with a contract; and therefore, she's not had any
19 contractual rights to be interfered with.

20 THE COURT: Position of the plaintiff?

21 MR. BRITTAIN: Your Honor, that's -- we have no problem
22 with that.

23 THE COURT: All right. So, the caption of the case will
24 be reformed to label Henry Brewington, individually, and doing
25 business as Levelz Bar & Grill as the plaintiff; is that

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1 correct?

2 MR. BRITTAIN: That's correct.

3 THE COURT: All right.

4 Mr. Battle?

5 MR. BATTLE: Your Honor, the next motion would be a
6 motion for nonsuit as to tortious interference with the
7 contract with Ms. Litsey. There is no evidence that the City
8 did anything to interfere with the contract in that you have a
9 situation where the reason why she would not go through with
10 the contract was because Ms. Davis would not rent the property
11 to her. There's no testimony about the motivation of Ms.
12 Davis. If there is any motivation of Ms. Davis, it's based on
13 the law and the fact that you have a judge that has entered an
14 order closing the business for a year.

15 THE COURT: From the plaintiff?

16 MR. BRITTAIN: Your Honor, on that point, let me explain
17 what our position is about this order. This order clearly
18 only deals with the Brewington business, with Henry
19 Brewington's business. There ain't no question about it.
20 Now, the statute would have allowed Judge Culbertson to make a
21 finding that would close that building down for a year. The
22 City said it's automatic; that's kind of what Mike was saying,
23 it's automatic. But that remedy was not chosen by Judge
24 Culbertson. In fact, it specifically relates itself strictly
25 to this business, and we notice that under the statute,

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1 Melvina Davis, who is the owner of the property, is not named
2 in the action, and she was never given notice of the action.
3 So, despite what the City -- this is part of the case on both
4 of these contracts, the City is misinforming Melvina Davis and
5 Natalie Litsey about what the circumstances are legally on
6 these premises. Now, there's no question that Levelz cannot
7 function. Levelz agents cannot function. But there's nothing
8 in that order and there's nothing automatic about those
9 premises being closed. There is substantial evidence in this
10 record. It's a fact for the jury to determine. They can read
11 the order. The Court can read the order. There is no
12 admission of any wrongdoing on the part of Henry Brewington or
13 Levelz. That part of Judge Culbertson's order -- the order
14 has three sections. This -- number 1, Levelz is shutting
15 down, nothing about the premises. Number 2, this order, which
16 has nothing to say about the premises, is gonna be posted on
17 the premises. What does that tell everybody? That Levelz
18 can't function. So, there's not a thing in that order, and
19 the City can't say that just because the statute says the
20 judge may do this, so the order does not do that. So, when
21 they tell -- this is part of the tortious interference with
22 these two contracts. The City is -- you heard the tape,
23 you've looked at the transcript, the City is making it hard
24 for Nancy Litsey. They're explaining the problems she's gonna
25 have; the hoops she's got to jump through; the problems with

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1 the address; the history of the place. All of that is
2 intended to and does eventually lead to two things; Natalie
3 Litsey withdrawing and Melvina Davis in a confused position
4 telling the Brewingtons she's pulling their lease, that
5 commercial lease, which is in evidence, away from them because
6 she's been told by the City that she cannot function. So,
7 there are questions of fact concerning the order, what it
8 says, what it doesn't say, and what the testimony in the case
9 is. This is a jury question.

10 MR. BATTLE: May I be heard from briefly, Your Honor?

11 THE COURT: Yes, sir.

12 MR. BATTLE: Paragraph 2 of Judge Culbertson's order says
13 that the entire premises is closed by order of this Court and
14 violators of the order may be punished for contempt of Court
15 and such other statutes or ordinances that may be applicable.
16 Officers are also directed to place police tape over the
17 entrance to the building. He did close the entire premises;
18 it's in this order.

19 MR. BRITTAIN: Judge, that is in connection with the
20 clause of that, the violators of the order may be punished.

21 THE COURT: I appreciate it, gentlemen. Thank you.

22 The motion is to dismiss the intentional interference of
23 the contract, tortious interference with the contract
24 regarding the contract between Henry Brewington and Ms.
25 Litsey. In her deposition testimony, which was introduced

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1 into evidence, Ms. Litsey says that Myrtle Beach, through
2 Officer Robertson, says that Levelz will not be open much
3 longer; go somewhere else, that the City is going to close it
4 down; don't invest in Levelz. They declare that they believe
5 them to be a nuisance; it wouldn't look good; they're going to
6 have a hard time with the City of Myrtle Beach; look somewhere
7 else; they're not gonna be open. And then, that's when she
8 said she used her ten-day window to get out. That's tortious
9 interfere with the contract; that simple.

10 Now, I'm just not relying on that, I'm relying on all the
11 testimony the plaintiff has produced so far. That's just a
12 small portion of it, but that's just to highlight that there's
13 evidence in the record. Now, I'm not judging credibility and
14 believability, not my job; their job over there, the Jury.
15 Does the evidence exist? Evidence exists. Motion to dismiss
16 the tortious interference of the contract is denied.

17 MR. PLAYER: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. BATTLE: The second motion would be for the
20 interference with the contract between Ms. Davis and -- the
21 lease agreement between Ms. Davis and the Brewington -- Henry
22 Brewington. Ms. Brewington -- Ms. Davis stated that the
23 reason that the contract was denied was because that they'd
24 consented to close the club for a year.

25 THE COURT: Counsel?

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1 MR. PLAYER: Your Honor, I believe we listened to that;
2 it was on page 42. She never says anything about signing an
3 order. She says, you ruined my business. It is ruined. Five
4 joints and a sparkler ruined her business. That's what she's
5 told. This is evidence -- this is the direct evidence of the
6 impart the City's misinformation had on Ms. Davis. They have
7 told her -- this is not a woman -- they're not having a
8 conversation. Ms. Davis says, don't call me again. You have
9 ruined my life for what we just went through with the nine
10 calls and we'll get into that on cross. But she did not say
11 at any point in what's in evidence that y'all signed a sheet
12 of paper, I don't have a choice. She said you ruined my
13 business; I can't do anything; you've got to go; I don't want
14 you to ever call me again. That's what's in the evidence and
15 everything comes back to -- I know there's a reason that Mr.
16 Battle and Mr. Brittain are focusing so much on that nuisance,
17 because that was the focus in federal court. And Judge
18 Harwell said since they signed that nuisance, all the Federal
19 1983 and the Federal Constitution charges are out the window;
20 that's the law. But what he did say is that, yes, they signed
21 the nuisance, which means by law, they agreed to it; that's
22 what Judge Harwell said. But what he also said is that
23 doesn't affect the tortious interference with a contract, and
24 that's why he remanded it here. Now, part of that is denying
25 supplemental jurisdiction and he left it to here. But at this

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1 point, what's in the evidence is that, on January 27th, the
2 City decided to shut Levelz down. It was not after the
3 shooting. The evidence is they were told on January 27th in
4 no uncertain terms by Tom Ellenberg, or on February 2nd, I'm
5 shutting you down. That process was started on the 27th.
6 They sent a letter to a landlord, and Mr. Battle is very
7 correct in pointing out the statute, and the City knew very
8 well what that letter was gonna do. That letter was gonna
9 tell the landlord, hey, you're not gonna have income from this
10 property for a year because your client is a nuisance. And
11 our point is, they signed that sheet of paper, but this was
12 not good faith. They did not have the good faith to shut them
13 down or call them a nuisance, we don't think even after the
14 shooting, but certainly not before the shooting. And like Mr.
15 Battle said in the beginning the focus here, and especially
16 for tortious interference with a contract, is the motive
17 employed by the City. And we have put a lot of evidence up
18 that my clients were treated differently, they were singled
19 out, and they were driven out. That is enough to create a
20 jury issue as to whether or not the City had proper motives,
21 and therefore we're entitled to send the issue of tortious
22 interference with a contract to the jury.

23 Thank you.

24 THE COURT: Brief reply, Mr. Battle?

25 MR. BATTLE: Briefly. The letter that he's complained

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BY THE COURT

1 about was sent by the solicitor's office. I do understand
2 that my son signed the letter and he does do work for the City
3 of Myrtle Beach, but at this time he was a special prosecutor.
4 He does lots of work for the solicitor; he's paid by the
5 solicitor; and actually is on insurance with the solicitor.
6 He was acting on behalf of the solicitor who made the decision
7 to send the notice of abatement, not the City of Myrtle Beach.
8 They made the complaint, but it was the solicitor -- and
9 that's what Judge Harwell found.

10 THE COURT: All right. Based upon the testimony
11 presented by the three witnesses and the documentary evidence
12 introduced, I'm going to deny your motion for the -- to
13 dismiss the tortious interference with the contract between
14 Mr. Brewington and Melvina Davis.

15 MR. PLAYER: Thank you, Your Honor.

16 THE COURT: Further motions, Mr. Battle?

17 MR. BATTLE: No, Your Honor.

18 BY THE COURT:

19 THE COURT: All right. So, now, as I understand it, and
20 I know we haven't got to that point, but am I correct in
21 understanding that all that remains of this case is the claim
22 by the plaintiff, now Henry Brewington individually doing
23 business as Levelz Bar & Grill against the City of Myrtle
24 Beach, nobody else?

25 MR. BRITTAIN: That's correct, Your Honor.

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BY THE COURT

1 THE COURT: And it's for tortious interference with both
2 those contracts?

3 MR. BRITTAIN: Yes. Yes, that's correct, Your Honor.

4 THE COURT: All right. So, all right. I just wanted to
5 be clear about where -- where we are.

6 MR. BRITTAIN: That's all -- that's all that's left,
7 really that's all it's been since we got back to State Court.

8 THE COURT: Is that your understanding, Mr. Battle?

9 MR. BATTLE: That is correct, Your Honor.

10 THE COURT: All right. Very good. So, I just wanted to
11 be clear about that. Okay.

12 So, 3 o'clock. I don't want to keep this jury longer
13 than 5:00. Okay? So, I don't know how you want to plan your
14 witnesses or so if -- you know, you have somebody that, you
15 know, you want to put up at 4:30 and think it's gonna take to
16 5:30 or 6:00, then we'll just wait until the next day to put
17 that one up. Okay? So, just trying to give you some idea.
18 So, I'm trying to, you know, not inconvenience --
19 inconvenience the jury as little as possible. All right? So,
20 hopefully that doesn't mess up your presentation, but I just
21 wanted to give you some idea of where we might stop. All
22 right?

23 MR. BATTLE: I understand, Your Honor.

24 THE COURT: Okay. All right. I'll see y'all back at 3
25 o'clock then. Okay?

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1 MR. PLAYER: Thank you, Your Honor.

2 THE COURT: Thank y'all.

3 **RECESS - 1:41 P.M.**

4 *****OFF THE RECORD*****

5 **ON THE RECORD - 3:02 P.M.**

6 THE COURT: All right. Is the plaintiff ready for the
7 jury?

8 MR. BRITTAIN: Your Honor, I'd like to make a point with
9 the Court before this next witness testifies, and I'd like to
10 have this next witness, I think is that witness, excused from
11 the courtroom, while I bring this up to you?

12 THE COURT: Okay. All right.

13 MR. BRITTAIN: It's Reverend Phillips.

14 THE COURT: All right. Yes, sir. Could you step outside
15 for just a second, please?

16 All right, Mr. Brittain.

17 MR. BRITTAIN: Your Honor, we've taken Reverend Phillips
18 deposition, and throughout the deposition he admits that he
19 has no personal knowledge of the events that he's getting
20 ready to testify to. It's got a lot to do with trash being
21 around the church, people going to the bathroom on the cars.
22 And I always ask him, you know, did you see any of this, you
23 know, do you know where it came from, and he says repeatedly I
24 have no personal knowledge. Now, I got no problem, just kind
25 of letting the Court know that I'll be objecting to any

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BY THE COURT

1 testimony he has that's not based on personal knowledge in
2 connection with the case. You'll need to hear it all, but I
3 just want to let the Court know that's already been
4 established in his deposition.

5 THE COURT: All right.

6 So, Mr. Battle ---

7 MR. BATTLE: I'll just ---

8 THE COURT: Just kind of giving you, you know, fair
9 warning.

10 MR. BATTLE: Thank you, Your Honor.

11 THE COURT: All right. You ready for the -- defense
12 ready for the jury to come in?

13 MR. BATTLE: We are ready, Your Honor.

14 THE COURT: All right. Ask the jury to come in then.

15 (REPORTER'S NOTE: Jury enters courtroom @ 3:05 p.m.)

16 THE COURT: All right. Mr. Battle?

17 MR. BATTLE: I call as our first witness, Reverend
18 William Phillips.

19 THE COURT: All right, sir, if you'd come around and meet
20 the clerk's representative right at the corner over here,
21 please, sir.

22 THE CLERK: If you'll raise your right hand and put left
23 hand on the Bible.

24 REVEREND WILLIAM PHILLIPS, HAVING
25 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

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WILLIAM PHILLIPS - DIRECT BY BATTLE

1 THE CLERK: Thank you. If you'll please state your
2 first and last name for the record.

3 MR. PHILLIPS: William Phillips.

4 THE COURT: Go ahead, Mr. Battle.

5 MR. BATTLE: Thank you, Your Honor.

6 DIRECT EXAMINATION OF WILLIAM PHILLIPS BY MR. BATTLE:

7 Q: Reverend Phillips, would you tell the jury who you are
8 and what you do for a living and your role with the First
9 United Methodist Church from 2013 to 2018?

10 A: I'm a United Methodist Minister, 43 years in the making.
11 I am no longer assigned at First Church; I'm at Saint Paul in
12 Waccamaw.

13 THE COURT: Could you move a little bit closer to the
14 microphone?

15 A: I'm sorry. I apologize.

16 THE COURT: That's all right.

17 A: How about now?

18 THE COURT: There you go.

19 A: Okay. When I was the pastor at First Church, I was the
20 senior pastor; there were associates there and staff.

21 BY MR. BATTLE:

22 Q: All right. Now, when Mr. Player was questioning about
23 the situation, where is First United Methodist Church located
24 in reference to what used to be Levelz Bar & Grill?

25 A: Right across the street.

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WILLIAM PHILLIPS - DIRECT BY BATTLE

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1 Q: How far would you say?

2 A: Less than a hundred feet.

3 Q: Okay. Now, do you know Levelz was able to get its
4 alcohol license?

5 A: I have no idea because we were not approached about that
6 before it took place. And, of course, there's some law in
7 South Carolina, as I understand it, about 3, 4, 500 feet from
8 a church, and they're literally right across the street. How
9 they got their license, I'm not sure.

10 Q: Okay. Now, with regard to Levelz itself, was Levelz
11 there in 2013?

12 A: I don't remember it.

13 Q: And when Levelz did come in, when did it come to your
14 attention that Levelz was across the street?

15 A: Well, when we started getting garbage.

16 Q: Okay. About when was that?

17 A: I don't know. I can't tell you that. I don't want to
18 tell you something that's not right, but I just remember the
19 trash.

20 Q: Okay. And what did you observe in your -- at the time
21 you started noticing the trash, did you notice trash before
22 Levelz had come?

23 A: Well, there's always some, because as it was noted
24 earlier, we do have -- we did have a very -- I'm trying to
25 speak present and past tense, because I'm past there.

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WILLIAM PHILLIPS - DIRECT BY BATTLE

1 Q: Right.

2 A: But we had a homeless problem there, but homeless people
3 didn't sleep on that side of the church, on the south side.

4 Q: Okay.

5 A: Because the south side was visible and homeless people
6 don't sleep where there's visibility and lights; they sleep
7 between buildings and under shrubs.

8 Q: Right.

9 A: And it's amazing that they would only have food on
10 Fridays and Saturdays, and because we would go out on Sunday
11 morning and have to pick up an inordinate amount of trash,
12 Styrofoam, chicken wings, all kinds of stuff scattered all
13 over the parking lot, and it was only after Friday and
14 Saturday night that we had to deal with that.

15 Q: And was it your understanding those are the nights that
16 Levelz was open?

17 A: Yes, and then the really bad one, I mean, we got to where
18 we wouldn't embark or disembark the youth onto vans at the
19 church. We went to the CDC, the Child Development Center, and
20 did that because on Saturday night, there was -- there was
21 some tension there, and they didn't want to get off the bus
22 there. So, we were limited on Fridays and Saturdays.

23 Q: They were afraid to get off the bus?

24 A: Yes.

25 Q: And ---

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WILLIAM PHILLIPS - DIRECT BY BATTLE

1 MR. BRITTAIN: Excuse me, Your Honor, I object to that
2 unless he has personal knowledge of that exchange with the
3 school or ---

4 THE COURT: So, you were present when this occurred?

5 MR. BRITTAIN: Well, I had the exchange with the youth
6 director.

7 THE COURT: All right, sir. So, you were not present
8 when the people were coming off and on the bus?

9 A: No.

10 THE COURT: I'm gonna sustain the objection.

11 MR. BATTLE: Okay.

12 BY MR. BATTLE:

13 Q: What was the reason for moving -- what was the reason
14 that you decided to relocate the disembarkation process?

15 MR. BRITTAIN: I object to -- I object to that question;
16 it's just another way to get around the hearsay, Your Honor.

17 THE COURT: Why don't you explore how he got the
18 information -- not what the information was, how he got the
19 information to make the decision. Where did that information
20 come from? Was it personal experience or did it come from
21 other people?

22 BY MR. BATTLE:

23 Q: Where did the -- where did you get the information that
24 caused you to decide to move the children to the other side?

25 A: The director of the youth program came to me and asked me

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WILLIAM PHILLIPS - DIRECT BY BATTLE

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1 would it be okay ---

2 MR. BRITTAIN: Object to what the director said.

3 THE COURT: Well, don't say what he told you.

4 A: Okay.

5 THE COURT: He's not an eyewitness. But you got the
6 information from that person.

7 A: That's right. Correct.

8 THE COURT: All right. You did not get it because of
9 your own personal knowledge?

10 A: No.

11 THE COURT: You didn't observe it, you didn't see it?

12 A: No.

13 THE COURT: You didn't hear it?

14 A: No.

15 THE COURT: I'm gonna sustain the objection.

16 BY MR. BATTLE:

17 Q: All right. And did you have any understanding or any
18 knowledge of any reports or interactions where your choir
19 members were harassed?

20 MR. BRITTAIN: Your Honor, here again, if he was ---

21 THE COURT: Just, and again, let -- let's just focus on
22 -- when you're asked these questions, sir, I'm sorry. When
23 you're asked these questions, you need to identify if you know
24 it of your own personal knowledge. You -- you had it or saw
25 it, observed it, whatever, or it came to you from somebody

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1 else.

2 A: Well, it came to me.

3 THE COURT: It came to you from somebody else?

4 A: The youth director.

5 THE COURT: All right, sir. Again the youth director?

6 A: Who I supervised.

7 THE COURT: I understand that. I appreciate that.

8 Now, Mr. Battle, you can certainly ask him, as a result
9 of the conversations, what did he do or what did the church
10 do, just not stuff he didn't know about of his own personal
11 knowledge.

12 BY MR. BATTLE:

13 Q: As a result of your conversation with your youth
14 director, what did you decide to do?

15 A: Well, she made the recommendation and ---

16 Q: You say what you decided to do?

17 A: Oh, I decided to accept her recommendation, which was to
18 move the embarking and disembarking to the child development
19 center.

20 Q: Okay. Which was where?

21 A: Down 17 Bypass.

22 Q: Okay. Is that away from Levelz?

23 A: Yes, I don't know, five miles maybe.

24 Q: Now, did you -- what did -- just give me a list of the
25 trash and everything that you found around the church Sunday

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1 and Saturday mornings?

2 MR. BRITTAIN: If he found it. There again, I object to
3 anything somebody told him.

4 A: No, I picked it up myself.

5 THE COURT: All right. Yes, sir. So, again, just when
6 you're asked these questions, we're just talking about your
7 personal knowledge. Okay?

8 A: Okay.

9 THE COURT: Go ahead.

10 BY MR. BATTLE:

11 Q: You picked it up yourself?

12 A: Well, I am the janitor. I would get there early with the
13 janitor at 6:30, and he and I would, you know, police the
14 area. And of course, on the side where the homeless people
15 tended to stay between the buildings and under the hedges, we
16 had to bleach some stuff there, and on the south side there,
17 on the Levelz side, where the parking lot is around the old
18 bus station, there would just be cups and Styrofoam plates
19 and, you know, and food refuse scattered everywhere, and
20 sometimes there were alcohol bottles there.

21 Q: Any needles?

22 A: Any who?

23 Q: Needles that you recall?

24 A: I didn't see a needle, no.

25 Q: Okay. Now, as a result of that, did you make any

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1 complaints to the City of Myrtle Beach?

2 A: Not officially. I complained to a couple of officers.

3 Q: Well, they're City of Myrtle Beach.

4 A: Okay. And, but it really got intense when the gun fight
5 took place and two bullets were -- one hit the side of the
6 building and one came into the music room through the window.

7 Q: Okay. When did that gun fight take place?

8 A: It was about a year before I left, I think.

9 Q: 2017?

10 A: Somewhere in there, yeah.

11 Q: And that's when it really got intense?

12 A: Yes.

13 Q: Why did that get intense with you?

14 A: Well, it's gun play, you know, and when somebody is in
15 gun play it could kill anybody from, you know, a long
16 distance. You know, he may shoot you and hit somebody else.
17 I grew up in the country and I know what guns can do, and it
18 really worried me when those bullets struck the building. And
19 we had an older choir there, an older congregation, you know,
20 that met as a choir, and they were really concerned.

21 Q: Okay. Now, in -- did you support the solicitor's action
22 to find a nuisance at this club?

23 A: Yes.

24 Q: Did you file an affidavit on that behalf? I'm going to
25 show it to you and ask you if you can identify that.

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1 A: Yes, that's it.

2 Q: Is that your affidavit?

3 A: You can't read my writing, so it is mine.

4 MR. BATTLE: I want to introduce this affidavit.

5 MR. BRITTAIN: Your Honor, I object to this affidavit.

6 THE COURT: How about let me read it first, if y'all
7 don't mind.

8 And just so that we're clear about what we're talking
9 about, let's get this marked for identification as a defense
10 exhibit, please.

11 COURT REPORTER: We'll have to put it 6 because we
12 reserved that number 5.

13 THE COURT: That's Defendant's 6?

14 COURT REPORTER: Yes, sir.

15 THE COURT: For ID.

16 DEFENDANT'S EXHIBIT NUMBER 6

17 MARKED FOR IDENTIFICATION

18 COURT REPORTER: We reserved that number on the record
19 while ago.

20 THE COURT: I'm sorry?

21 COURT REPORTER: We reserved that number for that ---

22 THE COURT: Can I have the document back, please. Thank
23 you.

24 All right. Mr. Phillips, without saying what's in the
25 affidavits ---

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1 A: Without saying what's in it?
2 THE COURT: I'm gonna ask you a question.
3 A: Okay.
4 THE COURT: All right. This on the back ---
5 MR. BATTLE: That unfortunately is another affidavit from
6 the church.
7 THE COURT: Okay. So, not from this witness?
8 MR. BATTLE: Not from this witness.
9 THE COURT: So, if it comes in, that will have to go
10 away. All right. So, look at that. How much of that
11 information that you have on that affidavit comes from your
12 personal knowledge, something you observed, something you saw,
13 something you heard?
14 A: I don't know how to answer that. I saw what happened.
15 You know, I was the one that picked up a lot of the trash.
16 THE COURT: All right.
17 A: So, I didn't see anybody throw the trash down.
18 THE COURT: All right. So, you didn't see where it came
19 from, who did it ---
20 A: I didn't see anybody, no.
21 THE COURT: All right. I'm not going to allow
22 Defendant's 6 into evidence. We'll leave it for
23 identification. If you want to question the witness about
24 what he saw and did, please do so.
25 MR. BATTLE: Your Honor, may I approach the bench?

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1 THE COURT: Yes, sir. Mr. Brittain? Oh, you're just
2 getting that. Okay. I'm sorry.

3 MR. BATTLE: Well, we could have a sidebar and we could
4 excuse the jury.

5 (REPORTER'S NOTE: Bench conference is held off the record in
6 the presence of but outside the hearing of the jury.)

7 BY MR. BATTLE:

8 Q: And I'm going to show you another exhibit and ask you if
9 you can identify this and don't say what it is? And what is
10 this?

11 A: What is it?

12 Q: Yeah, just generally in terms of ---

13 A: It's a letter explaining what was happening on the church
14 property.

15 MR. BRITTAIN: Your Honor, I have the same type of
16 objection to this document. Number one, it's got something on
17 the back of it, too, which I don't -- I don't understand.
18 This isn't addressed to anybody.

19 THE COURT: All right. So, let's again, let's get it
20 marked for identification purposes.

21 COURT REPORTER: Defendant's 7.

22 DEFENDANT'S EXHIBIT NUMBER 7

23 MARKED FOR IDENTIFICATION

24 THE COURT: All right. Can I see it, please?

25 MR. BATTLE: Yeah, Your Honor, just to shortcut it, I

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1 understand you're going to have the same ---

2 THE COURT: Well, and I appreciate that, just so I'll
3 know what I'm talking about here. Well, parts of this ---

4 All right. Obviously, whatever is on the back would have
5 to be removed. I would allow into evidence a redacted
6 document that contains paragraphs 1, 2, and 4; basically
7 eliminates, so that it cannot be read, paragraph 3, since it
8 contains information beyond the scope of this witness'
9 knowledge. He has no personal knowledge of any of this. He's
10 repeating what somebody else told him. So, I'm not gonna
11 allow that, but the other matters, as an official of the
12 United Methodist Church, he can say this is something that he
13 requested or said and to whom he said it, since it's not
14 addressed to anybody. So, if you want to do that?

15 MR. BATTLE: May I just publish that, those paragraphs 1
16 ---

17 THE COURT: Basically, just the third paragraph that
18 contains these -- information that he doesn't have any
19 personal information about.

20 MR. BATTLE: What I would like to do with your permission
21 is to read paragraphs 1, 2, and 4 and then the thank you.

22 THE COURT: As long as the witness identifies that's, you
23 know, the document --

24 BY MR. BATTLE:

25 Q: Well, if you want to read it, be sure you don't go

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1 outside the Judge's instructions.

2 A: I will not read paragraph 3.

3 Q: Okay.

4 THE COURT: So, just so we're clear. This is a document
5 you authored.

6 A: Yes.

7 THE COURT: And you did so an official of the church?

8 A: Yes.

9 THE COURT: All right. In your duties and capacities?

10 A: Yes.

11 THE COURT: All right. I'm gonna allow that.

12 BY MR. BATTLE:

13 Q: Speak into the microphone please.

14 A: I believe most churches seek to be good neighbors in the
15 communities in which they find themselves located. First
16 United Methodist Church in Myrtle Beach is no different, has a
17 tremendous record of good citizenship since its establishment
18 many years ago. There are a few areas of service or outreach
19 in this township that does not have an indelible thumbprint
20 from this congregation upon it. It is done so without need or
21 concern for reciprocation from those it has served. Today we
22 ask for assistance.

23 Last year Levelz was opened across the church at 515
24 Ninth Avenue North. It is an entertainment site; it serves
25 both food and alcohol. By opening of this establishment

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1 within the proximity of First United Methodist Church, I
2 believe, was in direct violation of ABC code, History 2996,
3 Act Number 415, Section 2, Section 61-6-120, stipulates an
4 establishment that serves alcohol may not be located within
5 300 feet of a church, school, or playground within a
6 municipality, or 500 feet outside of a municipality. Levelz
7 is less than a hundred feet from First United Methodist Church
8 property.

9 Now, I got to skip over that next paragraph.

10 I ask you to join me in taking every means necessary to
11 remove the liquor license from this establishment. I am
12 asking for the Trustees and the Church Council to show support
13 by vote, then City Council, the Chief of Police, and the ABC
14 Commission in Columbia will be contacted with our grievances.
15 If we get no relief, then we may need to secure legal
16 assistance in this effort.

17 Thank you for your consideration. If you have any
18 questions, feel free to call me. Reverend Doctor William H.
19 Phillips.

20 Thank you.

21 THE COURT: What number was that?

22 COURT REPORTER: 7.

23 THE COURT: 7.

24 COURT REPORTER: Defendant's 7.

25 THE COURT: All right. So, it's for identification only?

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WILLIAM PHILLIPS - CROSS BY BRITTAIN

1 COURT REPORTER: Yes, sir.

2 MR. BATTLE: And this is dated February the 17th, 2015.

3 BY MR. BATTLE:

4 Q: Now, did you have any nuisance problems, and by that I
5 mean trash problems, on the side of the building where THE
6 nuisance was not located?

7 A: Well, we always had some all over the church. You know,
8 but it accelerated after Levelz was open, and it got really,
9 really bad.

10 Q: Did you have any of those really bad problems since
11 Levelz has closed?

12 A: No.

13 Q: And the church has made nuisance complaints to the City?

14 A: Well, to the officers. That was the only document I
15 think was written to the City.

16 Q: That's all I have. Thank you.

17 THE COURT: All right. Cross-examination?

18 MR. BRITTAIN: Yes.

19 CROSS-EXAMINATION OF WILLIAM H. PHILLIPS BY MR. BRITTAIN:

20 Q: Reverend Phillips, I can say you're a close friend.
21 We've been friends a long time, haven't we?

22 A: Yes, sir.

23 Q: Okay. You were my preacher?

24 A: Yes.

25 Q: And, you know, you ---

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- 1 A: And your dad I were close friends.
- 2 Q: Absolutely. Yeah. That's just that we're in a different
3 position today; you understand all that?
- 4 A: Yes, sir.
- 5 Q: We're Wofford graduates and good friends, but we're in a
6 different position, and I have to ask you some questions to
7 make sure everybody is represented properly; you understand?
- 8 A: I do.
- 9 Q: No hard feelings. And the gist of it is, you really
10 didn't see a lot of what we've been talking about. Like for
11 example, you didn't see who threw any of the trash down?
- 12 A: No.
- 13 Q: And there are other establishments in that area, not as
14 close to the church, but you're familiar with that area; there
15 were other clubs and businesses in that area?
- 16 A: I don't know of any clubs.
- 17 Q: Oh, you didn't? Okay.
- 18 A: I don't know of any clubs, and I don't know of a
19 restaurant in that area that served that type of food.
- 20 Q: Okay. You don't know -- you never heard of the Pure
21 Club; you never seen it over there?
- 22 A: No.
- 23 Q: Okay. But did you ever go down there and look and see
24 what all the clubs were in that section?
- 25 A: No.

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WILLIAM PHILLIPS - CROSS BY BRITTAIN

- 1 Q: Okay. All right. But my point is, you -- you have no
2 way, from your personal knowledge, of knowing who threw that
3 chicken wing down on the church property?
- 4 A: I just -- no, I do not.
- 5 Q: You didn't see it?
- 6 A: I did not see it.
- 7 Q: So, you -- you saw what I think you described, you saw
8 remnants?
- 9 A: Yes.
- 10 Q: Okay. Now, you must have still had a problem because the
11 church objected to Natalie's bar being established over there
12 too, didn't they?
- 13 A: Uh-huh, (affirmative response).
- 14 Q: Okay. That was after Levelz was closed?
- 15 A: I -- I can't remember that.
- 16 Q: Okay. But you remember objecting based on your ---
- 17 A: I actually met with her ---
- 18 Q: Okay.
- 19 A: --- and told her why, yeah.
- 20 Q: Okay. But you never met with Henry Brewington?
- 21 A: I didn't know they were opening the establishment.
- 22 Q: Okay. You didn't find out who was running it and say,
23 hey, man, I'm worried about the trash over here?
- 24 A: I didn't know anything about the establishment before it
25 opened.

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WILLIAM PHILLIPS - CROSS BY BRITTAIN

1 Q: Okay. But I mean, you never walked over there and said,
2 hey, guys, we got an issue over here; let's see if we can
3 figure this out?

4 A: I -- no, I didn't personally. I thought -- our business
5 manager, I forgot his name now.

6 Q: But you didn't?

7 A: No, I did not.

8 Q: And did the police or anybody ever show you a DVR of
9 Henry Brewington picking up all the trash around his
10 establishment? Didn't you testify in your deposition, when it
11 came to these matters, that you never saw a soul do anything
12 over at the church in connection with this matter; I never saw
13 a soul?

14 A: Could you ask it another way.

15 Q: I'm saying, we're talking about complaints.

16 A: Uh-huh, (affirmative response).

17 Q: And when I was asking you questions in your deposition --
18 you know, we met over at Mike Battle's office -- and asked you
19 what you saw yourself in connection with these matters?

20 MR. BATTLE: Your Honor, may I give him his deposition?

21 MR. BRITTAIN: Sure.

22 THE COURT: Let's -- I mean, that's fine. It's not a
23 problem. It's only if he says I don't remember or I didn't
24 say that, that you show them the deposition, but if y'all want
25 to do it ---

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WILLIAM PHILLIPS - CROSS BY BRITTAIN

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1 MR. BRITTAIN: Well ---

2 MR. BATTLE: That's fine.

3 MR. BRITTAIN: That's fine.

4 A: That deposition is closer to it than I am now.

5 THE COURT: All right, sir. Then go ahead and point it
6 out to him.

7 MR. BRITTAIN: Okay.

8 THE COURT: Hold on one second.

9 BY MR. BRITTAIN:

10 Q: Page 22.

11 THE COURT: All right. Ladies and gentlemen, again, the
12 deposition is recorded testimony taken under oath at a prior
13 time and can either be used to substitute for live testimony
14 or to question a witness on the stand.

15 You said page 22, Mr. Brittain?

16 MR. BRITTAIN: Yes, sir, line number 3.

17 THE COURT: Here you go, sir, that's page 22.

18 BY MR. BRITTAIN:

19 Q: It's right up at the top, line number 3. You see line 3
20 on there?

21 A: Yeah. Question: Sure, but I'm talking about like, you
22 know, trying to -- Answer: As far as seeing somebody?

23 Question: Yeah, never seen a soul -- never seen a soul do it?
24 No, I have not.

25 Q: Okay. So, that's what you said on that day?

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WILLIAM PHILLIPS - REDIRECT BY BATTLE

1 A: I say it now.

2 Q: So, okay, I'm sorry. I thought you questioned whether
3 you said that or not?

4 A: No, I'm just -- I didn't see anyone, Natalie or -- I
5 didn't see anyone urinate, I didn't see anybody throw anything
6 down. All I saw what was left on Friday night and Saturday
7 morning -- or Sunday morning from Friday and Saturday night.

8 Q: Okay. All right. You never saw anything personally?

9 A: No.

10 MR. BRITTAIN: Okay. That's all I have, Your Honor.

11 THE COURT: Redirect?

12 MR. BATTLE: Yes, Your Honor.

13 REDIRECT EXAMINATION OF WILLIAM H. PHILLIPS BY MR. BATTLE:

14 Q: There was one question about having to step over someone;
15 do you recall that; was that -- did you see that?

16 A: There was -- I remember a couple of times, I can't
17 remember what I had for breakfast, you know, I'm that age.

18 Q: I understand.

19 A: But I remember there were a couple of people that were
20 there at Sunday morning at the old bus station sleeping and
21 they did not look like they were of the homeless population.

22 Q: Did you see anybody on any doorsteps?

23 A: Yes.

24 Q: Your doorstep?

25 A: Well, no, it was -- well, yes, it's the old bus station

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WILLIAM PHILLIPS - RECROSS BY BRITTAIN

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1 that the church now owns.

2 Q: Okay. And they were passed out on the doorstep?

3 A: Yes.

4 Q: That's all I have. Thank you.

5 RECROSS-EXAMINATION OF WILLIAM H. PHILLIPS BY MR. BRITTAIN:

6 Q: But, Reverend Phillips, you don't know where the people
7 came from?

8 A: No, but he did not look like from the homeless
9 population.

10 Q: But you don't know where he came from?

11 A: No.

12 Q: Okay. Nothing further.

13 THE COURT: All right, sir. You may step down. Thank
14 you very much.

15 MR. BATTLE: And could this witness be excused?

16 THE COURT: Any objection?

17 MR. BRITTAIN: None. None.

18 THE COURT: All right, sir, you're released from your
19 subpoena; you may go back to your regular duties and
20 responsibilities.

21 MR. PHILLIPS: Thank you.

22 THE COURT: All right. Your next witness, Mr. Battle?

23 MR. BATTLE: Lisa Robertson.

24 THE COURT: Please come around and be sworn.

25 THE CLERK: Please raise your right hand and your left

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LISA ROBERTSON - DIRECT BY BATTLE

1 hand on the Bible.

2 LISA ROBERTSON, HAVING BEEN DULY
3 SWORN TESTIFIES AS FOLLOWS:

4 THE CLERK: Will you please state your first and last
5 name for the record?

6 MS. ROBERTSON: Lisa Robertson.

7 THE COURT: Go ahead, Mr. Battle.

8 MR. BATTLE: Thank you, Your Honor.

9 DIRECT EXAMINATION OF LISA ROBERTSON BY MR. BATTLE:

10 Q: Ms. Robertson, would you tell the jury a little bit about
11 yourself, your relationship with the City of Myrtle Beach,
12 when you worked there and what your job duties were there, and
13 particularly with regard to your duties as a regulatory
14 officer?

15 A: Yes. My name is Lisa Robertson. I have worked for the
16 City of Myrtle Beach for 17 years. I retired in April of
17 2017. When I first started with the City, I was a bicycle
18 patrol officer on the boulevard; then I went to street crimes
19 unit for five years; and after that, my last three years was
20 with the regulatory unit. With the regulatory unit, I was
21 responsible for investigating activities and ongoing
22 complaints, whether it be business, properties, residence,
23 that's what we -- throughout the whole City of Myrtle Beach.

24 Q: And what are your goals as a regulatory officer?

25 A: The goals of a regulatory officer was to -- the first one

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LISA ROBERTSON - DIRECT BY BATTLE

1 is the safety of the community, of the clientele that these
2 businesses had; just to make sure that everybody was in
3 compliance, and everybody was safe, and that the quality of
4 life within that community was still like it should be in that
5 they weren't afraid. We just wanted them to have the quality
6 of life that they were used to.

7 Q: Now, in order to achieve those goals, did you ever work
8 with the bar and the property owners or -- or the club owners
9 throughout the city?

10 A: Yes, I did.

11 Q: Okay. Tell us what -- how you would approach that and
12 what you would try to do?

13 A: When a drinking establishment came into the City of
14 Myrtle Beach, any drinking establishment that was going to be
15 open as a bar, they would have to come to -- they would have
16 to go get a business license. And in order to obtain that
17 business license, we would meet with them, and we would give
18 them guidelines to go by. We would give the drinking
19 establishments or the drinking ordinance, the safety plan,
20 guidelines that they needed to go to. So, we would sit down
21 and have meetings with them to let them know that this is what
22 -- just to kind of guide them through the process.

23 Q: Okay. And did you do that with Mr. and Ms. Brewington?

24 A: I did.

25 Q: Did you give them guidelines as to what they should be

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LISA ROBERTSON - DIRECT BY BATTLE

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1 doing?

2 A: Yes.

3 Q: Okay. And did you seek to get their cooperation?

4 A: Absolutely. I would go -- I would call them in and we
5 had, you know, a meeting. And I would go down and speak with
6 them about what was going on, if a complaint came through or
7 something. I would try to get up with them just to let them
8 know, hey, this is what's going on, you know, can we do
9 something to help your business along. I'm not here, and I
10 told them, I'm not here to hurt your business; I'm here to
11 help you. I want the businesses to succeed in Myrtle Beach,
12 because well, that takes less work off of me. So, I, you
13 know, I do speak with them and try to gain compliance with --
14 with the ordinances. I had spoken with them on numerous of
15 times.

16 Q: And these are city ordinances that are laws?

17 A: Yes.

18 Q: And your goal then was to try to educate them and get
19 them to where they would comply?

20 A: Yes.

21 Q: Is that correct?

22 A: Yes. I feel like I really bent over backwards to help
23 the Brewingtons. I really liked the Brewingtons. I just feel
24 that the City of Myrtle Beach, that they just couldn't come in
25 compliance and, maybe -- and I don't know why they couldn't.

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LISA ROBERTSON - DIRECT BY BATTLE

1 I don't if they just didn't know how to run that bar or what,
2 but I just was trying to get them to come into compliance with
3 everything.

4 Q: You say you don't know why. Do you think the Brewingtons
5 are bad people?

6 A: No, not at all. I really liked Ginny and Mr. Brewington
7 a lot.

8 Q: You feel like they were in over their head?

9 A: Yes.

10 Q: Now, we're going to talk about your experience and your
11 history in interactions with the Brewingtons and with Natalie
12 Litsey. Did you compile a notebook which you used to bring
13 forth the complaint for the nuisance to give to your corporal?

14 A: Yes, I did.

15 Q: And were these two documents in this?

16 A: Yes, sir; they were.

17 Q: Could you put them in order in your complaint? And were
18 these records you compiled as business records in your job as
19 a regulatory officer?

20 A: Yes. Yes, I compiled the records, complaints, and calls,
21 and things

22 MR. BATTLE: Your Honor, I'd like to introduce this
23 business record into evidence.

24 THE COURT: Any objection?

25 MR. PLAYER: I haven't looked at it, Your Honor.

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BY THE COURT

1 MR. BATTLE: No objection?

2 MR. PLAYER: I got to look at it.

3 MR. BATTLE: Oh. Well, it's the same ---

4 THE COURT: It contains the documents that Mr. Brittain
5 already objected to.

6 MR. PLAYER: Yes, Your Honor, and I'm going to have a
7 similar objection. I know he's gonna try and bring it under
8 business records.

9 BY THE COURT:

10 THE COURT: All right. So, I tell you what. This is
11 going to take a little bit, ladies and gentlemen. Go to your
12 jury room for a little bit and I'll call you back out. Leave
13 your pads and pens and don't talk about the case. Thank you.
14 (REPORTER'S NOTE: Jury exits courtroom @ 3:43 p.m. The
15 following takes place outside the presence of the jury.)

16 THE COURT: All right. Counsel, your objection, please?

17 MR. PLAYER: Your Honor, with ---

18 THE COURT: And I'm sorry. Did we mark the book itself
19 yet?

20 COURT REPORTER: No, sir.

21 THE COURT: All right. Let's mark the book itself so
22 we're clear in what we're talking about.

23 MR. BATTLE: Judge, I'm gonna remove two pages that were
24 part of my outline of my questions.

25 THE COURT: Okay.

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BY THE COURT

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1 MR. BATTLE: And two notes that were ---

2 THE COURT: So ---

3 COURT REPORTER: I need to mark that, Judge.

4 THE COURT: I thought you marked it. I'm sorry.

5 All right. So ---

6 MR. PLAYER: And, Your Honor, I ---

7 THE COURT: Just a second. It's now marked as
8 Defendant's 8 for identification.

9 DEFENDANT'S EXHIBIT NUMBER 8

10 MARKED FOR IDENTIFICATION

11 THE COURT: So, I'm clear about this, Ms. Robertson, tell
12 me did you compile all the documents contained in that
13 exhibit? Look through it. Did you personally do that?

14 A: Yes, Your Honor, I compiled this notebook.

15 THE COURT: All right. And those documents, did you do
16 them contemporaneously with your duties and responsibilities
17 for the City?

18 A: I did.

19 THE COURT: You didn't compile them for this litigation?

20 A: No, I keep a notebook. This is just a condensed version
21 of it. I have a big notebook that I keep. And then, like I
22 said, this is just a condensed version of everything that was
23 ---

24 THE COURT: And it's part -- part of the business records
25 of the City of Myrtle Beach?

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1 A: Yes.

2 THE COURT: All right. All right. Counsel, let me hear
3 your objection.

4 MR. PLAYER: Your Honor, I understand that Mr. Battle is
5 putting it in as a business record, but there is hearsay
6 within the contents of the record -- I mean, of the file that
7 was created. Now, I understand if it's part of the
8 compilation, it can still be entered under the business
9 exception rule, but the business exception rule clearly says
10 no subjective opinions or judgments can be admitted even if
11 it's a business record. And in the actual -- and I don't
12 have a problem -- Ms. Robertson is here. Her notes, her
13 calculations, the call logs, I don't have a problem with
14 those. The witness statements that are in there with the
15 witnesses not being here, anything that is subjective at all,
16 and there are random sentences in there that are -- they're
17 clearly an opinion by the author. That's not admissible. I'm
18 fine with those being redacted. The incident reports, they're
19 pretty clean. There may be a few judgments here and there,
20 but I'm not gonna go nuts with that. But those witness
21 statements, I think Paulussen has clearly a subjective
22 judgment in there. The woman next to him, who talks about
23 what she found in her parking lot and she found a Levelz tag,
24 and you know, there is some hyperbole and, you know, adverbs
25 and adjectives in there that would fall into a subjective

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1 opinion or judgment which is not admissible under the business
2 exception -- the business record exception. So, it's only
3 those portions that would violate the rule with regards to a
4 subjective opinion or judgment that we object to with regards
5 to Ms. Robertson's file.

6 THE COURT: All right. Mr. Battle, what do you say to
7 that?

8 MR. BATTLE: Your Honor, this was a document that was
9 prepared and handed to the police that made the decision to
10 turn the complaint over to the solicitor to bring a nuisance
11 action. This was their motive; it was based on the
12 information contained in those documents. I don't see -- it's
13 like you have an investigator doing a report of an accident.
14 That is admissible if it's part of the records he
15 contemporarily makes. I don't -- she goes out and gets
16 statements; this is used. You can see all the time in
17 nuisance cases where you have members of the public making
18 complaints, and you just put in the affidavit as opposed to
19 calling all these witnesses. I do not agree with Mr. Player's
20 recitation of the law and I believe that it does come in
21 because it is a complaint that was relied upon in making a
22 decision and it is relevant to the motive of the City.

23 MR. PLAYER: Your Honor, they don't have anybody to
24 testify to that. I mean, the solicitor is not gonna be here.
25 The decision to shut the Brewingtons down was made on January

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1 27th, not February 17th. So, and I understand Mr. Battle's
2 position. This was the solicitor -- where's the solicitor?

3 THE COURT: All right, sir. I appreciate that.

4 Even though it is a business record, Mr. Battle, if it
5 contains any information that involve opinions, judgments, or
6 conclusions, that's not admissible, okay, not even under the
7 business records or public records of the City. So, as to any
8 statement in here that involves any kind of opinion, judgment
9 or conclusion, it may not be shown to or given to the jury in
10 this case. So, I'm gonna have to leave it to y'all -- that's
11 the Court's ruling. You'll have to go through and redact it
12 in accordance with that ruling, show it to opposing counsel
13 before Defendant's Exhibit 8, which is for ID only at this
14 point in time, can go to the jury. Thank you.

15 MR. PLAYER: Thank you, Your Honor.

16 MR. BATTLE: Your Honor, I would like for the witness to
17 have reference to it during ---

18 MR. PLAYER: Mike, if you just take out the ---

19 THE COURT: Y'all, that's something that y'all can agree
20 on. Okay?

21 MR. PLAYER: And, Your Honor, I'm just trying to say --
22 you know, can we finish Ms. Robertson today, because those are
23 the only things I object to, if you take it out of the
24 notebook, the notebook I will -- I will not contest and then
25 those affidavits ---

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1 THE COURT: All right. Well, how about take a couple of
2 minutes and show Mr. Battle. Y'all see if you can agree and,
3 if not, then you'll just have to go by the Court's ruling.
4 Okay?

5 MR. PLAYER: Thank you, Your Honor.

6 THE COURT: So, we'll just take a short break. Y'all
7 look at it and see if y'all can't come to an agreement.

8 Ma'am, you can step down; you just can't talk to him.

9 MS. ROBERTSON: Okay.

10 THE COURT: All right. Thank you.

11 **RECESS - 3:52 P.M.**

12 *****OFF THE RECORD*****

13 **ON THE RECORD - 3:56 P.M.**

14 THE COURT: All right. The City ready for the jury to
15 come back in?

16 MR. BATTLE: Well, let me explain what our procedure is
17 gonna be and maybe that will be ---

18 THE COURT: Okay, great.

19 MR. BATTLE: --- acceptable to you.

20 THE COURT: Yes, sir.

21 MR. BATTLE: I am going to ask Ms. Robertson if she
22 received complaints from certain parties. I'll list the
23 parties and she can agree or disagree, but I'm not gonna
24 publish any of the complaints, the language contained in the
25 complaints. I am going to go tonight and try to comply with

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1 your ruling and redact opinions and judgments along those
2 lines and then show it to them tomorrow morning before the
3 trial starts, and if we're in agreement then we'll introduce
4 the document then?

5 THE COURT: I'm perfectly fine with that.

6 MR. PLAYER: That works with us, Your Honor.

7 THE COURT: All right. Very good. The plaintiff ready
8 for the jury to come back in then?

9 MR. PLAYER: Yes, Your Honor.

10 THE COURT: All right. Ask the jury to come in, please.

11 All right, gentlemen, before the jury comes in, I've
12 asked the bailiff to inquire of the jury if they had any
13 problems staying after 5 o'clock and several of them do. So,
14 we'll just go until then, see where we are and if we have to
15 stop, we'll stop, and in the morning -- it's not -- I don't
16 like to do this and didn't want to do that, but in the face of
17 that, that's what I will do. Okay?

18 MR. PLAYER: Yes, Your Honor. Thank you.

19 (REPORTER'S NOTE: Jury enters courtroom @ 4:00 p.m.)

20 THE COURT: All right. Mr. Battle, you may resume.
21 Thank you.

22 MR. BATTLE: Thank you, Your Honor.

23 BY MR. BATTLE:

24 Q: Ms. Robinson, in this book I'm gonna ask you some
25 questions about who you received complaints from and, if you

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1 Recall -- if you'd like to look at the book, I'll be glad to
2 give it to back to you. But did you receive -- may I
3 approach?

4 THE COURT: Yes, sir, please.

5 MR. BATTLE: And just ask her questions here.

6 BY MR. BATTLE:

7 Q: Did you receive a complaint from Andrew Paulussen in
8 connection with Levelz?

9 A: Yes.

10 Q: And did you receive a complaint -- and he is a business
11 at House Parts?

12 A: Yes.

13 Q: Okay. Did you receive a complaint from Marie Sahnger?

14 A: Yes.

15 Q: And she has a hair studio By Midtown; is that correct?

16 A: Uh-huh, (affirmative response). Yes.

17 Q: And did you also receive a complaint from Pat Gibbons?

18 A: Yes.

19 Q: And he is the maintenance supervisor with the First
20 Methodist Church?

21 A: Yes, sir.

22 Q: And we've also talked about Mr. Phillips, and you
23 received his complaints there?

24 A: Yes.

25 Q: Now, with regard to the -- and it was what Ms. Brewington

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1 said or Mr. Brewington said that Ms. Litsey said about actions
2 that you told her; do you recall that testimony?

3 A: Yes.

4 Q: Was that true? Did you tell Ms. Litsey, you better get
5 out and don't rent from them?

6 A: Absolutely not.

7 Q: What conversations did you have Ms. Litsey in regard to
8 them, were those the ones that you recorded on the telephone?

9 A: Yes.

10 Q: All right. And that's part of the record, so I won't
11 give this to the jury now. With regard to -- did she also
12 contact you and did you also help her find another business in
13 that area?

14 A: She found the business herself. I did -- I did speak
15 with Natalie. She asked me a lot of questions. She asked me
16 questions was the nuisance gonna follow her. I told her it
17 should not follow her. She was gonna be a new business. I
18 did -- I did tell her that Levelz was under a nuisance; that
19 building was under a nuisance investigation, and if that -- if
20 it got deemed a nuisance, then it could be closed the whole --
21 not just Levelz itself, but the whole building could be closed
22 for up to a year. Later on, she did contact me and she told
23 me that ---

24 MR. PLAYER: Objection, Your Honor, hearsay.

25 THE COURT: Sustained.

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1 BY MR. BATTLE:

2 Q: Not what she told you, but basically what you -- what
3 your conversation was as far as what you had said and what you
4 had indicated to her, communicated to her.

5 A: Right. Other than that, that's all I communicated to
6 Natalie. I did tell her what she had to go through to get her
7 business license. That's one of our jobs; we educate new
8 businesses that are gonna be drinking establishments. What
9 they need to do and just helpful, you know, you need to go do
10 the business licenses, you need to get a business license,
11 you're going to go down -- or apply for a business license;
12 you're gonna go down and you're gonna apply for a business
13 license; they're gonna send you back to the regulatory unit to
14 have a safety plan. Once the safety plan -- and this is in
15 the ordinance -- once the safety plan is in place, then we
16 send it back to business license. They go through it and then
17 that's when they issue their business license. We let them
18 know that, you know, they have to go through zoning, and they
19 have to go through the fire marshal as far as that goes.

20 Q: During her deposition, did Ms. Litsey express the opinion
21 that all she needed was the corporate approval from the
22 Secretary of State?

23 A: Yes. Yes.

24 Q: She did not realize she had -- what she had to do?

25 A: Right.

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1 Q: And was this after she had signed her agreement with Mr.
2 Brewington?

3 A: I don't recall on that.

4 Q: Was it her plan to just reopen up Levelz and continue at
5 Levelz?

6 A: Yes.

7 MR. PLAYER: Objection, Your Honor, she can't testify to
8 what Natalie's plan was; hearsay.

9 THE COURT: I understand your objection. Again, you
10 can't relay what was told to you by that individual, but what
11 you did as a result of it or what you communicated back.
12 Okay?

13 A: All right.

14 BY MR. BATTLE:

15 Q: So, with regard to her name, I believe it's in the
16 telephone conversation, you indicated that Levelz would not be
17 acceptable to the solicitor?

18 A: Yes.

19 Q: And why was that?

20 A: Because it was under a nuisance at that time, and
21 nuisance investigation at that time.

22 Q: Now, there had been a notice of nuisance abatement sent
23 out by the solicitor prior to this conversation?

24 A: I don't recall.

25 Q: Now, when you had the conversation with Mr. Brewington

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1 and -- or Ms. Brewington and Tom Ellenberg, and was Chief Gall
2 there?

3 A: Yes, sir.

4 Q: Okay. Did you have anything -- did you say anything in
5 that conversation?

6 A: I didn't. I was in the room, but I didn't -- I didn't
7 say anything. I was asked to give a copy to -- the
8 Brewingtons asked for a copy of the calls and I -- I gave them
9 that. Other than that, I ---

10 Q: Now, with regard to the choice that was given to the
11 Brewingtons, was the choice simply to get out or was it, you
12 can either leave or we're gonna turn the matter over to the
13 solicitor?

14 A: You can either leave or they're gonna turn the matter
15 over to the solicitor.

16 Q: And when it goes to the solicitor, who has control of the
17 decision?

18 A: The judge, the solicitor's office.

19 Q: So, the decision then it does not have anything to do
20 with the City of Myrtle Beach?

21 A: No. Once it's out of my hands, I don't know what happens
22 to it after that, once it goes to the solicitor's office.

23 Q: Now, in this report, there are an incident that's dated
24 January 27th that shows nine incidents. Was there a follow-up
25 report done in this book?

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- 1 A: What date was that?
- 2 Q: The first two pages were the January the 27th report.
- 3 A: Yes.
- 4 Q: And how many instances are you talking about in that
- 5 particular -- I mean, how many entries did you make on that
- 6 particular report?
- 7 A: Well, from -- I'm sorry, bear with me. Now, are you
- 8 talking about the whole -- the whole thing, or what -- what
- 9 ---
- 10 Q: Just what is the nature of these reports you did include?
- 11 A: Oh, the police reports, okay. The nature of the reports
- 12 were fighting; where SLED had gone in and got after hours
- 13 drinks after 2 o'clock.
- 14 Q: So, those were descriptions of violations?
- 15 A: Yes, they were. They had a fight at the club, I guess on
- 16 -- and every time that something would happen, I would give
- 17 the Brewingtons a call just to let them know, hey, this is
- 18 going on. Is there something, you know, we can do to help you
- 19 guys be more aware of what's going on? Every time that I
- 20 would -- like I said, every time I got a call, I would -- I
- 21 would give them a call just to let them -- in case they
- 22 weren't there. I don't know if they were there or not because
- 23 I didn't go out at night to check. So, I would give them a
- 24 call and say, hey, what happened or what's going on.
- 25 Q: All right. Now, in the complaint that was brought by the

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1 solicitor or the assistant solicitor, who -- the special
2 prosecutor, did you assist in the drafting of that complaint;
3 did you verify it? You can look at it and look at the
4 verifications.

5 A: The verification, is that what ---

6 Q: Yes, ma'am.

7 A: Yes.

8 Q: Okay. And that's basically saying that everything that's
9 in that complaint is true to the best of your knowledge?

10 A: Yes.

11 Q: And was it true?

12 A: Yes.

13 Q: Now, let's turn to plans that City Council may have had
14 in connection with the Superblock. Did you have any knowledge
15 of any plans by the City Council or the DRC in connection with
16 the area where Levelz is located?

17 A: No, I didn't. That's way beyond my pay grade and I'm not
18 privy to that information.

19 Q: Okay. Did anyone contact you to ask you to find a reason
20 to close Levelz?

21 A: No, they didn't.

22 Q: Now, did you ever try to talk Ms. Davis out of leasing
23 her property to Ms. Litsey?

24 A: I never spoke with Ms. Davis.

25 Q: You never spoke to Ms. Davis?

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1 A: No.

2 Q: Did you try to interfere, or did you have the intent to
3 interfere with the contract between Ms. Davis and the
4 Brewingtons?

5 A: Oh, no, not at all.

6 Q: And you never spoke with Ms. Davis?

7 A: No, not that I recall.

8 Q: Now, Ms. Litsey said that everything you told her was
9 true. Was she the one asking you questions and asking you for
10 information?

11 A: Yes.

12 Q: And did you give her information to the best of your
13 ability?

14 A: I did.

15 Q: Is that your duty as a public servant?

16 A: It is.

17 Q: Did you have any intent to interfere or try to interfere
18 with any business relationship between the Brewingtons and the
19 Litseys -- Ms. Litsey?

20 A: Absolutely not, no. I liked them. I loved the
21 Brewingtons. They were very nice people.

22 Q: What did you try to do and what was your purpose in
23 talking to them and answering their questions?

24 A: Was just to try to guide them and help them along if they
25 needed questions, and I wanted to keep them abreast of what

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1 was going on with their business.

2 Q: All right. Now, did you have any decision-making role in
3 this particular case with regard to whether or not they were a
4 nuisance?

5 A: No, sir.

6 Q: But do you have an opinion?

7 A: Oh, I have opinions.

8 MR. PLAYER: Objection, Your Honor, she can't give it.

9 THE COURT: Sustained.

10 BY MR. BATTLE:

11 Q: That's all the questions I have. Thank you.

12 THE COURT: Cross-examination?

13 MR. PLAYER: Yes, Your Honor, thank you.

14 CROSS-EXAMINATION OF LISA ROBERTSON BY MR. PLAYER:

15 Q: Ms. Robertson, were you completely honest with the
16 Brewingtons?

17 A: Yes.

18 Q: All right. I want you to look at your little notebook
19 and go to your notes on the calls -- well, actually your
20 communications with the Brewingtons. Okay?

21 A: Uh-huh, (affirmative response).

22 Q: We want to look at the top of page 2 on -- in the middle
23 of the page, there's a date 1/20/2015?

24 A: Okay.

25 Q: Do you have that page?

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- 1 A: Uh-huh, (affirmative response).
- 2 Q: Let's go to 1/22/2015?
- 3 A: Okay.
- 4 Q: I want you to read the first two sentences?
- 5 A: On this date, I gave Virginia Brewington, with her phone
6 number, owner of Levelz a courtesy call in reference to a
7 fight.
- 8 Q: Okay. Next sentence?
- 9 A: Uh-huh, (affirmative response).
- 10 Q: Can you read it for me?
- 11 A: Uh-huh, (affirmative response). I advised her that the
12 fight would not be held against her, and because they did call
13 the police for help -- for helping out in this matter. Mr.
14 Brewington stated that -- Ms. Brewington stated that she does
15 not -- or does have the fight on flash drive and that if I
16 wanted to -- for her to show it to me, she would get it for
17 me.
- 18 Q: Okay. So, we're gonna put a pin in that for a second,
19 but ---
- 20 A: Uh-huh, (affirmative response).
- 21 Q: --- want to remember, you said ---
- 22 A: Uh-huh, (affirmative response).
- 23 Q: --- that her call on 1/18 was not gonna be used against
24 her?
- 25 A: Right.

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1 Q: Okay. So, what happened in your notes ---
2 A: Uh-huh, (affirmative response).
3 Q: --- on January 26th, Ms. Robertson called you and
4 complained, did she not?
5 A: Who called me?
6 Q: I mean, I'm sorry ---
7 A: Ms. Brewington?
8 Q: --- Ms. Brewington, I apologize.
9 A: Yes.
10 Q: What was she complaining about? Well, actually, let's
11 read your words.
12 A: Okay.
13 Q: What's the first sentence?
14 A: On this date, I received a call from Virginia Brewington
15 wanting to make a complaint against the police department.
16 She stated that she wanted to meet with me and chief of
17 police. I could not get a word in as Ms. Brewington kept
18 talking about how she thought that the police were harassing
19 them. There were too many police on the property this
20 weekend, and there did not need to be many police. She thinks
21 that some of the officers are in cohorts with the people from
22 Heat. They never get calls over there, and officers are
23 always hanging out there in the owner's office.
24 Q: Okay. That's all we need to read right now. So, she's
25 complaining about Club Heat?

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- 1 A: Uh-huh, (affirmative response).
- 2 Q: And she's complaining that she's being treated
- 3 differently, correct?
- 4 A: Yes, that was her complaint.
- 5 Q: And she also complains that she thinks the cops are
- 6 protecting Heat, right; isn't that what she said?
- 7 A: That's what she said, yes.
- 8 Q: What did you do the next day?
- 9 A: I set up a meeting with the ---
- 10 Q: Come on, Ms. Robertson; you can read it?
- 11 A: Oh, do I need to read it. Okay.
- 12 Q: Yeah, on this date ---
- 13 A: On this date, I put together the nuisance file for
- 14 Levelz, a letter of recommendation to go ahead with nuisance
- 15 abatement letter, and file was given to Corporal Gibson to
- 16 send up through the chain.
- 17 Q: Okay. And you have that letter in your file, right?
- 18 A: I do.
- 19 Q: Let's go to number 5. What is number 5?
- 20 A: Where is number 5.
- 21 Q: In your abatement letter the nine, number 5, on January
- 22 18th, 2015 -- I'm not -- I'm talking about this, the official
- 23 letter that you sent, where you compiled their Levelz file?
- 24 A: Yes. I've got it.
- 25 Q: What is number 5?

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1 A: Number 5. On January the 18th, 2015 at approximately
2 3:20 hours, a female called the police department and refused
3 to give her name. I was later -- it was later discovered the
4 female was Virginia Brewington.
5 Q: That's the call that your notes say you told Virginia
6 Brewington would not be held against her, correct?
7 A: Not that call.
8 Q: Really? There was another call on January 18th that Ms.
9 Brewington had a fight?
10 A: I'm not sure. I'm not sure.
11 Q: It's in your notes, Ms. Robertson.
12 A: The call that she gave me that I called her about was not
13 going to be held against her because she called. This one
14 here, we didn't discover that she called until later.
15 Q: Okay.
16 A: We didn't discovery how, and I don't recall how we
17 discovered it was her that called.
18 Q: Well, your notes do. Let's go back and read them. Let's
19 go back to page 2.
20 A: Okay.
21 Q: And up top -- well, actually 1/20, two days -- two days
22 before you have a conversation with Ms. Brewington, 1/18, is
23 when the event happened, correct? Go to 1/22 and let's read
24 it again. On this date, I gave Virginia Brewington, owner of
25 Levelz, a courtesy call-in reference to the fight that

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1 happened on 1/18/2015 at their club. I advised her that the
2 fight would not be held against her, and it was.

3 A: No, I never held a fight against her. If they call ---

4 Q: No, no, no, no.

5 A: Okay.

6 Q: Read number 5?

7 A: I'm reading it.

8 MR. BATTLE: She's allowed to explain it.

9 THE COURT: Gentlemen?

10 MR PLAYER: I'm sorry, Your Honor.

11 THE COURT: All right.

12 BY MR. PLAYER:

13 Q: Please ---

14 THE COURT: As I've said before, listen to the question,
15 answer the question, then you may explain your answer. Go
16 ahead.

17 A: Are you waiting on me?

18 BY MR. PLAYER:

19 Q: Yes, ma'am.

20 A: Okay. On that day, on the 20 -- or the 18th, 2015, the
21 dispatch receive a call for a fight. Dispatch came through
22 unknown caller; didn't know who it was. They refused to give
23 their name. The CAD, which is how we get our reports -- it's
24 through a computer system -- and it described the suspects and
25 the establishments and both parties left. Later on, it was

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1 discovered that Virginia Brewington had called. I don't
2 recall how I knew that it was Virginia Brewington; it's been a
3 long time.

4 Q: In response to that, I would ask you again to read 1/22
5 when you specifically state you talked to her about the call?

6 A: Uh-huh, (affirmative response).

7 Q: So, if you didn't know she made the call, how are you
8 telling her on January 22nd, it's not gonna be held against
9 her?

10 A: Like I said, the call that she made was un -- I didn't
11 know who it was that called.

12 Q: I just -- I want you to listen to my question.

13 A: I'm listening.

14 Q: I want you to look at your notes ---

15 A: I'm looking.

16 Q: --- for 1/22. You called her, and I advised her that the
17 fight would not be held against them because they did call the
18 police. Who is they?

19 A: Okay.

20 Q: That's Ms. Brewington, correct?

21 A: Can I answer?

22 Q: Sure. Sure.

23 A: Okay. On number 5, that was on January the 18th, when I
24 gave her a call in reference to the fight ---

25 Q: On what day? When was the fight?

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1 A: The fight was -- on this date, I pulled the call for
2 Levelz on the 18th.

3 Q: Not when you pulled it, that's when the fight that you're
4 talking to her about, correct? I mean, you say the fight that
5 happened on 1/18/2015; that's your words, you're talking about
6 the same thing. You still don't admit that?

7 A: If it says it, I do.

8 Q: Okay.

9 A: Okay.

10 Q: Now, I want to talk about I think the 26th and the 27th
11 of the report. The 26th, she calls and complains about Heat.
12 Remember that now. And she's complaining that Heat is treated
13 differently, correct? And the next day you did the memo to
14 Chief Gall -- this is in your book, January 27th -- and the
15 last thing you said is based on the number of above calls for
16 service in such a short period of time it is my, meaning you
17 ---

18 A: Uh-huh, (affirmative response).

19 Q: --- recommendation that we move forward with the nuisance
20 abatement letter to the owner of the establishment. Now, you
21 just told Mr. Battle you had nothing to do with this. You had
22 no discretion. Who did? Because that's your words?

23 A: That's my words. I compile the information, I put it
24 together ---

25 Q: Okay.

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1 A: --- and then I send it up. Once it's out of my hands and
2 it goes up, they're the ones that make the recommendation as
3 to whether the chief -- it goes to the corporal, the
4 lieutenant, the captain, to the chief, and then the chief
5 makes the final recommendation if he thinks that, yeah, we
6 should go along with it. So, once it goes to the chief, then
7 it goes to the solicitor's office. Once it goes out of my
8 office to the chief, it's -- I don't have anything to do with
9 it.

10 Q: If you had a set of dominoes and the only thing you do is
11 hit one of them and the rest of them fall, is it your
12 testimony that that's not your responsibility?

13 A: No.

14 Q: Okay. So, what is your rule, because Mr. Battle likes to
15 talk about it, what does the law say about somebody who is
16 found to be a nuisance? You can shut them down for a year,
17 right? That's what you were telling everybody.

18 A: Yeah.

19 Q: What happens when you tell the landlord that?

20 A: I never talked to the landlord.

21 Q: Did you send her a letter?1

22 A: I did not.

23 Q: The law requires that the owner of the property be
24 notified when there's a nuisance letter, does it not?

25 A: It does.

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LISA ROBERTSON - CROSS BY PLAYER

- 1 Q: So, you didn't follow the law?
- 2 A: I did not; the solicitor did.
- 3 Q: Did you know that a letter was going to go to Melvina
4 Davis saying you're getting ready to lose your place for a
5 year because we think they're a nuisance?
- 6 A: The solicitor's office does that, not me.
- 7 Q: Okay. Again, did the solicitor's office investigate
8 this; did they take statements?
- 9 A: No.
- 10 Q: Did they compile the notebook you have?
- 11 A: No.
- 12 Q: That was you?
- 13 A: Yes.
- 14 Q: You were the first domino, correct?
- 15 A: Yes.
- 16 Q: Now, on the 26th, Ginny said this earlier, she calls in
17 and complains, and I think you kind of verified and said she
18 wouldn't stop talking. You hung up and called her back. Who
19 did you call? When she said the cops -- I'm being treated
20 unfairly; he gets away with everything -- gets away with
21 everything; I'm being treated unfairly. You didn't say, oh,
22 I'm so sorry; we'll start an investigation. You said, I'll
23 have to call you back. Who did you call?
- 24 A: Once she started to calm down when I was speaking to her
25 -- first of all, I don't take complaints on officers; that

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LISA ROBERTSON - CROSS BY PLAYER

1 goes to Sergeant Beaty at that time, he was over OPS. I gave
2 her that number to give him a call if she had somebody to
3 complain on. I am not at that paygrade; I don't do that.

4 Q: Okay. Let's go to 2/02. Ginny called you and wants a
5 meeting with the cops because she thinks she's being treated
6 unfairly, and she thinks -- well, I don't want to put words
7 her mouth. At this meeting there's Chief Gall; is he gonna
8 testify?

9 A: Chief Gall?

10 Q: Yeah, here, do you know?

11 A: I don't know.

12 Q: All right. What about Tom Ellenberg?

13 A: I don't know.

14 Q: And let me get the exact words you used earlier. You
15 said what if we just ask them to relinquish their license.
16 This is how people feed their family, and they came in there
17 -- and let's read what you said Tom Ellenberg said. Mr.
18 Ellenberg explained to them that they had nine calls; five
19 joints, a sparkler, and some other ridiculous stuff.
20 Provided, Mr. Ellenberg explained to them that their place of
21 business had become a nuisance and asked the Brewingtons to
22 surrender their license. So, what message does that send to
23 the Brewingtons on 2/02/15?

24 A: I can't tell you what Tom Ellenberg was trying to send a
25 message. He was explaining to them, from my understanding,

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1 that you either surrender the license, or it's going to go for
2 a nuisance.

3 Q: Is it your testimony that Tom Ellenberg was nice and
4 accommodating to the Brewingtons?

5 A: He was point. He was right on point, but he does that
6 with everybody.

7 Q: Have you spent a lot of time around Mr. Ellenberg?

8 A: Quite a few.

9 Q: Okay. So, Mike said something earlier. What's the DRC?

10 A: Downtown Redevelopment.

11 Q: And what did they do for the City of Myrtle Beach; you
12 don't know they bought up all this property?

13 A: No, I don't.

14 Q: You don't know that they sold every one of those
15 properties after they bought them to the City last October?

16 A: No, I don't.

17 Q: And one of those properties was Levelz; you didn't know
18 that either?

19 A: No, I did not.

20 Q: Okay. Nuisance, you said at the beginning it's about
21 safety. Okay? This is in closing, but I want to go through
22 it with you. Because when you drafted the letter that ended
23 their lease, this -- these -- and yes, I'm stupid and say
24 sparklers are sprinklers; I apologize. A sprinkler. Someone
25 was smoking a joint on the dance floor; SLED said you served

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1 one drink after 2:00 that they didn't stock -- let's go -- in
2 December, there's a guy rolling a joint in the bathroom. Who
3 is that hurting; how is that a safety issue?
4 A: That's hurting the people that are in there that don't be
5 around that kind of stuff. They come to just enjoy.
6 Q: You been in Levelzs a lot?
7 A: Not -- I've been in there a few times.
8 Q: Have you been in one of those stores down on the ocean
9 front where they sell bongs?
10 A: I do.
11 Q: Uh-huh, (affirmative response). So, they sell bongs and
12 go buck wild, but this guy rolling a joint, got to shut them
13 down. All right. Let's keep going. 1/18, owner of the
14 security company self-reports a fight that the police show up
15 to late to observe. I want to know what evidence you have
16 that a fight occurred?
17 A: I have the report from the officer.
18 Q: What officer? He didn't see anybody.
19 A: I don't recall.
20 Q: You don't recall? It's in your book, isn't it?
21 A: The complaint.
22 Q: All of the incident reports are in your book.
23 A: I don't remember. I'll have to find it, if you'll bear
24 with me. And when was that call again?
25 Q: That was 1/18/15; you can look at your notes, you

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1 describe it there?

2 A: Yeah, but I was trying to see the officer. Yeah, I don't

3 have the officers name on here.

4 Q: Okay. But my question is, who was fighting?

5 A: It was called in by a female caller who refused to give

6 her name. There was a second call by APS Security. Caller

7 stated that there was a male that went by the name of J.R. and

8 was known to carry a pistol. A second male that left in a

9 gray Dodge Charger stated they liked to do drive-by shootings.

10 Q: Who made those calls?

11 A: Someone who didn't identify herself and then APS.

12 Q: Someone who didn't identify herself. I thought we

13 established that was Virginia; you're now denying that again?

14 A: No, this is a different.

15 Q: Show me two calls on 1/18/15; you've got the book, show

16 it to me?

17 A: Well, it looks like a call on 1/20.

18 Q: No, read it again?

19 A: Oh, I'm sorry, 1/18. I can't see it; I can't find it.

20 Q: Okay. I'm about done. Two things. You said a couple of

21 things in the past that I want to make sure the jury

22 understands, and then we're gonna ask you another question.

23 What's a CAD report?

24 A: I'm sorry, I didn't hear?

25 Q: CAD reports?

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1 A: Uh-huh, (affirmative response).

2 Q: I apologize, I'm walking with my back to you and that's
3 really not -- and I apologize. CAD reports, what does that
4 stand for?

5 A: I'm not for sure -- I can't remember what it stands for.
6 I've been out for a while, so ---

7 Q: Sure. Would you disagree that it means Computer Assisted
8 Dispatch?

9 A: Yes.

10 Q: Okay. What is that? What is a CAD report?

11 A: They -- dispatch takes in the calls that go into a CAD
12 system. When the officers go, then they do a report through
13 that CAD system, and then we can pull off the reports that the
14 officers do, or we can pull off the calls that dispatch have.

15 Q: And are there CAD reports in your notebook?

16 A: Yes.

17 Q: Can you tell me how many pages of CAD reports you have on
18 the Brewingtons in your file that justified asking for the
19 nuisance abatement?

20 (REPORTER'S NOTE: Mr. Player confers with Mr. Battle.)

21 THE COURT: Gentlemen, I'm sorry, is there an objection?

22 MR. BATTLE: Yes, sir; I object. This is not ---

23 THE COURT: All right. Ladies and gentlemen of the jury,
24 go to your jury room. Thank you. I'll call you back out in a
25 little bit, leave your pads and pens. Don't talk about the

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1 case.

2 (REPORTER'S NOTE: Jury exits courtroom @: 4:36 p.m. The
3 following takes place outside the presence of the jury.)

4 BY THE COURT:

5 THE COURT: Ms. Kay, here's that deposition we were
6 talking about earlier.

7 COURT REPORTER: Do we need to mark this?

8 THE COURT: You can just make it as a Court's exhibit;
9 let's just do that.

10 COURT REPORTER: Okay.

11 THE COURT: Make it easy.

12 COURT'S EXHIBIT NUMBER 1

13 MARKED FOR IDENTIFICATION

14 MR. PLAYER: Your Honor, these are CAD ---

15 THE COURT: Just hold on a second. The court reporter is
16 marking ---

17 MR. PLAYER: Oh, I gotcha.

18 THE COURT: --- marking that deposition. So just wait
19 for just a second.

20 MR. PLAYER: I apologize.

21 THE COURT: That's all right.

22 All right. How about tell me what it is we are asking
23 the witness about.

24 MR. PLAYER: The witness -- I intend to ask her if she
25 treated the Brewingtons differently than the other clubs in

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1 the area, which I fully expect her to say no. She's already
2 testified to what the CAD reports are. These are the
3 documents of the defendant. These are the CAD reports for
4 other bars. And my point is, this is Sharkey's, Sharkey's,
5 and Sharkey's. These are reports for another bar. They shut
6 us down for nine. There's over 200 in here, and these all
7 occurred on her watch.

8 THE COURT: All right. Well, you'll have to find out
9 whether or not this witness knew about them or not; and if
10 not, then you may have to subpoena somebody from the City of
11 Myrtle Beach in reply and their recordskeeper and get them in
12 that way.

13 MR. PLAYER: Yes, Your Honor. I understood that. I was
14 just ---

15 MR. BATTLE: May I be heard, Your Honor?

16 THE COURT: Yes, sir.

17 MR. BATTLE: These documents are part of another case. I
18 have had no knowledge, no preparation, I have not reviewed
19 them for the purposes of this case. I am caught by surprise
20 and I am prejudiced. He's just announced that he's gonna use
21 them this afternoon right now, and that is not fair and that
22 is unduly prejudicial to me to go into these documents. In
23 addition to that, the documents are from different clubs,
24 different bars, the equal protection argument that they lost
25 in Federal Court is not before this Court. All we have here

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1 before this Court is tortious interference with a contract.

2 THE COURT: And then but, within that, there is the
3 motive aspect of it, and were they treated differently or not;
4 that's part of the motive. So, that would then -- they'd be
5 able to use it. Now, what we may have to do is recess and
6 you'll have tonight, you can look through them, go through
7 them, call anybody tomorrow you want to call, and then we'll
8 have to see if the plaintiff wants to call somebody in reply
9 regarding those.

10 I appreciate it, Mr. Battle. I'm giving you tonight to
11 go through them.

12 MR. BATTLE: Well, what I'm asking, this witness has a
13 plane out tomorrow to Texas where she works and lives; she was
14 only here to Wednesday.

15 THE COURT: Well, I'm sorry about that. I'm sorry about
16 that. Okay? You should have called that witness first if she
17 was under such time constraints or you should have told the
18 Court yesterday, and we could have inserted the witness out of
19 order. But telling me now when we're close to close of
20 business for the day, I can't help you with it. I could've
21 helped you with it before if you had of let me know, but don't
22 tell me right before the close of business about some problem
23 tomorrow that I can't now do anything about. You want to have
24 time to go through the documents; I'm giving you time tonight
25 to go through all those documents and to call anybody tomorrow

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1 you want to regarding those. All right? So ---

2 MR. BATTLE: Your Honor?

3 THE COURT: Yes, sir.

4 MR. BATTLE: And let me just state for the record that
5 I'm completely caught by surprise. If I had known this was
6 going to be part, obviously I would have taken a different
7 thing, but I have, you know, the times that are scheduled,
8 setbacks, and that sort of stuff is something I had no control
9 over.

10 THE COURT: And I appreciate that And I will ---

11 MR. PLAYER: And, Your Honor, just to -- I mean these are
12 exhibits in a Federal Summary Judgment response. It's not --
13 these aren't my documents; these are presented in the manner
14 in which the City presented it to us in that case. And I
15 understand that it may not have been produced in discovery,
16 but this is the case. I mean, if it was -- if we're talking
17 about 25 versus nine, then, yeah, I'm stretching it. Nine,
18 but this?

19 THE COURT: And I appreciate that, but -- and I
20 appreciate your arguments, Mr. Battle, that you're -- you
21 believe you've been put at a disadvantage regarding this case,
22 obviously you knew about the documents ahead of time. There's
23 no question about that, but maybe not in this case. So,
24 that's why I'm giving you time. So, we're going to -- we'll
25 recess, come back tomorrow morning, finish the cross-

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1 examination. You'll have time to go over all the documents
2 tonight.

3 MR. BATTLE: Thank you, Your Honor.

4 THE COURT: All right. Ask the jury to come back in for
5 just a minute and tell them I'm gonna send them home.

6 (REPORTER'S NOTE: Jury enters courtroom @ 4:43 p.m.)

7 THE COURT: All right. Ladies and gentlemen, some issue
8 about documents has come up and the attorneys need time to go
9 over that. I don't want to keep you in your jury room for
10 whatever length of time that might take. And several of you
11 have indicated to the bailiff that you have problems today
12 staying after 5 o'clock and we're very closely approaching
13 that right now. So, we're gonna stop for today and we'll come
14 back and resume the testimony of this witness in the morning.

15 A couple of things. Remember, go home, don't talk about
16 the case, don't allow anybody to talk to you about it, don't
17 talk about it among yourselves. I expect tomorrow that we'll
18 be in a position to give you this case for your deliberations
19 and unanimous decision. Once I do that, the case is yours
20 until you return a unanimous verdict. So, that means you'll
21 be with us until that happens. So, if you need to inform
22 somebody at home that you might not make some deadline
23 tomorrow, you need to tell them because once I give it to you,
24 it's yours until you come to that unanimous conclusion or
25 whatever time you deem necessary and proper.

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1 So, with that, I'm gonna excuse you tonight. See you
2 tomorrow morning 9:30. So, the bailiff will tell you when to
3 come. Leave your pads and pens in your seat. Thank you.

4 (REPORTER'S NOTE: Jury exits courtroom @ 4:45 p.m. The
5 following takes place outside the presence of the jury.)

6 THE COURT: All right, gentlemen, we'll resume tomorrow
7 morning at 9:30. Y'all be here by 9:15, please.

8 MR. PLAYER: Yes, Your Honor.

9 THE COURT: Thank you very much.

10 **RECESS - 4:47 P.M. - END OF DAY 2**

11 *****OFF THE RECORD*****

12 **JUNE 23, 2021 - DAY 3**

13 **ON THE RECORD - 9:33 A.M.**

14 (REPORTER'S NOTE: The following takes place outside the
15 presence of the jury.)

16 THE COURT: Yes, sir, Mr. Battle.

17 MR. BATTLE: We have done the redactions that were
18 requested by the Plaintiffs and the exhibit book that was the
19 business records is now ready to be introduced into evidence
20 and I would introduce it into evidence at this time.

21 THE COURT: All right. And what's the docket -- the
22 document number?

23 MR. BATTLE: That will be 6.

24 THE COURT: It is 8, actually.

25 MR. BATTLE: I'm sorry, Defendant's 8.

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1 THE COURT: Defendant's 8. Okay. And I understand
2 that's coming in without objection, is that correct, from the
3 Plaintiff?

4 MR. PLAYER: Yes, Your Honor.

5 THE COURT: All right. So, Defendant's 8 -- so, it's in
6 evidence without objection.

7 DEFENDANT'S EXHIBIT NUMBER 8

8 ADMITTED INTO EVIDENCE

9 THE COURT: All right. And yes, sir, Mr. Battle?

10 MR. BATTLE: With regard to the CAD reports from
11 Sharkey's and Landshark, we still have our objection?

12 THE COURT: All right. And let me hear that, please?

13 MR. BATTLE: Basically, these were not disclosed in
14 answers to interrogatories or requests for production, and I
15 am caught by surprise. You did give me overnight to review
16 them, examine them, and if you do decide to allow these
17 documents in, you indicated that you would allow us to
18 introduce any additional documents if we deemed necessary, and
19 we do have additional documents that we deem necessary to
20 support our, at least in some ways, respond to the several
21 inches of documents that were produced yesterday afternoon.

22 THE COURT: All right. Let me hear the argument, please,
23 sir.

24 MR. PLAYER: Yes, Your Honor. These are not -- the
25 documents aren't unknown to the City; they gave them to us. I

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1 do realize they weren't produced in discovery in this case,
2 but this is real -- this is really more of an impeachment or
3 rebuttal issue to the issue of whether or not the Brewingtons
4 were treated differently. And I honestly don't know if I
5 wanted to put them in, there's some dramatic effect there, I
6 just want to ask her how Sharkey's can have that many calls
7 and they're not shut down, but my folks get nine calls and
8 they do get shut down. That's the primary purpose of the
9 exhibits and I looked through what Mr. Battle has given. He
10 has some summaries in there. I don't think they're accurate
11 in terms of what's in that pile. They're certainly not
12 accurate from all of the documents they gave us in the other
13 case, but I have no objection to them going in because, you
14 know, he didn't see it coming. If this is what it wants to
15 soften the blow with that stuff, that's fine. And of course,
16 if Ms. Robertson denies that she knows what those are; that's
17 a different issue and I don't think we're gonna go the extent
18 to bring somebody from the solicitor to put it into evidence,
19 but I do want to -- I want to hand her those documents and
20 have her answer some questions about it. That's my primary
21 intention.

22 THE COURT: All right. So, just so that I understand it,
23 and those documents, what are they marked as, so that I know?

24 COURT REPORTER: Plaintiff's 6, 7, 8, and 9.

25 THE COURT: Okay. So, 6, 7, 8, and 9?

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1 COURT REPORTER: Yes, sir.

2 THE COURT: All right. Very good. And they're from
3 Sharkey's and what was the other place?

4 MR. PLAYER: Landshark.

5 THE COURT: Landshark.

6 COURT REPORTER: Number 9 is Landshark; 6, 7, and 8 are
7 Sharkey's.

8 THE COURT: Okay. Very good. All right. Now, just so
9 that I understand it in context, were those bars subject to a
10 nuisance hearing or did ---

11 MR. PLAYER: My understanding is they're still open, and
12 I'm unaware -- I searched the database and did not see any
13 petition from the solicitor with regards to a nuisance to
14 either one of those businesses.

15 THE COURT: All right. So, then I would assume when --
16 if Solicitor Battle testifies, you can very well ask him
17 whether or not ---

18 MR. PLAYER: Yes, Your Honor.

19 THE COURT: --- he's proceeded with any petition on those
20 documents?

21 MR. PLAYER: Yes, sir.

22 THE COURT: All right. Let's -- let's go through the
23 process first of you questioning the witness that's on the
24 witness stand.

25 MR. PLAYER: Yes, sir.

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LISA ROBERTSON - CROSS BY PLAYER

1 THE COURT: And then we'll see where we are with that at
2 that point in time.

3 MR. PLAYER: Yes, sir.

4 THE COURT: Okay.

5 MR. PLAYER: Yes, sir.

6 THE COURT: All right. Ms. Robertson, could you come
7 back up and take the witness stand, please, ma'am?

8 And with that, is the plaintiff ready for the jury to
9 come in?

10 MR. PLAYER: Yes, Your Honor.

11 THE COURT: And the defense, Mr. Battle?

12 MR. BATTLE: Yes, Your Honor.

13 THE COURT: All right. Ask the jury to come in please.

14 (REPORTER'S NOTE: Jury enters courtroom @ 9:40 a.m.)

15 THE COURT: All right. You may resume your cross-
16 examination.

17 MR. PLAYER: Thank you, Your Honor.

18 CONTINUATION OF CROSS-EXAMINATION OF LISA ROBERTSON BY MR.

19 PLAYER:

20 Q: Mr. Robertson, I mean -- I'm sorry, Ms. Robertson -- I
21 only had six cups of coffee this morning. Yesterday we were
22 talking about CAD reports and I'm going to ---

23 (To the Court.) May I approach the witness, Your Honor,
24 to give her these?

25 THE COURT: Yes, sir, please.

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LISA ROBERTSON - CROSS BY PLAYER

1 BY MR. PLAYER:

2 Q: This is your notebook. I think we were going through it
3 yesterday. We were talking about the number of CAD reports
4 with regard to the Brewingtons?

5 A: Yes.

6 Q: And I think if we talk about before the shooting in
7 February, it was the initial letter that you drafted was on
8 nine calls, correct?

9 A: Yes, sir.

10 Q: And you heard Ginny Brewington say that she felt they
11 were being treated differently than other businesses and clubs
12 and bars in Myrtle Beach; do you agree with that statement?

13 A: Yes, sir; I heard her say that.

14 Q: Okay. Did you agree with it that she was treated
15 differently?

16 A: No, sir.

17 Q: Do you know what Sharkey's is?

18 A: Yes. It's a bar down on, I think, Sixth Avenue ---

19 Q: Okay.

20 A: --- in Myrtle Beach.

21 Q: And do they serve alcohol?

22 A: They do.

23 Q: And I'm gonna ask you to look at what's been marked for
24 identification ---

25 A: Okay.

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1 Q: --- as Plaintiff's Exhibit 6, 7, and 8; and tell me if
2 you can explain what those are?
3 A: These are event reports.
4 Q: Uh-huh, (affirmative response).
5 A: From Sharkey's.
6 Q: Okay. And I believe they're in chronological order; can
7 you look at the beginning date and tell me if you were the
8 regulatory officer when that first report was issued?
9 A: 8/16; yes, I was.
10 Q: And then look at the last page of the third one, if you
11 don't mind; there's a lot of them.
12 A: This one looks like it's 5/30/16.
13 Q: Okay. I may have made a mistake. Hold on, let me see;
14 that's the third one?
15 A: Uh-huh, (affirmative response).
16 Q: Do you remember the date that you retired?
17 A: April the 20th, 2017.
18 Q: Okay. So, so the last stack.
19 A: Okay.
20 Q: If you'll look at the last date on that one and tell me
21 if that was during your tenure as a regulatory officer; I
22 think the date is 4/09?
23 A: 4/09/16.
24 Q: Okay. So, these are the CAD reports that these calls
25 referencing -- you got too many calls. You got nine call and

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1 that's too many; that's what he's referring to?

2 A: Yes.

3 Q: Okay. And can I hold your notebook for just one minute?

4 A: Oh, sure.

5 Q: And it's kind of a trick question. This looks to be a
6 whole lot bigger than the file on the Brewingtons; would you
7 agree?

8 A: It is. However, these are not just -- these are the
9 actual calls. These right here are calls from maybe traffic
10 stops that were in front of the business or, because when
11 officers stop a car, say it's in front of Sharkey's, they
12 actually use that address as the point, or out of the beach
13 access beside of Sharkey's. So, it'll give Sharkey's address,
14 but not necessarily comes from Sharkey's.

15 Q: Okay. Are you telling me that Sharkey's didn't have more
16 calls than the Brewingtons?

17 A: I can't tell you that; I don't recall.

18 Q: Well, it's kind of right in front of you, isn't it?

19 A: Well, right here, yes. But like I say, some of these are
20 from traffic stops, some of these are from public assists,
21 some of these from the beach access.

22 Q: Okay. But you would agree that those are CAD reports
23 issued that are generated by the City?

24 A: Yes.

25 Q: With regards to a single business during your tenure as

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LISA ROBERTSON - CROSS BY PLAYER

1 the regulatory officer?

2 A: Yes.

3 MR. PLAYER: At this time, Your Honor, we would like to
4 introduce exhibits 6, 7, and 8 into evidence?

5 THE COURT: All right. Do you maintain your objection,
6 Mr. Battle?

7 MR. BATTLE: I maintain my objection, Your Honor.

8 THE COURT: All right. Very good. I'm gonna allow
9 Plaintiff's 6, 7, and 8 into evidence over the objection of
10 the defense.

11 PLAINTIFF'S EXHIBIT NUMBERS 6, 7, AND 8

12 ADMITTED INTO EVIDENCE

13 THE COURT: You may proceed.

14 MR. PLAYER: Thank you, Your Honor.

15 BY MR. PLAYER:

16 Q: Okay. So, that's Sharkey's. Let's go with a smaller
17 place and see if you recognize what's Number 9; what are
18 those?

19 A: These are event reports from the Landshark.

20 Q: The Landshark?

21 A: Uh-huh, (affirmative response).

22 Q: Does that look like more than nine complaints?

23 A: Like I said, the same as with this, these aren't all
24 complaints from that location. It could be traffic stops as
25 well. It could be a disorderly out in front of the business

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1 or across the street or on the beach itself and they give
2 Sharkey's -- Landshark's or Sharkey's the address to where the
3 officer is at.

4 Q: Right and that's what you -- that was one of the nine for
5 the Brewingtons, right, there was a drunk in their parking lot
6 and that was one of the nine, right?

7 A: I don't know if I put that in there or not on that. I
8 can't tell you that.

9 Q: Okay. If you'll open up your notebook and go to your --
10 your letter, the first document?

11 A: Okay.

12 Q: And that's got the list of the nine. I think it's number
13 eight or nine, they found a drunk in the parking lot and they
14 found a joint in his pocket?

15 A: Yes, he was sitting in the parking lot.

16 Q: Sitting in the parking lot that was not exclusive to
17 Levelz, but it got held against them, didn't it?

18 A: It was in the CAD report, yes.

19 Q: Okay. And that was part of your letter to Chief Gall and
20 the petition to the solicitor to shut them down?

21 A: Yes.

22 Q: So, if Landshark had several of those -- well, here's I
23 guess the \$100,000 question. Did you ever file a nuisance
24 petition against Landshark or Sharkey's?

25 A: Not that I recall.

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LISA ROBERTSON - CROSS BY PLAYER

1 Q: Okay. Let's get back to Club Heat. You heard Ginny
2 testify. Do you remember a shooting at Sharkey's in July
3 2014?
4 A: I don't know.
5 Q: Okay. You were the regulatory officer, weren't you?
6 A: When was this?
7 Q: In July of 2014.
8 A: I had just buried my son. So, I don't recall that, no.
9 Q: I apologize. Well, let's move a little bit forward to
10 February of 2015. Do you know what happened in relation to
11 Club -- I mean, the Heat Lounge in February of 2015?
12 A: I don't recall.
13 Q: You don't recall them being indicted for laundering
14 money?
15 A: Oh, yes, sir, I do, yes.
16 Q: Okay. So, the owners of the Heat Lounge are indicted in
17 Federal Court for laundering drug money in Club Heat, and you
18 didn't try to shut them down either, did you?
19 A: We did.
20 Q: When?
21 A: I don't recall.
22 Q: You don't recall?
23 A: They were shut down; they were closed down.
24 Q: In October when he pled guilty, right?
25 A: I don't recall.

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LISA ROBERTSON - CROSS BY PLAYER

- 1 Q: What's the difference between February and October? Was
2 it two days? That's how long you gave them after the
3 shooting?
- 4 A: I don't recall.
- 5 Q: Did you file an emergency petition to shut down a club
6 that was laundering drug money in Myrtle Beach two days after
7 you found out?
- 8 A: I don't recall.
- 9 Q: Okay. But it was your job?
- 10 A: Yes.
- 11 Q: Okay. Now, in your -- I believe they're in the book.
12 You've got these complaint affidavits, right?
- 13 A: Yes.
- 14 Q: How did you get those?
- 15 A: We went to the businesses and gave them the forms because
16 they had complained, and we asked them if they were willing to
17 do an affidavit, and they said yes, they were, that they
18 wanted to.
- 19 Q: Okay. Can you go through those statements and see --
20 tell me how many times you see the word Levelz and how many
21 times you see the word Brewington?
- 22 A: There's one for Levelz.
- 23 Q: What does it say?
- 24 A: Do you want me to read the whole thing?
- 25 Q: If you'd like.

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LISA ROBERTSON - CROSS BY PLAYER

- 1 A: Okay. It says came into my business on Saturday morning
2 finding trash, bottles, needles, also smashed windshield in
3 the parking lot, wrist band from Club Levelz, just a mess.
4 Q: So, the only thing that was there was a wrist band from
5 Levelz?
6 A: Yeah, that had Levelz on it.
7 Q: Okay. And wristbands, will the blow in the wind?
8 A: I assume.
9 Q: Okay. So, there's no way to tell how that got there, but
10 we're talking about one wristband that says Levelz?
11 A: That's what it says.
12 Q: Now, here's the important part of it. I want you to look
13 at the date of every affidavit and the notary and tell me if
14 they are the exact same for every affidavit?
15 A: 3/8 of 21.
16 Q: That's actually when her notary expires.
17 A: Oh, I'm sorry.
18 Q: February 17th is the first one?
19 A: 17 -- yeah, February 17, 2015.
20 Q: And what -- what is that date; what happened two days
21 before February 17, do you remember?
22 A: I don't.
23 Q: Do you remember the shooting at Levelz?
24 A: I do.
25 Q: Do you agree that that was February 15th, 2015?

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LISA ROBERTSON - REDIRECT BY BATTLE

1 A: As I -- like I said, I've been gone for a while, so I ---

2 Q: I understand.

3 A: Let me see, I can look here at the notes and see. I
4 don't see that I have that in here.

5 Q: Okay. But you agree with me, that all of these witness
6 statements were obtained because you went to them on the
7 Monday after the shooting and had them sign it and had your
8 person notarize it, correct?

9 A: Yes.

10 Q: Is that bending over backwards to help the Brewingtons?

11 A: I believe that I was.

12 Q: Okay. No further questions.

13 THE COURT: All right. Redirect?

14 MR. BATTLE: Yes, Your Honor.

15 REDIRECT EXAMINATION OF LISA ROBERTSON BY MR. BATTLE:

16 Q: Now, Ms. Robertson?

17 A: Yes.

18 Q: When we talk about CAD reports and the number of CAD
19 calls or calls that were made with regard Levelz, you said
20 there were nine; those were -- were they specifically chosen
21 out of all the CAD reports?

22 A: Yes.

23 Q: Tell me how many CAD reports do we have with regard to
24 Levelz for that six-month period?

25 A: Ninety-one.

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LISA ROBERTSON - REDIRECT BY BATTLE

1 Q: Ninety-one. And do you have a summary what each one of
2 those CAD reports are?

3 A: I do.

4 Q: And this is already in evidence?

5 A: Yes.

6 Q: So, when Mr. -- that's a little bit misleading, isn't it,
7 as far as to what the CAD -- to compare this to what you
8 chose, and I'll start again. I'm starting to testify. I
9 apologize.

10 THE COURT: That's all right. Not a problem.

11 BY MR. BATTLE:

12 Q: With regard to the size of Sharkey's, how much bigger is
13 Sharkey's than Levelz?

14 A: I know that Sharkey's is three stories, and they have an
15 outside bar area, when I was working.

16 Q: Okay. I'm gonna show you a photograph, overhead taken
17 from Google, and ask you what this is?

18 A: It says Sharkey's Oceanfront.

19 Q: Does that accurately represent what Sharkey's looked like
20 from that overhead projection?

21 A: From what I recall of what Sharkey's looked like.

22 MR. BATTLE: Your Honor, we'd like to offer this into
23 evidence?

24 MR. PLAYER: No objection, Your Honor.

25 THE COURT: All right. What's the number?

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LISA ROBERTSON - REDIRECT BY BATTLE

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1 COURT REPORTER: Defendant's 9.

2 THE COURT: Defendant's 9 is in evidence without
3 objection.

4 DEFENDANT'S EXHIBIT NUMBER 9

5 ADMITTED INTO EVIDENCE

6 BY MR. BATTLE:

7 Q: I have a similar thing here for the Landshark.

8 A: Yes, from what I recall.

9 Q: Does that look accurate to you?

10 A: Yes.

11 MR. PLAYER: No objection.

12 THE COURT: All right. So, Defendant's 10 is into
13 evidence without objection.

14 DEFENDANT'S EXHIBIT NUMBER 10

15 ADMITTED INTO EVIDENCE

16 BY MR. BATTLE:

17 Q: Where are these bars located with regard to access to
18 general public and streets they're located on?

19 A: They're located right on Ocean Boulevard. Excuse me.
20 You can come up off the beach and go on -- into the bar/
21 restaurant.

22 Q: And one of them is by Plyler Park?

23 A: Yes.

24 Q: And is there a lot of traffic on North Ocean Boulevard?

25 A: Yes, a lot.

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LISA ROBERTSON - REDIRECT BY BATTLE

- 1 Q: Where is Levelz located?
- 2 A: Levelz is located in the Superblock area on, I think,
3 it's Main Street. I'm not sure what the ---
- 4 Q: It's Ninth Avenue.
- 5 A: Ninth Avenue, that's it.
- 6 Q: A lot of traffic on Ninth Avenue?
- 7 A: Not really, no.
- 8 Q: Okay. And let's go to the Landshark.
- 9 A: Okay.
- 10 Q: I mean, Sharkey's, where is it located?
- 11 A: Excuse me. I believe it's at Sixth or I recollect that
12 it's at Sixth Avenue North and Ocean Boulevard. It's right on
13 the boulevard as well. People can come off the beach or out
14 of the beach access into -- into Sharkey's.
- 15 Q: So, with regard to these -- Landshark is a restaurant; is
16 it not?
- 17 A: Yes, it's a restaurant.
- 18 Q: And Sharkey's is a three-story bar?
- 19 A: Right, yes, sir.
- 20 Q: Okay. And you retired in 2017?
- 21 A: Yes, sir; April 2017.
- 22 Q: And you spend most of the time in Tennessee or Texas?
- 23 A: Correct. As soon as I retired, I retired on Thursday; I
24 was in Tennessee on the following Monday and started working
25 the following Tuesday in Tennessee. I was there nine months

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LISA ROBERTSON - REDIRECT BY BATTLE

1 out of the year for three years, and I've been in Texas since
2 March of this year and will continue to be through the end of
3 the year.

4 Q: You have been with the Myrtle Beach Police Department how
5 long?

6 A: Seventeen years.

7 Q: And how long -- years that was regulatory officer?

8 A: Three years.

9 Q: Three years?

10 A: Yes, sir.

11 Q: And so, for 14 years you were out on the streets?

12 A: Yes.

13 Q: Now, I believe you testified you did not have any
14 conversations with Ms. Davis?

15 A: Not that I recall; no, sir.

16 Q: And I believe -- when was the last conversation you
17 recall having with Ms. Litsey? You can consult your notes?

18 A: Okay. I'm not for sure on the date; it doesn't really
19 say. I know that on 2016 that I had spoke with the
20 Brewingtons, and I made reference to Natalie talking to me,
21 but I don't know if she had called that day or ---

22 Q: Well, with regard to the Brewingtons or anything with the
23 contract between Litsey and Brewingtons, do you recall what
24 month that was; was it February or March?

25 A: I'm not -- I'm not really sure.

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LISA ROBERTSON - RECROSS BY PLAYER

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1 Q: Okay. Well then, did you ever try to talk Ms. Litsey out
2 of the contract she had with the Brewingtons?

3 A: No, sir; I did not.

4 Q: Okay. That's all I have.

5 THE COURT: Anything on those questions just asked?

6 MR. PLAYER: Very briefly, Your Honor.

7 RECROSS-EXAMINATION OF LISA ROBERTSON BY MR. PLAYER:

8 Q: Mr. Battle was asking you a lot about different locations
9 of the bars, but that doesn't matter to you, right?

10 A: I'm sorry?

11 Q: The location or area of the bar was not something you
12 considered in your job, correct?

13 A: No, it doesn't matter where they're at.

14 Q: It doesn't matter?

15 A: No.

16 Q: Okay. Thank you.

17 A: You're welcome.

18 THE COURT: You wish the witness to be excused?

19 MR. BATTLE: Please, Your Honor.

20 THE COURT: Any objection?

21 MR. PLAYER: No, Your Honor.

22 THE COURT: All right. Ma'am, you're released from your
23 subpoena; you may go back to the State of Texas.

24 A: Thank you.

25 THE COURT: All right.

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LISA ROBERTSON - RECROSS BY PLAYER

1 MR. BATTLE: Your Honor, I need to go outside because
2 they've sequestered the witnesses.

3 THE COURT: All right. Very good.

4 MR. BATTLE: They're coming, Your Honor.

5 THE COURT: All right. Very good. And who is the next
6 witness?

7 MR. BATTLE: This is going to be Chief, Police Chief Amy
8 Prock.

9 THE COURT: All right. Very good.

10 MR. BRITTAIN: Your Honor, could we have a sidebar
11 briefly?

12 THE COURT: Sure.

13 (REPORTER'S NOTE: Bench conference is held off the record in
14 the presence of but outside the hearing of the jury.)

15 THE COURT: All right. You want to bring your next
16 witness in?

17 MR. BATTLE: Yes, Your Honor, just a second.

18 THE COURT: All right. Very good.

19 MR. BATTLE: I call to the stand Police Chief Amy Prock.

20 THE COURT: Please come around, ma'am, and be sworn, just
21 right around the corner there.

22 THE CLERK: If you'll raise your right hand; left hand on
23 the Bible?

24 AMY PROCK, HAVING BEEN DULY SWORN

25 TESTIFIES AS FOLLOWS:

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AMY PROCK - DIRECT BY BATTLE

1 THE CLERK: Thank you. If you'll please state your first
2 and last name for the record.

3 MS. PROCK: Amy Prock, P, as in Paul, -R-O-C-K.

4 THE COURT: All right. Go ahead and have a seat, ma'am,
5 and scoot your chair up as close as you can to the microphone.

6 All right. Mr. Battle?

7 MR. BATTLE: Thank you, Your Honor.

8 DIRECT EXAMINATION OF AMY PROCK BY MR. BATTLE:

9 Q: Chief Prock, let's go into your background, a little bit
10 of your history and how you became the first female police
11 chief in the City of Myrtle Beach?

12 A: Yes, sir. I have been with the Myrtle Beach Police
13 Department for just about 25 years in October. I was hired in
14 October of 1996. I started as a patrol officer; that was in
15 October of 1996. Throughout my time with the Myrtle Beach
16 Police Department, I was promoted from patrol officer to
17 patrolman first class; that was in 1998. And then from there
18 to corporal. I went to a narcotics unit, and then from there
19 to investigator during that time in about 2002. And then
20 promoted to sergeant from investigator in about 2005; from
21 investigator, as I said, to sergeant of our street crimes unit
22 and then to a regulatory unit. And throughout that time also
23 as a patrol officer, patrolman first class, was in a patrol
24 division, a waterfront unit. And throughout my time, I
25 worked, as I said, our regulatory unit as a lieutenant, and I

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AMY PROCK - DIRECT BY BATTLE

1 worked for some time there and was transferred back to the
2 road in our waterfront unit as a watch commander for some
3 time. Then was promoted to captain in 2014 and worked for
4 some time in our strategic planning unit over special events,
5 also included regulatory, and then to assistant police chief.
6 And then in 2017 was promoted to interim police chief and then
7 police chief on July 3rd.

8 Q: All right. Now, what educational degrees do you have
9 with regard to your preparation for these positions?

10 A: I have my undergrad from Radford University that I
11 received in 1996 in criminal justice. I have my master's
12 degree from Francis Marion University in psychology. I also
13 have graduated from the South Carolina Criminal Justice
14 Academy in 1996 -- excuse me in 1997. In addition to multiple
15 other leadership as well as trainings that range from anything
16 from patrol procedures to traffic to investigative
17 interviewing techniques in the field of law enforcement.

18 Q: How long have you been out on the streets of the City of
19 Myrtle Beach with regard to fighting crime?

20 A: Since the beginning of 1997 when I graduated from the
21 academy.

22 Q: Now, is the -- with regard to businesses and night clubs
23 in the City of Myrtle Beach, what is the intention or purpose
24 of the regulatory unit; would you explain that to the jury?

25 A: Chief Gall originated the regulatory unit back in about

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AMY PROCK - DIRECT BY BATTLE

1 2008, 2009. The focus of the regulatory unit was to work
2 together with our business community in order to focus on
3 ongoing issues on complaints, whether they were received from
4 our community, our business community, or residents, to
5 address ongoing complaints related to anything from property
6 issues, business concerns, but the focus was to address our
7 ordinances and be able to work together with the department to
8 address those ongoing issues, and if not gain compliance, if
9 we can't gain compliance and enforce our issues -- enforce
10 ordinances.

11 Q: And enforcement issues, are those civil or criminal
12 enforcement remedies?

13 A: Criminal.

14 Q: Okay. Do you ever have any civil remedies such as
15 nuisance or business license issues?

16 A: Yes, sir; we do.

17 Q: And does the police, do they participate in that and to
18 what extent?

19 A: We forward that through our solicitor's office as well
20 working with our other departments withing the City.

21 Q: And that would be pursuant to the City's ordinances and
22 state statutes?

23 A: That is correct.

24 Q: How long have you been dealing with public nuisances with
25 regard to these civil types of remedies and things?

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AMY PROCK - DIRECT BY BATTLE

1 A: I've been working since I started back in the narcotics
2 unit back in 2001, 2002.

3 Q: And did you also act as an undercover officer?

4 A: I did.

5 Q: Okay. And I believe the first time we worked together
6 was 2004 with the Sharks Club; is that correct?

7 A: Yes, sir.

8 Q: And that was during the what -- what was going on during
9 that time?

10 A: We had received some complaints from business owners and
11 some citizens in reference to some inappropriate and lewdness
12 at one of the local businesses located at that time Eleventh
13 Avenue North and Ocean Boulevard.

14 Q: Okay. And did we close that down?

15 A: Yes, sir.

16 Q: And then you had a situation with several other clubs
17 since 2004 that have been closed. There's a 115 or 100 or so
18 dealing with massage parlors and all that sort of stuff sound
19 about right?

20 A: Yes, we've had issues with other businesses and
21 properties.

22 Q: Okay. Now, what role does public safety play in your
23 decision making?

24 A: Public safety is extremely important. As I've said
25 before, it's a about a partnership of trying to gain

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AMY PROCK - DIRECT BY BATTLE

1 compliance and working with our community. You've heard me
2 say multiple times about public safety being a shared
3 responsibility in our community, and that's we focus on within
4 our department.

5 Q: Do -- were you a made -- were you made aware or was the
6 regulatory unit made aware of any way of any plans that the
7 City of Myrtle Beach had with regard to the Superblock?

8 A: No, sir.

9 Q: That's not -- is that something that they would talk to
10 you about?

11 A: No, sir.

12 Q: Did you receive, or did you know of any requests to close
13 down the bars in the Superblock other than for public safety
14 reasons?

15 A: No, sir.

16 Q: Is operating a bar in the City of Myrtle Beach, where you
17 have the influx of tourists close to 12 million a year or
18 more, is that fairly a complex, complicated operation?

19 A: It can be difficult; yes, sir.

20 Q: Okay. Is that different from other locations?

21 A: Yes, sir.

22 Q: Such as a small town like Hemingway?

23 A: I'm sure it can be.

24 Q: Have you talked with the Brewingtons or Ms. Davis?

25 A: Not directly, no.

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AMY PROCK - VOIR DIRE BY BRITTAIN

1 Q: Okay. Now, have you ever been qualified in State Court
2 to testify as an expert, or have you ever testified as an
3 expert giving your opinion as to whether or not a nuisance
4 exists?

5 A: Yes, sir.

6 Q: Okay. How many times?

7 A: I believe three or four.

8 Q: Okay. And what does your -- what is the basis or what is
9 the qualifications that you have that allow you to give an
10 opinion as to whether or not a public nuisance exists?

11 A: My experience as a law enforcement officer in addition to
12 the cases that I have worked within the city of Myrtle Beach.

13 MR. BATTLE: Okay. Your Honor, I would tender Chief Amy
14 Prock as an expert on the question of what constitutes a
15 public nuisance in the City of Myrtle Beach.

16 THE COURT: All right. Do you wish to voir dire the
17 witness or challenge her qualifications?

18 MR. BRITTAIN: I do.

19 THE COURT: All right. Very good.

20 VOIR DIRE OF AMY PROCK BY MR. BRITTAIN:

21 Q: Good morning, Chief?

22 A: Good morning, sir.

23 Q: Do you -- have you attended any sort of special courses
24 like at a university or somewhere that deals with nuisance?

25 A: No, sir.

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AMY PROCK - VOIR DIRE BY BRITTAIN

- 1 Q: Okay. And you don't -- you didn't go to law school?
- 2 A: I did not.
- 3 Q: Okay. What chapter is the nuisance statute in the South
- 4 Carolina Code of Laws?
- 5 A: 15.
- 6 Q: What?
- 7 A: 15.
- 8 Q: It's 43, isn't it?
- 9 A: 43, excuse me.
- 10 Q: Okay. And what obligations does the solicitor have to
- 11 the property owner under that statute?
- 12 A: The obligations as far as -- can you be more specific?
- 13 Q: Okay. You got a nuisance like in this situation, you've
- 14 got a property owner and a business in there.
- 15 A: Uh-huh, (affirmative response).
- 16 Q: Two different things.
- 17 A: Yes, sir.
- 18 Q: What obligations does -- who prosecutes a nuisance case?
- 19 A: The state.
- 20 Q: The state?
- 21 A: Uh-huh, (affirmative response).
- 22 Q: And in Myrtle Beach or Horry County, who does that turn
- 23 out to be?
- 24 A: The solicitor.
- 25 Q: Okay. What obligations does the solicitor have to the

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AMY PROCK - VOIR DIRE BY BRITTAIN

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1 property owner under the abatement of nuisance statute?
2 A: Put them on notice.
3 Q: And how many days?
4 A: Ten days.
5 Q: Okay. So, in a properly brought nuisance action, the
6 solicitor is supposed to notify the property owner; is that
7 correct?
8 A: Correct.
9 Q: Okay. Do you know whether that happened in this case?
10 A: I do.
11 Q: It happened?
12 A: I said I do -- I do know, yes.
13 Q: Okay. And did it happen?
14 A: No, sir.
15 Q: No, sir. Okay. What articles or treatises have you read
16 or -- in preparation for making your opinion to this case?
17 A: In this case specifically?
18 Q: Yeah, any -- any -- I'm trying to find out what sort of
19 special knowledge or -- or education you have on this
20 particular issue, so like, you know, books that deal with it;
21 is there an article you've dealt with, book you've read or
22 anything like that?
23 A: Not regarding the contract, no, sir.
24 Q: Okay. So, really basically, your experience as a police
25 officer in this particular area is what you're relying on to

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AMY PROCK - VOIR DIRE BY BRITTAIN

1 become -- be qualified as an expert on that question; is that
2 a fair statement?

3 A: From my understanding, we are discussing the nuisance
4 case and that is what I'm relying for this; yes, sir.

5 Q: Okay. But I'm talking about your experience is
6 basically, you've had a long career with the police?

7 A: Yes, sir.

8 Q: And I understand that and thank you for it and appreciate
9 it. That's what you're relying on to qualify you as an expert
10 to give an opinion to the jury; is that correct?

11 A: The multiple cases I've worked, nuisance cases, yes, sir.

12 Q: Now, would you -- would you -- because of that long
13 experience, you've also handled murder cases, narcotics cases,
14 and those sort of things, too, right?

15 A: Yes, sir.

16 Q: Okay. So, that same experience would make you an expert
17 in all of those issues, too?

18 A: I have worked as many of those as I have worked, besides
19 drug cases, as I have with nuisance cases, yes, sir.

20 Q: So, I mean, you've got experience in all of those things,
21 too?

22 A: Yes, sir.

23 Q: So, if we're looking at it from that standpoint, the fact
24 that you've been a policeman all these years, you would have
25 multiple qualifications or expert opinions based on your

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AMY PROCK - VOIR DIRE BY BRITTAIN

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1 police experience?

2 A: Yes, sir.

3 Q: Not just nuisance?

4 A: Yes, sir.

5 Q: Okay. How many hearings have you attended of a nuisance

6 determination?

7 A: Over ten.

8 Q: Okay. Now, do you have experience in any other

9 jurisdictions with nuisance cases other than Myrtle Beach and

10 Horry County?

11 A: No, sir.

12 Q: Do you know what a property owner can do if there's a

13 nuisance found against a business owner that's a tenant?

14 A: I'm not sure I understand the question.

15 Q: Okay. We've talked about Chapter 43.

16 A: Uh-huh, (affirmative response).

17 Q: And what I'm asking you now is let's say there's a

18 decision that there's a nuisance, what can a property owner

19 do, if anything, to change that?

20 A: Abate the nuisance.

21 Q: Okay. But I'm mean, let's say that's happened, I mean,

22 in other words, the nuisance has been found.

23 A: Uh-huh, (affirmative response).

24 Q: And that business is closed and it may be affecting the

25 property owner, what rights, if any, does the property owner

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AMY PROCK - VOIR DIRE BY BRITTAIN

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1 have ---

2 A: You're talking about appealing?

3 Q: Not appealing. Can they go to the Court and ask that

4 they be excused from the nuisance under the statute?

5 A: Under the statute they can -- I guess I don't understand

6 what you're asking about appealing or trying to ---

7 Q: I'm not asking about ---

8 A: --- get a temporary injunction.

9 Q: Okay. Have you worked -- have you worked with any

10 theories on the other side? I mean, you -- all you've done is

11 work with the prosecution of nuisance cases; isn't that true?

12 I mean, you have never been in a situation where you were

13 trying to prevent a nuisance from being found?

14 A: I disagree with that statement.

15 Q: Okay. Well, what -- tell me about it?

16 A: We focus our efforts on working with our business owners

17 and our business community as well as our residents to try to

18 deter nuisances from occurring. As I've stated on many

19 occasions and even in my deposition, our focus is to try to

20 prevent nuisances from occurring. So, we want to prevent

21 that; we want our community to be safe, so we don't want to

22 have to file a nuisance case. Our solicitor doesn't want to

23 file nuisance cases. So, that is what we do to work with them

24 to build partnerships to gain compliance.

25 Q: And I understand that. My question is, have you ever

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1 appeared in Court and testified that such and such a thing was
2 not a nuisance?

3 A: No, I have not.

4 Q: Okay. And as a matter of fact, you do not, of your own
5 personal knowledge, know of one thing that happened in the
6 Brewington case?

7 A: That is not accurate.

8 Q: Okay. I -- you took it -- I took your deposition and I
9 asked you if you had any personal knowledge concerning the
10 affairs of the Brewingtons?

11 A: I was not involved in the case; that is correct, yes,
12 sir.

13 Q: You told me you did not -- you do not -- you did not have
14 any involvement in it?

15 A: That is what I just said.

16 Q: Okay.

17 A: I was not involved in the case.

18 Q: You were a strategic planning officer?

19 A: Correct.

20 Q: So, with respect to facts of this case, of your own
21 personal knowledge, there are none?

22 A: I reviewed the case after the fact; yes, sir.

23 Q: You reviewed it -- you reviewed what other people said
24 happened, right?

25 A: Correct.

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AMY PROCK - BY THE COURT

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1 Q: You weren't involved in any of that?

2 A: That is correct.

3 Q: Okay. Thank you, ma'am.

4 MR. BRITTAIN: Nothing further at this time, Your Honor.

5 THE COURT: Do you have an objection as to the offer?

6 MR. BRITTAIN: Yes, I do.

7 EXAMINATION BY THE COURT:

8 THE COURT: All right. Chief, let me ask you a couple of
9 questions.

10 A: Yes, sir.

11 THE COURT: The ten cases that you testified in, did they
12 involve massage parlors, closing down hotels; were they all
13 bars that you tried to close down?

14 A: Many of them were bars, yes, sir.

15 THE COURT: Okay. How many of the ten?

16 A: Probably five or six.

17 THE COURT: How many were massage parlors?

18 A: One or two.

19 THE COURT: And hotels?

20 A: Maybe one.

21 THE COURT: All right.

22 BY THE COURT:

23 Ladies and gentlemen, if you'll go to your jury room for
24 a little bit, please. Thank you.

25 Remember, don't talk about the case.

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BY THE COURT

1 (REPORTER'S NOTE: Jury exits courtroom @ 10:20 a.m. The
2 following takes place outside the presence of the jury.)

3 THE COURT: Mr. Battle, I need a better understanding of
4 what you're gonna ask this witness. So, ask her some
5 questions as to what you expect to get out.

6 MR. BATTLE: I'm going to ask her from the book in there,
7 the things that are listed in the book does she believe that
8 Levelz was a public nuisance.

9 THE COURT: So, you're asking her to be the judge?

10 MR. BATTLE: No, Your Honor, I'm just asking her to give
11 her opinion as far as the ---

12 THE COURT: Isn't it up to the judge to decide, based on
13 the evidence, whether something is a nuisance?

14 MR. BATTLE: It is, Your Honor, but it's a -- an expert
15 can give an opinion as to ultimate issues in the case. It's
16 just an opinion, and then she can state why she has that
17 opinion. But it is something that the expert is -- she's been
18 qualified and has been doing this by ten other judges. I
19 don't believe that what, you know, her being able to say in my
20 opinion this is a public nuisance, because we're talking about
21 the motive of the City for bringing a public nuisance action.
22 And, if she believes it is a public nuisance, then that makes
23 it more likely that the City believed it, and they weren't
24 doing it for some intentional act to procure some sort of
25 breach of a contract between Ms. Brewington -- Mr. Brewington

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BY THE COURT

1 and the City -- and Melvina Davis in this case. So, her
2 opinion is -- is important from the point of view of what she
3 thinks and that shows what, at least the police officer expert
4 would think that is a public nuisance.

5 THE COURT: Let me hear from the plaintiff?

6 MR. BRITTAIN: Your Honor, let's not lose track of where
7 we are here. We are at a point where the defendant, the City
8 of Myrtle Beach, is proposing their chief of police as an
9 expert witness in this case. She has no specialized training
10 whatsoever, except having been a police officer. If you
11 accept her theory of qualifications, every police officer
12 whose come through the ranks in the City of Myrtle Beach, is
13 an expert on murder, nuisance, narcotics. That goes against
14 the nature of the qualification of an expert. The first
15 decision the Court would make, under the *Watson* case, which is
16 the South Carolina version of *Daubert* is the trial court must
17 find that the subject matter is beyond the ordinary knowledge
18 of the jury, thus requiring an expert to explain the matter to
19 the jury. Now, normally that is a cruise control device or a
20 medical proposition. Here we've got statute, definitions, and
21 a judge to charge the jury. They don't need any special
22 expertise, and she doesn't have any. All she's got is
23 experience with nuisance cases. She doesn't even know exactly
24 what chapter it was in. Now, these are minor issues, but why
25 does this jury -- there's no expert needed here, and that is

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1 the gatekeeper requirement for the Court. That doesn't even
2 get into her qualifications. The first prong on this test is
3 are we dealing with an issue that requires expert testimony
4 for this jury and the question of that is a resounding no,
5 because it's not scientific, it's not technical, there are no
6 unusual issues associated with that; it's a matter of legal
7 definition. We have a judge that is trained and capable to
8 explain the concepts to the jury. That's rule number one, and
9 that has to be met in all cases where there's an expert; it
10 doesn't apply here.

11 Secondly, what she's testified to, taking this conclusion
12 makes every police officer in Myrtle Beach that's been there
13 20 years an expert in every criminal or legal issue that comes
14 before you. Now, we all understand that can't possibly be the
15 way it's supposed to work. So, she shouldn't be allowed to
16 render an opinion. There shouldn't be a decision made that an
17 expert is needed in this case. If she has any other issues, I
18 think Mr. Battle said there's some documents there that she
19 would understand. Fine, but we oppose, number one, a
20 determination that an expert is appropriate in the case under
21 *Watson*. And number two, that the showing that has been made
22 here so far would qualify her to render such an opinion.

23 THE COURT: All right. Based on her experience in the
24 regulatory department of the police department of the City of
25 Myrtle Beach, I believe she'd be able to testify as to looking

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1 at documents in evidence as to this particular establishment
2 and say in her position in the chain of command, whether or
3 not, if given that information, she would have referred that
4 matter to the chief of police to make a ultimate decision of
5 referring it to the solicitor. I do not believe she has the
6 experience, knowledge, training to give an opinion as to
7 whether or not something is a nuisance or not. She can, based
8 on her experience, say whether or not the matter would have
9 been referred to the chief to make a decision. But, as to the
10 ultimate opinion as to whether or not it is a nuisance, she
11 does not have the qualifications, training, experience to give
12 that type of opinion, and I will not allow her to do so.

13 All right. Ready for the jury to come back in?

14 MR. BRITTAIN: Yes, Your Honor.

15 THE COURT: Mr. Battle?

16 MR. BATTLE: Yes, Your Honor.

17 THE COURT: Ask the jury to come back in, please.

18 (REPORTER'S NOTE: Jury enters courtroom @ 10:29 a.m.)

19 THE COURT: All right. Mr. Battle, you may continue.

20 MR. BATTLE: Thank you.

21 CONTINUATION OF DIRECT EXAMINATION OF AMY PROCK BY MR. BATTLE:

22 Q: The first thing I want to clear up one thing that was
23 asked on voir dire. Was Melvina Davis the property owner in
24 this case?

25 A: I think so; yes, sir.

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1 Q: Does it appear that Melvina Davis got a copy of the
2 letter from the solicitor?

3 A: Yes, sir.

4 Q: Okay. Now, if she -- if she was the property owner, she
5 got notice?

6 A: Yes, sir.

7 Q: Now, looking at that book, which is a abbreviated report
8 from the regulatory officer, if you were given that
9 information, would you have passed that information to your
10 chief of police and recommended that they provide it to the
11 solicitor for nuisance proceedings?

12 A: I have reviewed this; and yes, I would.

13 Q: Okay.

14 THE COURT: And you said the book, what's the exhibit
15 number?

16 MR. BATTLE: I am sorry. Exhibit 8, which is report on
17 Levelz.

18 THE COURT: Defendant's 8. All right. Very good.

19 MR. BATTLE: Defendant's 8.

20 THE COURT: Just so the record is clear what she's
21 looking at. Not a problem. Thank you.

22 BY MR. BATTLE:

23 Q: Who makes the final decision with regard to whether a
24 nuisance lawsuit is filed?

25 A: The solicitor.

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AMY PROCK - DIRECT BY BATTLE

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- 1 Q: And that would be Jimmy Richardson?
- 2 A: Yes, sir.
- 3 Q: And does the City make any decisions for the solicitor?
- 4 A: No, sir.
- 5 Q: The City, what does it do, what does it provide to the
- 6 solicitor?
- 7 A: It provides a recommendation.
- 8 Q: Okay. And together with information that you said you
- 9 would have passed on if that would be a nuisance?
- 10 A: Correct. They will provide anything from calls for
- 11 service to incident reports to communications and those
- 12 communications can be information from our business centers,
- 13 from our citizens, from our officers. It would just be
- 14 evidence -- anything that's of evidentiary value to provide
- 15 information to the solicitor to make a decision on whether to
- 16 move forward with the nuisance.
- 17 Q: Now, with regard to CAD reports, are the number of CAD
- 18 reports the basis for finding a nuisance with regard to the
- 19 regulatory unit or recommending a nuisance?
- 20 A: No, sir.
- 21 Q: Okay. How many CAD reports were generated on Levelz?
- 22 A: There were 91 CAD reports that were generated and ---
- 23 Q: And that was for a six-month period?
- 24 A: That is my understanding. Just to be more specific, a
- 25 CAD report is a computer aided dispatch. A CAD report is

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AMY PROCK - DIRECT BY BATTLE

1 generated anytime we get a call for service to the police
2 department, whether it is medical, whether it is for police
3 service, EMS, fire; it is a report that documents that call
4 coming in. So, we want to make sure that we document that.
5 It happens every time a call comes in for service, whether
6 it's a officer generated call or if it's a call that comes in,
7 we want to make sure that we document it properly. If an
8 officer goes to a location, as we call keep checking that
9 location, we document it. So, with Levelz, there were 91 of
10 those calls for service.

11 Q: All right. With regard to these calls at Sharkey's, do
12 -- do all of those or what part of those are any of those that
13 would not be used for finding a nuisance?

14 A: Yes, sir.

15 Q: Would you go through just a few of them and just explain
16 what you're talking about?

17 A: I will. What I want to make clear also with our calls
18 for service, is when somebody calls in, our officers will
19 generate a call for service. They're looking for a landmark.
20 When you're driving down Ocean Boulevard, you want to make
21 sure that we know, our officers, we know where they're at.
22 So, if something would occur and we need to get more officers
23 there, or if a medical unit needs to respond, we want to make
24 sure the medical unit knows where to go. So, oftentimes, like
25 in many of these CAD reports, an officer will be giving a

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1 landmark, so they'll say respond to Sharkey's, when in fact,
2 the call for service was not at Sharkey's; it was in the beach
3 access or it was at the parking lot just north of Sharkey's or
4 it was at the boardwalk behind Sharkey's. So, these calls for
5 service reflect not at Sharkey's, in fact, but the actual
6 location, that beach bar. They were actually at a different
7 location; they were behind the location, they were to the
8 south of the location, or they were to the north of the
9 location. Just like this one, improper illegal parking at
10 Sharkey's blocking one of the trucks around from the parking
11 lot in the public parking next to Sharkey's. And this is CAD
12 report 1608-12392.

13 Here's a public assistance call at 600 North Ocean
14 Boulevard. Each CAD report, I don't know how much detail you
15 went into in this case about these CAD reports, but what the
16 information on the CAD report has is primarily the location.
17 It gives a longitude and latitude so that we have a location
18 exactly, the caller's name if the caller is not anonymous,
19 it'll give as much information if there's a business or a
20 location. It gives notes about the call for service. The
21 dispatcher puts notes in those locations as well as when the
22 call is received, routed, if the call is finished, when the
23 call is dispatched, it's in route, when a person -- when the
24 officer first arrives, when the officer clears. In addition,
25 then it starts giving the officer who actually respond, any

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1 officers who are backup units as well. So, all that
2 information is obviously important so we can track who is
3 responding to calls for service. They talk about -- and these
4 are self-initiated calls, as I explained, as well as
5 information about the type of call. It will give the nature
6 of a call, for example, event, which is the CAD report number,
7 1609-01321. It says it's at 600 North Ocean Boulevard, which
8 is the address of Sharkey's, but says it's a city code or
9 business license violation. It said sign on sidewalk.
10 Officer's respond which was -- which and says which has been
11 moved, and that's in the comments that were in there to talk
12 about it.

13 Q: Okay. Very good. Is the ability to make complaints to
14 the solicitor for public nuisances important to the City of
15 Myrtle Beach in order to keep it safe?

16 A: Absolutely, yes, sir.

17 Q: Is it a tool you try to use as often as possible when
18 neighbors are complaining and the crowd that is attracted to
19 the area is -- becomes -- the violation statute, which
20 basically says repeated breaches of the peace, use of
21 narcotics, or and then one that hadn't been involved here,
22 except perhaps in one of the complaints, prostitution?

23 A: It's a tool we use if we cannot gain compliance.

24 Q: I'm sorry. What?

25 A: It's a tool we use if we cannot gain compliance. As I

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AMY PROCK - DIRECT BY BATTLE

1 talked about before, there are certain steps that we use. We
2 want to make sure that we're gaining compliance, we're working
3 with the business owners, that we take those steps in order to
4 abate.

5 Q: Can you gain compliance by simply arresting a person when
6 they commit a crime?

7 A: No, sir.

8 Q: And -- and -- and one of the things that you can do that
9 would deter crime, I guess you might say, is to increase
10 police presence at periods of time. Do y'all use that tool
11 any?

12 A: Yes, sir.

13 Q: Okay. If you have intelligence that there's going to be
14 a shootout or a retaliation, is that one of the tools you use?

15 A: Yes, sir.

16 Q: And do you feel like you're helping the property owners
17 to prevent a shootout on their property?

18 A: Yes, sir.

19 Q: So, this public nuisance law is very important to the
20 City?

21 A: It is.

22 Q: That's all the questions I have. Thank you.

23 THE COURT: Cross-examination?

24 MR. BRITTAIN: Yes.

25 CROSS-EXAMINATION OF AMY PROCK BY MR. BRITTAIN:

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1 Q: Chief, when the jury has those documents -- you were
2 reading some of them, you just picked a few to read -- will
3 they be able to read and tell them -- will it tell them kind
4 of what was going on?

5 A: Some of them will. As I mentioned, some of them don't
6 have notes in them. We have been working with our training,
7 with our officers and our dispatchers to ensure that most
8 information is put in there so that when we have cases and
9 that we can follow-up to attribute that information is put in
10 there. We have a luxury, obviously with technology now, that
11 when we do investigations, we can always rely on our
12 technology as well as our body-worn cameras and other
13 technology that we have been able to instill over the last
14 couple of years.

15 Q: But that's something they can look at it and it would be
16 some information provided to them about what happened with
17 those reports if they read them?

18 A: With these reports for different locations, yes, sir.

19 Q: Yeah. Okay. Let me hand you up what's been marked
20 Plaintiff's Exhibit Number 9, and see if with your knowledge
21 of CAD reports, if those look like CAD reports maintained by
22 the City of Myrtle Beach?

23 A: Yes, sir.

24 MR. BRITTAIN: Okay. Your Honor, I move to introduce
25 Plaintiff's Exhibit Number 9; I don't think it's been

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AMY PROCK - CROSS BY BRITTAIN

1 introduced -- I mean, I don't think it's been offered into
2 evidence?

3 COURT REPORTER: We did 6, 7, and 8, but not 9.

4 THE COURT: Not 9?

5 COURT REPORTER: Yes.

6 THE COURT: All right. So ---

7 MR. BATTLE: May I see it, Your Honor?

8 MR. BRITTAIN: Yeah.

9 MR. PLAYER: That's Landshark.

10 MR. BATTLE: Landshark? I maintain the same objection.

11 THE COURT: All right, sir. So, Number 9 is in evidence
12 over the objection of the defendant.

13 PLAINTIFF'S EXHIBIT NUMBER 9

14 ADMITTED INTO EVIDENCE

15 BY MR. BRITTAIN:

16 Q: Chief, how many times have you recommended to a solicitor
17 they prosecute a nuisance case for the City of Myrtle Beach
18 and they told you no?

19 A: Several.

20 Q: Okay. So, what's several, two or three?

21 A: Closer to seven or eight.

22 Q: Okay. Do you remember the cases?

23 A: Yes, sir.

24 Q: Okay. Was one of them Riptides?

25 A: No, sir.

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1 Q: Well, now Riptides is a restaurant down on Ocean
2 Boulevard, isn't it?

3 MR. BATTLE: Your Honor, I would like to enter an
4 objection to the questioning about specific bars and that sort
5 of thing that was under investigation. There might -- you
6 know, there may be actions that are going or were in the
7 solicitor's office. I think that the fact that the solicitor
8 has rejected them as -- that were suggested to him is we
9 covered the point. I don't see any point in going into each
10 case and publicizing the detrimental or harmful information to
11 the individual businesses.

12 THE COURT: What's the relevance for discussing those?

13 MR. BRITTAIN: Your Honor, it's under the same theory of
14 unfair and imbalanced treatment for the Brewingtons.

15 THE COURT: Well, first she has to have knowledge of it.

16 MR. BRITTAIN: Yeah, I'll ask her that.

17 THE COURT: And if she doesn't, then you can't ask any
18 questions.

19 MR. BRITTAIN: Okay.

20 BY MR. BRITTAIN:

21 Q: Chief, were you aware that there have been two killings
22 inside the restaurant of Riptides?

23 A: I am.

24 Q: Okay. That happened when you were chief, both of them?

25 A: Not both of them; no, sir.

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AMY PROCK - CROSS BY BRITTAIN

1 Q: Okay. But they all -- they both happened while you were
2 with the police department?

3 A: They did.

4 Q: Okay. And has there been any recommendation for closing
5 that restaurant as a nuisance?

6 A: Not directly to the solicitor to my knowledge.

7 Q: Okay. So, the idea that these requests have been
8 rejected, that indicates that sometimes when you decide, your
9 police department, or trying to consider something to be a
10 nuisance, the solicitor says no, you're out of bounds there,
11 you're wrong, we're not going to prosecute that case; that
12 happens right?

13 A: It does.

14 MR. BRITTAIN: Okay. No further questions.

15 THE COURT: Anything on those questions, Mr. Battle?

16 MR. BATTLE: No, Your Honor.

17 THE COURT: All right. You may step down.

18 Do you wish the witness to be excused?

19 MR. BATTLE: Yes, Your Honor.

20 THE COURT: All right, ma'am. Any objection?

21 MR. PLAYER: No, Your Honor.

22 MR. BRITTAIN: No, objection.

23 THE COURT: All right, Chief, you are released from your
24 subpoena and may go back to your regular duties. Thank you.

25 All right. Your next witness, Mr. Battle?

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1 MR. BATTLE: Your Honor, I am going to publish the
2 written questions, deposition of Melvina Davis.

3 THE COURT: All right. It's from -- from her deposition?

4 MR. BATTLE: Yes.

5 THE COURT: All right. Very good. And are there any
6 parts that will be published from the plaintiff?

7 MR. BRITTAIN: No.

8 THE COURT: Okay. Very good. Go ahead.

9 MR. BATTLE: Thank you.

10 MR. BRITTAIN: I think you're going to read the entire
11 deposition, aren't you, Mike?

12 MR. BATTLE: I'd like to just go ahead and put it --
13 yeah, I'm going to read the entire deposition.

14 THE COURT: Okay. Well, go ahead.

15 MR. BATTLE: Okay. This is written deposition question
16 and responses from Rule 31 from the Federal Rules of -- well,
17 this was when the case was in Federal Court. It's questions,
18 written questions that were deposition questions that were
19 presented to Ms. Melvina Davis.

20 (REPORTER'S NOTE: The deposition of Melvina Davis published
21 to the jury and transcribed as read. Questions and answers
22 read by Mr. Battle.)

23 Q: Is your name Melvina Devine Davis and are you a
24 party in the above-captioned lawsuit?

25 A: No, my name is Melvina Devine Davis. Yes, I am

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MELVINA DAVIS (DEPOSITION) - DIRECT BY BATTLE

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1 a party to this lawsuit.

2 Q: During the material times alleged in the
3 complaint in the above-captioned lawsuit, were you
4 acting as the landlord in a lease agreement with the
5 plaintiffs for the building where Levelz is located
6 at 519 -- 515, Ninth Avenue North, Myrtle Beach,
7 South Carolina in Horry County?

8 A: Yes.

9 Q: Are you aware of the difference between the
10 employees of the solicitor for the 15th Judicial
11 Circuit of South Carolina and the employees of the
12 City of Myrtle Beach?

13 A: No, I have no idea.

14 Q: Did you receive a public notice -- a notice of
15 public notice letter from the office of the ---

16 MR. BATTLE: Let me get to my other -- getting old is ---

17 THE COURT: That's all right, Mr. Battle.

18 MR. BATTLE: I apologize.

19 THE COURT: Not a problem.

20 BY MR. BATTLE:

21 Q: Did you receive notice of a public nuisance
22 letter from the office of the solicitor for the 15th
23 Judicial Circuit of South Carolina?

24 A: Yes.

25 Q: Did you have any conversations with any

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1 employee of the City of Myrtle Beach in connection
2 with the public nuisance at Levelz?

3 A: I may have spoken to two persons. I know I
4 spoke to at least one. Upon receipt of the February
5 10th, 2015 letter, I called the telephone number on
6 the letter and spoke to someone. It was perhaps Mr.
7 Battle, but I cannot be sure.

8 Q: If you did, who was the person or persons at the
9 City of Myrtle Beach with whom you talked?

10 A: See prior answer.

11 Q: If you did, who initiated the conversation or
12 made the telephone call?

13 A: I am not certain, but it was probably me since
14 I was at my store when we spoke.

15 Q: If you did, when did the conversation occur?

16 A: I have no idea. Perhaps the same day I
17 received the February 10, 2015 letter.

18 Q: If you did, what were you told by the City of
19 Myrtle Beach employee?

20 A: I was told the business was a nuisance and
21 needed to be abated.

22 Q: Plaintiffs allege that in early February 2015,
23 representatives of Defendant City and Defendant
24 County, began to inaccurately notify Defendant Davis
25 that her tenant, plaintiff's business, had become a

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MELVINA DAVIS (DEPOSITION) - DIRECT BY BATTLE

1 public nuisance and was being used for the sale of
2 controlled substances. You answered by stating, did
3 you not, stating that you did not have sufficient
4 information as to the truth or falsity of the
5 allegation and therefore deny the allegation. Were
6 you notified by an employee of the City of Myrtle
7 Beach that Plaintiff's business has become a public
8 nuisance and it was being used for the sale of
9 controlled substances?

10 A: I still have neither information or belief
11 about the business being a public nuisance or used
12 for the sale of controlled substances. That simply
13 is what I was told -- that is simply what I was
14 told.

15 Q: In your counterclaim, you allege entry into the
16 consent order closing the business Plaintiffs allege
17 -- closing the business -- Plaintiffs allege illegal
18 conduct therein. Plaintiffs vacating the business
19 and allowing it to be posted and taped were all
20 violations of the term of their lease with you. Do
21 you still that -- do you still believe that the
22 plaintiffs' violated the terms of the lease
23 agreement?

24 A: Yes. Do you believe ---

25 Q: Do you believe that the consent order closing

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1 the business, Plaintiffs vacating the business and
2 allowing it to be posted and taped was the reason
3 the lease agreement was -- was terminated?

4 A: Yes.

5 Q: Did the plaintiffs pay any rent for the
6 premises after February of 2015?

7 A: No. If the ---

8 Q: If the plaintiffs failed to pay rent after
9 February of 2015, what effect did their failure to
10 pay rent have on the continuation of the plaintiffs'
11 lease rights?

12 A: The failure to pay rent, having the business
13 shut down, vacating the premises, and the court
14 order all had the effect of violating their lease.

15 MR. BATTLE: And then that's signed under oath by Melvina
16 Devine Davis.

17 Your Honor, I'd like to just go ahead and offer this into
18 evidence.

19 THE COURT: Any objection to it coming into evidence?

20 MR. BRITTAIN: None, Your Honor.

21 THE COURT: All right, sir, mark it as a defendant's
22 exhibit then.

23 MR. BATTLE: Your Honor, I have ---

24 THE COURT: Hold on one second and let the Court Reporter
25 mark it. Sorry. And what's the number?

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1 COURT REPORTER: I'm sorry. Defendant's 11.

2 THE COURT: Defendant's 11. So, Defendant's 11, the
3 deposition questions of Melvina Devine Davis is into evidence
4 without objection.

5 DEFENDANT'S EXHIBIT NUMBER 11

6 ADMITTED INTO EVIDENCE

7 THE COURT: All right. You have another witness?

8 MR. BATTLE: Yes, Your Honor. Our witness is sequestered
9 and ---

10 THE COURT: No, I understand that.

11 Come up and talk to me for just one second if you could,
12 Mr. Battle and Mr. Brittain?

13 (REPORTER'S NOTE: Bench conference is held off the record in
14 the presence of but outside the hearing of the jury.)

15 MR. BRITTAIN: Madame Court Reporter?

16 COURT REPORTER: Yes, sir.

17 MR. BRITTAIN: There was a notice that was marked as an
18 exhibit, a letter, I think, from James Battle. Do you know
19 what I'm talking about?

20 Mike, didn't you put into evidence James' letter to
21 everybody?

22 MR. BATTLE: Yeah, this is right here.

23 MR. BRITTAIN: Okay. Good enough.

24 MR. BATTLE: Melvina Davis.

25 THE COURT: All right. Mr. Battle, if you would come all

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1 the way around up here to the corner to be sworn, sir.

2 THE CLERK: If you'll raise your right hand; left hand on
3 the Bible.

4 JAMES BATTLE, HAVING BEEN DULY SWORN
5 TESTIFIES AS FOLLOWS:

6 THE CLERK: Thank you. If you'll please state your first
7 and last name for the record, please.

8 MR. JAMES BATTLE: James Battle.

9 THE COURT: All right, Mr. Battle, just go ahead and have
10 a seat and scoot up to the microphone as close as you can.

11 And, Mr. Battle, you may question your son.

12 MR. BATTLE: Thank you, Your Honor.

13 DIRECT EXAMINATION OF JAMES BATTLE BY MR. BATTLE:

14 Q: Just for the jury's information before you start
15 testifying, tell them your relationship to me and your
16 relationship to the solicitor's office; do you do any work for
17 the City of Myrtle Beach; and go from there.

18 A: You are my father. I'm your eldest son. I was a
19 assistant solicitor for about three years out of law school,
20 then I joined the Battle Law Firm. Since joining the Battle
21 Law Firm in 2000 -- 2008, I have done a lot of work for the
22 City of Myrtle Beach and have worked as a special prosecutor
23 for the solicitor's office.

24 Q: All right. And the Battle Law Firm is a firm which I am
25 a member?

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- 1 A: Yes, sir.
- 2 Q: And your younger brother is also a member?
- 3 A: Yes, sir.
- 4 Q: Now, with regard to your relationship with the solicitor,
5 are you paid a specific amount of money from them?
- 6 A: For doing what type of work?
- 7 Q: Any type of work for the solicitor. Do you get insurance
8 or are you an employee or part-time employee?
- 9 A: Yes, sir.
- 10 Q: Okay. And you get your insurance through the county?
- 11 A: Yes, sir.
- 12 Q: But they consider you one of their employees?
- 13 A: Yes, sir.
- 14 Q: All right. Turning to the case of the State of South
15 Carolina in relation of Jimmy A. Richardson, Solicitor of the
16 Fifteenth Judicial Circuit versus Henry Brewington, doing
17 business as Levelz Bar & Grill, what was your position in that
18 case?
- 19 A: I was the special prosecutor.
- 20 Q: Okay. Who were you working for when you were the special
21 prosecutor?
- 22 A: The solicitor.
- 23 Q: And who was your boss?
- 24 A: Jimmy Richardson.
- 25 Q: Okay. Did you take direction from anyone other than

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1 Jimmy direction -- Jimmy Richardson over the decision-making
2 process of this case?

3 A: No, sir.

4 Q: Turning to the nuisance actions in general, what is the
5 process by which the solicitor makes a decision to proceed
6 with a nuisance action?

7 A: So, the police department, they're responding to, let's
8 say, Levelz and they'll, you know, I don't know, you know,
9 you're responding out there for crimes, they're dealing with
10 the owners. And then they'll contact generally me or maybe
11 sometime Jimmy directly and say, we think we have a nuisance
12 property that we would like to address. And so, I'll say
13 okay, send me what you got, and then I review it. Sometimes
14 I'm a filter and I'll say, I don't think y'all have enough or,
15 yes, this looks good and if I think it looks good. I'll call
16 Jimmy and I'll say, Jimmy, this is what we got, and I'll go
17 into his office and we'll kind of sit down and go through it,
18 and then Jimmy either gives a thumbs up or down.

19 Q: Okay. And so, it's Jimmy Richardson that gives the
20 thumbs up or down, not the City?

21 A: No, he's the solicitor.

22 Q: Now, with regard to the Levelz case, were you provided
23 information in that procedure and what you just described?

24 A: Yes, sir. So, at that time, Officer Robertson was
25 assigned to the regulatory unit, and she sent me, you know,

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1 her notebook on Levelz.

2 Q: Okay. And did you review that notebook?

3 A: I did.

4 Q: And did you then go and recommend to the solicitor, what
5 did you recommend to the solicitor?

6 A: I said, you know, Jimmy, it looks like you have a club
7 that is -- has a lot of promoters. It hasn't been open very
8 long and, right off the bat, they're having issues with, you
9 know, fights; there's people using drugs; it doesn't look like
10 there's much security inside the club. You have a lot of
11 property owners surrounding the club that are concerned, and
12 that, you know, like the owners aren't very experienced. And
13 so, he said, yeah, this is an issue. Let's send a notice
14 letter out to them, you know, and kind of begin that process.

15 Q: Okay. I'm going to show you what is marked as
16 Defendant's 3 and ask you is that a copy of the letter that
17 you sent out?

18 A: Yes.

19 Q: And what does that letter do?

20 A: So, under the statute, before you can begin a nuisance
21 action, you have to give the owner notice of the nuisance and
22 then ten days to abate the nuisance. And so, this letter was
23 that notification. We sent it to the property owner; her name
24 was Melvina Davis.

25 Q: Okay. Did you also send such a letter to the

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1 Brewingtons?

2 A: I don't see their address on the top of the letter but --
3 well, I see an envelope. So, yes, we sent them a copy as
4 well.

5 Q: All right. Now, you say you give them a ten-day notice
6 of abatement?

7 A: Right.

8 Q: What does that mean to the jury; what can the property
9 owner do or the business owner do?

10 A: So, it kind of depends. You know, clubs are like little
11 snowflakes. Levelz was -- when we sent out the letter, it was
12 -- they were having serious problems but, you know, we've seen
13 -- I've seen worse. I don't know that closure would've been
14 the immediate result in dealing with them. We send out the
15 notice, generally they call back, hopefully were talking with
16 an attorney as well on their side. A lot of times, we may do
17 like, hey, y'all close at 1:00 A.M.; get a decent security
18 detail inside, not your buddy from growing up, but like real
19 security; get some cameras, you know, this kind of thing.
20 We've done that with a lot of clubs. Sometimes it's
21 successful; sometimes it's not. But, you know, and then other
22 times we give the notice and it's like, you know, y'all are
23 done; you've got to close.

24 Q: Okay. Now, with regard to this particular notice, did
25 you receive any circumstance or any event that occurred that

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1 put this on a priority list?

2 A: Well, I mean, at the time, we sent out the letter, it was
3 -- it was kind of a routine type, you know, nuisance action.
4 But we'll kind of pay attention like if once you get the
5 letter that, hey, y'all are a nuisance property, we kind of
6 expect the stuff to stop. Like okay, the business owner, the
7 property owner, they're like okay, we really need to pump the
8 brakes on what we're doing over here. And so, things that
9 occur after that is an indication to us that they really don't
10 have control over what's going on in their club. So, we sent
11 out the letter and then, what, several days later there was a
12 murder outside of Levelz club. Is that what you're referring
13 to?

14 Q: Yes.

15 A: Okay.

16 Q: And it involved one of their patrons?

17 A: Right, so I, you know, I've been involved in law
18 enforcement for I guess coming up on 15 years. I've never
19 seen a murder like the one that occurred out at Levelz. It
20 was a methodical ---

21 MR. BRITTAIN: Your Honor, I object to this testimony
22 unless he has personal knowledge of the events.

23 THE COURT: Did you use that information in bringing your
24 nuisance action before the Court?

25 A: Yes, sir.

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1 THE COURT: I'm going to allow him to testify.

2 A: Okay. So, you have the victim inside the club. There
3 was -- they had video footage inside the club, and then they
4 have video footage outside the club. I reviewed it with the
5 police, and they said, here's your shooter.

6 MR. BRITTAIN: Objection, Your Honor.

7 THE COURT: All right. Don't -- don't explain what other
8 people told you, but what you saw and what you observed from
9 the information you had. You looked at the videos, correct?

10 A: Yes, sir.

11 THE COURT: So, just explain that?

12 A: Okay. So, the victim comes out with his two buddies, the
13 shooter hides behind two cars; he knows ahead of time the
14 victim is coming out. The victim comes out, the two friends
15 pull back, so they're away from him. The victim goes past the
16 shooter, the shooter waits for him to pass and then comes out
17 from behind the car, empties his magazine into the victim and
18 then runs off. That was -- it left an impression with me.
19 This was not bumping into somebody's girlfriend in a club and
20 two drunk people and somebody happens to have a gun. This was
21 much more professional. And we talked with Lynn Baker, she's
22 a gang expert at the Horry County Police Department, confirmed
23 yes, this was a gang assassination.

24 MR. BRITTAIN: Your Honor, here again, that's relayed; it
25 wasn't ---

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1 THE COURT: I'm gonna allow it. Go ahead.

2 A: Anyway, so that was what caught our attention. And it
3 moved from we need to have this club, you know, closed.

4 BY MR. BATTLE:

5 Q: Well, now what was the response, your understanding, of
6 the response from the Brewingtons to whether or not they would
7 open the next Friday after the shooting -- the shooting occurs
8 like Wednesday night. What was the -- did the Brewingtons
9 indicate they wanted to open Friday?

10 A: If memory serves, yeah, they were going to open. They
11 wanted to sort of have like a concert for the victim, Saequan
12 Vereen. And we just -- we thought that was a bad idea,
13 because the shooting and -- the shooting was a retaliation
14 most likely from a fight that occurred in Conway, and so it
15 was like a cycle that we wanted to discontinue.

16 Q: And so, as a result of that, did you file any petitions
17 or motions for a temporary injunction?

18 A: Yes, I did.

19 Q: Now, what is a temporary injunction?

20 A: A temporary injunction is you come into court, I guess
21 similar to this, except there's no jury, and you ask the Judge
22 for an order. In this case, we would've been asking for an
23 order closing the club until we can have a hearing on the
24 merits with the case.

25 Q: Okay. So, it wasn't a close the club; it was more or

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- 1 less let's just close it for right now?
- 2 A: That's correct.
- 3 Q: And that was done to prevent the opening on Friday?
- 4 A: Yes, sir.
- 5 Q: All right. Now, did you talk to the Brewingtons'
- 6 attorney?
- 7 A: Yes, sir.
- 8 Q: Who was that? Was that Shannon Prosser?
- 9 A: Yes, sir.
- 10 Q: And what did y'all discuss?
- 11 A: So, he -- he said that the Brewingtons felt like they
- 12 were in over their head, that they wanted to get out of the
- 13 club business and were going to consent to the closure of the
- 14 club.
- 15 Q: Okay. And as a result of that, did he authorize you to
- 16 send out a consent order?
- 17 A: Yes, he did. And we -- we emailed back and forth a
- 18 couple of different versions. He made some changes to the
- 19 language and then -- and then we settled on the version that
- 20 the Court signed.
- 21 Q: Okay. And did he authorize you to sign his signature?
- 22 I'll show you what's been entered as Plaintiff's Exhibit Number
- 23 2?
- 24 A: Okay. He did. So, his first name is John, but he goes
- 25 by Shannon. He said, well, sign it for me and go to the

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1 hearing in front of the Judge, and I said, okay.

2 Q: Okay. And what -- what effect did that order have on the
3 club, on the building itself?

4 A: So, it closed the club. It enacted that -- well, it
5 enacted an injunction on the club where it was closed due to
6 being a nuisance.

7 Q: Okay. For how long was the club closed by the Court
8 order?

9 A: One year.

10 Q: Okay. How would you open the club back up if you were
11 the property owner after it had been closed by court order?

12 A: Well, you can wait the one year and then the order
13 automatically goes away and, you know, there's no encumbrance
14 on the property; or if you don't want to wait that one year,
15 you petition the Court, say -- I mean, there's a provision in
16 the statute that says, Your Honor, we've addressed the
17 concerns, we've abated the nuisance, we've -- you know, here's
18 the business we want to put in, and then the judge gives his
19 thumbs up or down on that.

20 Q: Okay. It's the judge's decision?

21 A: That's right.

22 Q: All right. Now, did you file the complaint to seek a --
23 a finding of a public nuisance against Levelz?

24 A: Yes, sir.

25 Q: You know -- did you do it before or after the shooting?

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1 A: I believe I did it after. It was in between the notice
2 letter -- the shooting was in between the notice letter and my
3 filing the complaint.

4 Q: Okay. And when you seek a temporary injunction, how many
5 days' notice does the law require you to give the property
6 owner and the people involved?

7 A: Three.

8 Q: Three days. So, you can have an injunction within three
9 days or temporary injunction?

10 A: Yes, sir.

11 Q: And instead of getting a temporary injunction, the
12 Brewingtons, through their attorney, consented to an
13 injunction for one year or at least close the club for a year;
14 is that correct?

15 A: Yes, sir.

16 Q: And they were permanently enjoined from operating any
17 clubs that involved a nuisance throughout the state of South
18 Carolina?

19 A: Yes, sir.

20 Q: Okay. Now, did you present this argument and this order
21 to Judge Culbertson and ask him to sign it?

22 A: Yes, sir.

23 Q: And did he sign it?

24 A: Yes, sir.

25 Q: Could you have signed that order by yourself?

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1 A: No, sir.

2 Q: Now, did you have any telephone conversations with

3 Melvina Davis?

4 A: Yes.

5 Q: Did she call you?

6 A: She did.

7 Q: Okay. Do you know how many conversations you had with

8 Ms. Davis?

9 A: I don't recall; it was -- she called me a number of

10 times.

11 Q: Okay. And each time you talked to Ms. Davis, who were

12 you representing and who were speaking for?

13 A: The solicitor's office.

14 Q: Did you ever have any conversations with Natalie Litsey?

15 A: Not that I recall.

16 Q: Did you have any conversations with the Brewingtons?

17 A: Very briefly at the -- when we met with Judge Culbertson,

18 but other than that, no.

19 Q: Tell us about the meeting with Judge Culbertson with the

20 Brewingtons before you met with Judge Culbertson?

21 A: So, we came into the courtroom; it was a smaller

22 courtroom than this. And the Brewingtons were there, and I

23 had the order, the consent order, and I introduced myself and

24 I told them, you know, that there wouldn't be any argument,

25 that it was a consent order I would be handed it up to the

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1 Court. They said, okay. Mr. Brewington, I remember he had
2 the security video of the shooting on his phone and wanted to
3 show it to me. I said that's okay; I've already seen it. And
4 that was kind of it. I -- you know, their attorney wasn't
5 present, so I didn't want to get into the merits of the case
6 or, you know, whether it was or wasn't a good idea.

7 Q: Did you tell them they had no choice, that it was a gang
8 club?

9 A: No.

10 Q: Did you tell them they could not fight this nuisance?

11 A: No. You know, my attitude, my position with them was
12 that we were on the same page, that I did not see them as --
13 you know, that we were adversarial. It was just a, you know,
14 how are you.

15 Q: Okay.

16 A: I -- I thought they'd consented, or their attorney
17 consented, and that it was just kind of a formality of getting
18 the judge to sign the order.

19 Q: All right. Now was there a trial of that murder that
20 occurred outside of Levelz?

21 A: Probably, I'm not aware of it.

22 Q: If there is a trial and there's a DVR with a hard drive
23 on it, what happens to that DVR; does it get introduced into
24 evidence?

25 A: Possibly, I'm not -- I don't -- I don't know.

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1 Q: I mean, you don't know whether this one was -- well, is
2 it a usual matter of course that ---

3 MR. BRITTAIN: Asked and answered, Your Honor.

4 THE COURT: This witness doesn't know the answers to your
5 questions, Mr. Battle. So, let's move along.

6 BY MR. BATTLE:

7 Q: With regard to exhibits that are introduced into
8 evidence, where do they lay -- where do they stay?

9 A: Exhibits, once they're in evidence, they go back with the
10 Clerk of Court.

11 Q: Now, did Ms. Davis contact you about releasing the
12 property?

13 A: I mean, she wanted to know about a new property owner or
14 a new business going in there, and I'd tell her I, you know,
15 we don't really have control over that. I -- you know, that
16 she needed to speak with a judge; it's the judge's order. You
17 know, that our concern was we didn't want to see Levelz Part 2
18 going in there right after we had gotten an injunction closing
19 the first one, that we were concerned about the same activity
20 popping up one week later. But, you know, that's -- that's as
21 far as that conversation went. I don't have ---

22 Q: Did she hire the Bellamy Law Firm to represent her?

23 A: Yes, she did.

24 Q: And then that matter was referred to the master?

25 A: I believe so.

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JAMES BATTLE - CROSS BY BRITTAIN

1 Q: Okay. And you don't know whether that club was ever
2 reopened for -- as a result of that because you were involved
3 in that part of the proceeding?

4 A: That's correct. That's correct, I mean, I -- right.

5 Q: So, it was a decision between the Judge and the property
6 owner?

7 A: I believe so. You know, it kind of -- I don't know if
8 they waited the one year out. I never -- you know, we met --
9 I met briefly with Skeets Bellamy and Hal Bellamy, and I think
10 they may have waiting the one year out. I'm not real sure.

11 Q: That's all the questions I have. Thank you.

12 THE COURT: Cross-examination?

13 MR. BRITTAIN: Yes, sir.

14 CROSS-EXAMINATION OF JAMES BATTLE BY MR. BRITTAIN:

15 Q: Good morning, Mr. Battle?

16 A: Good morning, Mr. Brittain.

17 Q: How you doing, sir?

18 A: I'm good; how are you?

19 Q: I'm doing good. I think you testified earlier, I want to
20 make sure I -- this point. Certainly, you sent a letter to
21 Ms. Davis; we've seen that in evidence. You sent a notice
22 letter; have you looked at that?

23 A: Yes, sir.

24 Q: All right. You did not name her in this lawsuit?

25 A: Ms. Davis?

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1 Q: Yeah, I mean your application for injunction and that
2 sort of thing?
3 A: No, sir.
4 Q: Okay. So -- so, that we're straight. You filed an
5 action in Court concerning the property that she owned,
6 correct?
7 A: Yes, sir.
8 Q: All right. She was not named as a party to this action;
9 is that true?
10 A: I don't recall. I -- I -- do you have a copy of the
11 complaint?
12 Q: Well, this is the order here, isn't it?
13 A: Yes, sir.
14 Q: Okay. Well, wouldn't it have the right caption on it; is
15 she on that caption of the order?
16 A: No, she's not on the caption.
17 Q: Okay. That order doesn't have her name on it, correct?
18 A: No, it does not.
19 Q: Okay. And she was the property owner?
20 A: Yes, sir. So, if I could explain my answer?
21 Q: Sure.
22 A: So, we have to wait ten days before -- we have to give
23 the property owner ten days before we can file an action
24 against the property owner. The ten days had not run since
25 Ms. Davis had been given notice, so we named the business

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1 owner. My concern was that I'd be in conflict with the
2 statute if I named the property owner without waiting those
3 ten days.
4 Q: When did you sue Ms. Davis?
5 A: I don't recall.
6 Q: Did you ever sue her?
7 A: I don't recall.
8 Q: You mean, you don't know whether or not in this case you
9 sued the property owner?
10 A: Okay. I amended the complaint and added the property
11 owner?
12 Q: You did?
13 A: Yes, sir.
14 Q: When did that happen?
15 A: I don't recall the date.
16 Q: Do you have a copy of that?
17 A: No, sir.
18 Q: Okay. Does your father have a copy of that?
19 A: I don't know.
20 Q: Who was her lawyer?
21 A: Skeets and Hal Bellamy.
22 Q: Did they file an answer to that claim?
23 A: I don't recall.
24 Q: If those documents were -- were -- were filed by you,
25 would they still be a record from the clerk of court's office?

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1 A: Yes, sir.

2 Q: Do you recall what her position was?

3 A: What Ms. Davis' position was?

4 Q: Yes, in response to your filing?

5 A: She wanted -- she wanted the business closed; I recall

6 that.

7 Q: Okay. Is there an order from Judge Culbertson or any

8 Circuit Judge, finding Ms. Davis as the property owner to be a

9 nuisance?

10 A: I don't believe so.

11 Q: Okay. Now, there's no question under the statute, even

12 if she was determined to be a nuisance or if a nuisance was

13 found by a business that she was leasing to, there's a

14 provision where, I think you discussed this earlier, she can

15 secure a release of that building by going to talk to the

16 judge and saying, hey, I didn't really do anything wrong; the

17 people that did are gone. I got somebody else that's gonna

18 come in and buy it, how about let me open up; is that correct?

19 A: Yes, sir.

20 Q: Okay. So, there's not an automatic unchangeable one-year

21 closing of the building. There's a process to let Melvina

22 Davis decide, if she wants to, to try to put Natalie Litsey,

23 somebody else, in the business and run that by a judge,

24 correct?

25 A: Yes, sir.

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- 1 Q: Okay. So, that could happen. You know, it would have
2 to work out, but if that happened, the Brewingtons could sell
3 to somebody else if Ms. Davis agreed, Ms. Davis could then
4 propose that new business to a judge and a judge could say,
5 hey, Ms. Litsey is a veteran of the United States Air Force,
6 no prior problems, fine, I'm gonna let you put her in the
7 building; a judge could do that?
- 8 A: Yes, sir.
- 9 Q: Okay. Now, you did -- and I understand what happened.
10 The Brewingtons showed up for this hearing, right?
- 11 A: Yes, sir.
- 12 Q: Okay. Did you say that Prosser -- that's the lawyer for
13 them, right?
- 14 A: Uh-huh, (affirmative response).
- 15 Q: Did you know him before this?
- 16 A: Briefly, not really.
- 17 Q: Okay. Did you say he told you you could sign his name?
- 18 A: Did I tell the Brewingtons that?
- 19 Q: No, did Prosser tell you you could do that?
- 20 A: Yes, sir.
- 21 Q: Okay. I mean, you don't do that often, do you, sign a
22 lawyer's name on the other -- have you ever done that before?
- 23 A: Maybe -- it's not common.
- 24 Q: Okay. But the Brewingtons showed up in one of the
25 courtrooms up here?

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JAMES BATTLE - CROSS BY BRITTAIN

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- 1 A: Yes, sir.
- 2 Q: Okay. And you did have a conversation with them?
- 3 A: Yes, sir.
- 4 Q: And were there a lot of people in the courtroom or just a
5 few?
- 6 A: I think it was maybe us, the Brewingtons, and maybe one
7 other person. There was not many people.
- 8 Q: Okay. And there's no question that you discussed some of
9 the circumstances surrounding this case with them? It's a
10 consent matter, we're going before the judge, et cetera.
- 11 A: Yes, sir.
- 12 Q: Okay. And you did that without their lawyer being
13 present, because he was in Hemingway?
- 14 A: Yes, sir; he was not present.
- 15 Q: Had you already drawn up the order for Judge Culbertson
16 to sign?
- 17 A: Yes, sir.
- 18 Q: You went there that day with an order for Judge
19 Culbertson to sign that you had already prepared?
- 20 A: Yes, sir.
- 21 Q: Okay. Now, I know you've seen the videos. Have you
22 found any other nuisance cases where there were shootings
23 outside of clubs in Myrtle Beach?
- 24 A: Yes, sir.
- 25 Q: Okay. You don't know whether or not another business

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JAMES BATTLE - REDIRECT BY BATTLE

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1 went into this property that Ms. Davis owned, do you?

2 A: No, sir.

3 Q: Okay. That's all I have. Thank you very much.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION OF JAMES BATTLE BY MR. BATTLE:

6 Q: Did Ms. Davis ever approach you and ask you to assist in
7 reopening the club to Natalie Litsey -- for Natalie Litsey?

8 A: No, I have no recollection of Natalie Litsey's name
9 coming up.

10 Q: That's all I have. Thank you.

11 THE COURT: Do you wish the witness to be excused?

12 MR. BATTLE: Yes, Your Honor.

13 THE COURT: Any objection?

14 MR. BRITTAIN: No objection, Your Honor.

15 THE COURT: All right, Mr. Battle, you are released from
16 your subpoena, you may go back to your regular duties.

17 Thank you.

18 MR. JAMES BATTLE: Thank you.

19 THE COURT: All right. Mr. Battle, further witnesses on
20 behalf of the City?

21 MR. BATTLE: That would be the defendant's case.

22 THE COURT: All right. Any reply testimony from the
23 plaintiff?

24 MR. BRITTAIN: None, Your Honor.

25 THE COURT: All right. Very good.

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BY THE COURT

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1 BY THE COURT:

2 THE COURT: All right. Ladies and gentlemen, as at the
3 end of the plaintiff's case, there are matters of law I have
4 to take up outside of your presence.

5 Also, where we stand at this point in time is we will,
6 next, after the break, go into the closing arguments of the
7 attorneys. After that time, I will give you the law that you
8 will apply to the facts and evidence you've heard in this case
9 and then I'll submit the case, give the case to you for your
10 deliberations and unanimous decision.

11 Now, in regards to the law, I have a responsibility to
12 talk to the lawyers about what it is I am going to instruct
13 you so that they know what it is I am going to tell you. That
14 will take some time. The motions that must be heard by the
15 Court at this point in time, will take some time. So, all
16 that to say what I'm going to do is have y'all come back at 2
17 o'clock. I want y'all to come back at 2 o'clock. We'll
18 resume at that point in time and go on with this case. All
19 right?

20 Thank you very much.

21 (REPORTER'S NOTE: Jury exits courtroom @ 11:23 a.m.)

22 THE COURT: All right. Motions from the plaintiff?

23 MR. BRITTAIN: None from the plaintiff, Your Honor.

24 THE COURT: Motions by the defense?

25 MR. BATTLE: Yes, Your Honor.

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1 MOTIONS:

2 MR. BATTLE: Essentially the same motions I made at the
3 close of the plaintiff's lawsuit. In addition to that, I
4 would argue that this was -- that the Brewingtons' lawsuit,
5 this was one that was done by the solicitor and there's no
6 evidence objecting to that. He made the decision; he made the
7 final call. The City did not make the final call and
8 therefore if that was the cause of breach of the contract,
9 which Ms. Davis testified that it did, and I would say that
10 that particular action should be dismissed.

11 As far as the Litsey case, all of the evidence points to
12 the fact that Ms. Davis did not want to rent to Ms. Litsey.
13 She didn't have any conversations with the City of Myrtle
14 Beach with regard to that; and therefore, the City of Myrtle
15 Beach did not interfere with either contract.

16 THE COURT: All right, sir. Arguments from the
17 plaintiff?

18 MR. PLAYER: Yes, Your Honor. With regards to the
19 renewal from the plaintiff's case, we would obviously make the
20 same arguments. Now, we have Melvina. And noticed something
21 earlier what Ms. Davis said -- hold on one second. Number 10,
22 plaintiffs allege representatives of the City and the County
23 inaccurately notified defendant Davis of her tenant
24 plaintiff's business had become a public nuisance and was
25 being used for the sale of controlled substances. Testimony

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1 of every person from the defense and every person from the
2 plaintiff, there has never been a charge of PWID or any type
3 of distribution charge of marijuana. They're all simple
4 marijuana charges. And what Ms. Melvina Davis said is, I
5 don't have any information or belief about the business being
6 a public nuisance or used for the sale of controlled
7 substances; that is simply what I was told. Somebody told her
8 they were selling drugs, and it certainly wasn't the
9 Brewingtons. So, somebody gave her the false information that
10 the Brewingtons were selling drugs out of that club and that's
11 why she cancelled the lease. This is their exhibit, not ours.
12 So, there's no way they're entitled to a directed verdict at
13 this point. Thank you.

14 THE COURT: All right, sir.

15 Again, at the -- as with that at the end of the
16 plaintiff's case, in this directed verdict stage, the Court is
17 concerned with the existence or non-existence of evidence. I
18 don't judge credibility or believability, and in this I have
19 to determine whether a verdict for the non-moving party, that
20 is the party opposing the motion, would be reasonably possible
21 under the facts as liberally construed in that party's favor.
22 In that, I do find that evidence presented, looking at all the
23 evidence, if that evidence is so believed by the jury, there
24 is more than sufficient evidence to sustain a jury's verdict
25 regarding the tortious of both contracts. That is the

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1 contract between Henry Brewington and Melvina Davis regarding
2 the lease and the proposed contract of sale -- or the contract
3 of sale between Henry Brewington and Ms. Litsey.

4 There is evidence that -- as testified to by the
5 Brewingtons and by Ms. Litsey as to contacts with them by the
6 City of Myrtle Beach that interfered with the contracts,
7 testimony about interference with the lease agreement by the
8 City of Myrtle Beach as to motive. There is evidence in the
9 record that there was an ulterior motive in this matter; that
10 is to secure ownership of property; further motive as to the
11 treatment showing that they were being treated differently
12 than other establishments in the same or general area.

13 Again, relying on all of the evidence and the testimony
14 presented, I respectfully decline to grant the motion for a
15 directed verdict.

16 MR. PLAYER: Thank you, Your Honor.

17 THE COURT: Further motions by the defense?

18 MR. BATTLE: No, Your Honor.

19 CHARGE CONFERENCE:

20 THE COURT: All right. All right, gentlemen, let's --
21 I'm first going to give you a copy of the verdict form. I
22 want y'all to look at it and see if -- if -- if y'all have any
23 objection to the verdict form. Hold on just a second and then
24 we'll talk about the requests to charge.

25 MR. PLAYER: Your Honor, I wrote your verdict form about

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1 20 minutes ago. That's exactly what we're -- we're absolutely
2 in concurrence with that.

3 THE COURT: All right. Well, that's good. All right.
4 Mr. Battle, do you ---

5 MR. BATTLE: I'm still reading, Judge.

6 THE COURT: All right. Sorry.

7 MR. BATTLE: I have no objection to the verdict form.

8 THE COURT: All right. Very good. So, that's the one
9 that we will use for this particular matter and hand to the
10 jury.

11 As to the charge, let me go over my intentions and then
12 I'll have you tell me whether or not there are things you want
13 to add and/or delete from them.

14 We'll talk to the jury about the things we always talk to
15 them about, their duties and responsibilities, credibility and
16 believability of the witnesses, their job to examine the
17 evidence, apply their good common sense to it. Since we
18 allowed them to take notes, I'll remind them again about the
19 same issue I talked to them about earlier about notetaking,
20 that, you know, some people are better than other and relying
21 on their collective wisdom.

22 That this is a preponderance of evidence case and for the
23 plaintiff to prevail, they must prove their claim by the
24 greater weight or preponderance of the evidence.

25 As to the tortious interference with a contract or the

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1 intentional interference with the contract, let me -- I think
2 it's probably just easiest to read to you what it is I'm going
3 to tell the jury. I know that y'all have -- Mr. Battle has
4 suggested some things. I will tell you, Mr. Battle, some of
5 it's the same; some of them I didn't use. So, I want you to
6 listen to it and you tell me if there's something else you'd
7 want to add to that. All right?

8 MR. BATTLE: Yes, sir.

9 THE COURT: And that's the same for the plaintiff.

10 Intentional interference with a contract, tortious
11 interference with a contract. One that intentionally and
12 improperly interferes with the performance of a contract
13 between another and a third person by inducing or otherwise
14 causing a third person not to perform the contract is subject
15 to liability for the loss resulting from the failure of the
16 third person to perform the contract. The theory is that the
17 parties to a contract have a property right in the contract in
18 which a third party has no right to maliciously deprive or
19 injure. Such injury amounts to a wrong for which the injured
20 party may seek damages.

21 To establish an action for intentional interference with
22 an existing contractual relationship, sometimes referred to as
23 tortious interference with an existing contractual
24 relationship, plaintiffs must prove by the greater weight or
25 preponderance of the evidence the existence of a contract, the

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1 wrongdoer's knowledge of the contract, the intentional
2 procurement of the contract's breach, the absence of
3 justification, and resulting damages. There must be a valid
4 and enforceable contract for a cause of action for tortious
5 interference with a contractual relationship to exist. The
6 particular agreement must be in force and effect at the time
7 of the breach. The plaintiff must prove that the outsider
8 intentionally induced the third person not to perform his
9 contract with the plaintiff. The essential element is the
10 intent to cause the result. The alleged act of interference
11 must influence, induce, or coerce one of the parties to the
12 contract to abandon the relationship or breach the contract.
13 Plaintiff must show that, but for the interference, the
14 contractual relationship would have continued.

15 An essential element of the tort of interference with the
16 contractual relationship is that damages resulted from the
17 breach. In an action for interference with a contract, the
18 plaintiff may recover such damages sustained by him as are a
19 natural consequence of the interference. The measure of
20 damages may include unforeseen expenses, damages to
21 reputation, damages for lost employees, damages for lost
22 customers, damage for loss of goodwill.

23 Where damages alleged are lost profits, the plaintiff
24 must prove that it is reasonably certain that the profits
25 would have been realized but for the interference, and that

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1 such lost profits can be ascertained and measured from the
2 evidence with reasonable certainty. Where the result of the
3 interference is to put the plaintiff out of business, his
4 damages are the difference between the value of his business
5 in the absence of the interference and the amount realized by
6 liquidation.

7 The factors in determining whether interference is
8 improper. In determining whether defendant's conduct in
9 intentionally interfering with the contract of another is
10 improper, you may consider the following factors: The nature
11 of the defendant's conduct -- conduct; defendant's motive; the
12 interest of others with which the defendant interferes;
13 interest sought to be advanced by the defendant; social
14 interest in protecting the freedom of contractual interest;
15 the proximity or remoteness of the defendant's conduct to the
16 interference; and the relation between the parties.

17 Aggravated, unjustified interference with contractual
18 rights or reckless disregard of the rights of the contracted
19 parties can justify the award.

20 And, we haven't talked about this, punitive damages.
21 You're not asking for that, correct?

22 MR. PLAYER: Correct. We can't get those, Your Honor.

23 THE COURT: Okay. And so obviously we won't talk about
24 that paragraph. All right.

25 Tortious interference regarding advice. One who

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1 intentionally causes a third person not to perform a contract
2 or not to enter into a prospective contractual relationship
3 with another, does not interfere properly with the other's
4 contractual relation by giving the third person truthful
5 information or honest advice within the scope of a request for
6 the advice. There is no liability for interference with a
7 contract or with a prospective contractual relation on the
8 part of one who gives truthful information to another. The
9 rule as to honest advice requires that the advice be
10 requested, that the advice be given within the scope of the
11 request, and that the advice be honest.

12 Hold on one second.

13 That would be my intention. Does the plaintiff want me
14 to do anything in addition, change or delete any portion of
15 that?

16 MR. PLAYER: No, Your Honor.

17 THE COURT: Mr. Battle?

18 MR. BATTLE: Yes, Your Honor.

19 THE COURT: All right. What is it you would like for me
20 to do?

21 MR. BATTLE: I believe that you should charge the
22 statutory elements of a public nuisance because the primary
23 case that the plaintiffs have presented is whether or not a
24 nuisance existed. I think the jury needs to know what a
25 nuisance is.

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1 With regard to ---

2 THE COURT: All right. Let's deal with them one at the
3 time.

4 MR. BATTLE: I'm sorry.

5 THE COURT: That's all right. I just -- I do better when
6 we deal with them one at a time.

7 MR. BATTLE: Yes, sir.

8 THE COURT: So, of the things you handed to me, which is
9 it that you want me to charge? You want me to charge 15-43-
10 10?

11 MR. BATTLE: Yes, Your Honor.

12 THE COURT: Okay. A, B, and C, or just A?

13 MR. BATTLE: I believe that the entire statute should be
14 charged, Your Honor.

15 THE COURT: All right. Any objection to 15-43-10 as it
16 is in the code to be charged?

17 MR. PLAYER: No, Your Honor.

18 THE COURT: All right. So, we'll do that. All right.

19 MR. BATTLE: 15-43-60.

20 THE COURT: All right.

21 MR. PLAYER: Your Honor, we don't think that's relevant
22 to this. I'm afraid it might confuse the jury.

23 MR. BATTLE: All right.

24 THE COURT: I don't believe that that one gives any
25 useful or helpful information to the jury for them to

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1 understand the law or to help them reach their decision on the
2 facts. So, I will not charge 15-43-60.

3 MR. BATTLE: Just for the record, Your Honor, briefly.
4 This shows that the statute gives control of the dismissal of
5 the nuisance action to either the judge, or the solicitor, or
6 the attorneys, Your Honor. The City of Myrtle Beach cannot
7 come in and dismiss this action or control it.

8 THE COURT: That's something that y'all are gonna argue
9 in your closing argument?

10 MR. PLAYER: No, Your Honor. Our argument is before it
11 ever got to the solicitor is when the decision was made and
12 when the tort occurred. So, you know, I don't think a
13 dismissal has any bearing on the facts and issues the jury has
14 to decide.

15 THE COURT: All right. Barring something in the closing
16 arguments that brings the matter into issue, I'm not gonna
17 charge 15-43-60.

18 What else, Mr. Battle?

19 MR. BATTLE: 15-43-20.

20 THE COURT: Okay.

21 MR. BATTLE: It simply shows the statutory authority.

22 MR. PLAYER: With regard to that, Your Honor, I don't
23 think it's an issue, but it's certainly something that Mr.
24 Battle has argued. So, we don't have an objection to that,
25 charge.

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1 THE COURT: All right. Very good. So, we'll charge 15-
2 43-20. All right?

3 MR. BATTLE: 15-43-110.

4 MR. PLAYER: I think we would agree for that.

5 THE COURT: All right. We'll do that one, also.
6 All right?

7 MR. BATTLE: 15-43-80.

8 THE COURT: That's about abatements, correct?

9 MR. BATTLE: Yes, Your Honor.

10 THE COURT: All right. Do y'all have that?

11 MR. PLAYER: Which one was that?

12 THE COURT: 15-43-80, it's about abatement, the caption
13 of the statute -- I'm not gonna read the captions, I'm just
14 gonna tell the jury, but it says, Abatement; sale of fixtures;
15 closing place for a year.

16 MR. PLAYER: Oh, yes, Your Honor. We do want that one.

17 THE COURT: All right. So, 15-43-80, we'll charge that,
18 also. Now, in charging those, I'm not going to read the
19 caption of the statute; I'm just going to read the statute.

20 MR. BATTLE: Your Honor, I have one other ---

21 THE COURT: Request?

22 MR. BATTLE: I would like to -- I have requested that the
23 definition of a nuisance be added in the case of *State v.*
24 *Turner*.

25 THE COURT: Okay. Let me turn to that, please.

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1 MR. PLAYER: We don't have a problem with that one, Your
2 Honor.

3 THE COURT: All right. Very good.

4 MR. BATTLE: And with regard to Anderson's charge, 33-4,
5 advice, proper advice. That last sentence says if these
6 conditions are present, it is immaterial that the defendant
7 also profits by the advice or that he dislikes the third
8 person and takes pleasure in the harm caused to him by the
9 advice.

10 THE COURT: What's the plaintiff's position?

11 MR. PLAYER: We're fine taking that out. I mean, we
12 don't want that in, Your Honor.

13 THE COURT: Okay. You -- you object to adding that part
14 to it.

15 MR. BRITTAIN: Yeah, but I don't -- I don't believe it's
16 present in this case. I don't think it -- I think it flies in
17 the fact of the previous instructions that the Court is going
18 to be given about tortious interference.

19 THE COURT: All right. Well, I -- I'm going to -- I did
20 and am gonna charge a great portion of that, but I am not
21 charging that last sentence.

22 MR. BATTLE: Your Honor, if you will just indulge me, I
23 had trouble following how you were reading the first part of
24 33-1.

25 THE COURT: All right. So ---

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1 MR. BATTLE: I don't know whether you included all of it.
2 If you included all of it ---

3 THE COURT: I don't -- as you have -- and as I said at
4 the very beginning, I believe the charge covers the law
5 regarding tortious interference of a contact. I am not
6 charging it exactly as set forth by Judge Anderson. I'll just
7 tell you, in general, I have a philosophical difference with
8 Judge Anderson. I find many of his charges to be and border
9 on telling the jury what to do. That they are more proper
10 maybe for a Federal Judge to give, but not a State Court
11 Judge. And so, the things I eliminated from Judge Anderson's
12 charge, I either thought were not warranted by the facts of
13 this case or came close to an instruction telling the jury
14 exactly what they had to do in this case and not giving them
15 general instructions on the law. So, what I am charging them
16 is not a direct and complete word-for-word charge as set forth
17 by Judge Anderson.

18 MR. BATTLE: And I understand that, Your Honor, but
19 please note that I take exception to those choices.

20 THE COURT: Certainly, and I understand that. Is there a
21 particular -- and again, you pointed some things out
22 particularly to me and the plaintiff hadn't had any objection
23 to it, so I'm gonna charge it. So, is there something in
24 there that you want to point to me specifically so the
25 plaintiff can say they object or they don't?

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1 MR. BATTLE: Well, as I said earlier, I don't -- I've
2 lost you in the process of reading it, but I don't believe I
3 heard anything about the first paragraph on page 421 of the
4 charges which is, for a cause of action to arise, a breach
5 must be intentionally procured. The plaintiff must prove that
6 the outsider intentionally induced the third person not to
7 perform his contract with the plaintiff. The essential
8 element is the intent to cause the result. If the defendant
9 does not have this intent, he does not -- his conduct does not
10 subject him to liability.

11 THE COURT: All right. What I did say is, first, that
12 the plaintiff must prove that the outsider intentionally
13 induced the third person not to perform the contract with the
14 plaintiff. An essential element is the intent to cause the
15 result. The alleged act of interference must influence,
16 induce, or coerce one of the parties to the contract to
17 abandon the relationship or breach the contract. The
18 plaintiff must show that, but for interference, the
19 contractual relationship would have continued.

20 And then later on, there's a paragraph about factors in
21 determining whether the interference is improper. In
22 determining whether the defendant's conduct in intentionally
23 interfering with a contract of another is improper, they may
24 consider the following: Nature of the defendant's conduct;
25 the defendant's motive; the interest of others with which

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1 defendant interfered; interest sought to be advanced by the
2 defendant; social interest in protecting the freedom of
3 contractual interest; proximity or remoteness of the
4 defendant's conduct to the interference; and the relations
5 between the parties.

6 So, again, I think I've covered that. I may not say it
7 exactly how Judge Anderson says it, but I think it's covered.

8 MR. BATTLE: I understand that, Your Honor, but ---

9 THE COURT: You want me to say it exactly like Judge
10 Anderson says it?

11 MR. BATTLE: I'm trying to protect myself for the record.

12 THE COURT: I understand that, but what you want me to do
13 essentially is just say it just like Judge Anderson says it.

14 MR. BATTLE: You're close to what Judge Anderson said and
15 I haven't gone through the rest of them. I mean, it's not --
16 I'm not asking you to mimic him, but I -- here we are in court
17 talking back and forth, I'm listening to you read on very
18 technical points and -- and you're doing your best; I don't
19 have any question about that. I just, you know, I have
20 studied this charge, and I believe this charge accurately sets
21 forth the law.

22 THE COURT: All right, sir. Thank you.

23 All right. Anything else from the plaintiff?

24 MR. PLAYER: No, Your Honor.

25 THE COURT: Anything else, Mr. Battle?

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1 MR. BATTLE: The next paragraph there, did you charge
2 that, the ---

3 THE COURT: Okay. Which -- and I'm sorry?

4 MR. BATTLE: 421?

5 THE COURT: Okay. Page 421, all right.

6 MR. BATTLE: Second paragraph, the tort of intentional
7 interference with a contractual relationship requires that the
8 third party's interference in fact produced the breach
9 complained of.

10 THE COURT: Yes, sir, I believe that the charge says
11 that.

12 MR. BATTLE: Okay.

13 THE COURT: I -- I'm just saying, I think that when I say
14 the plaintiff must prove that the outsider intentionally
15 induced the third person not to perform the contract of the
16 plaintiff, I think I'm saying it.

17 MR. BATTLE: Well, again, I'm gonna take -- I hate to be
18 so ---

19 THE COURT: No, no; that's all right. That's what I'm
20 asking you.

21 MR. BATTLE: I'm gonna -- same objection. In fact
22 procure the breach, you know, inducing one thing to do
23 something and in fact procuring the breach are two different
24 things in my humble opinion.

25 THE COURT: Okay. All right. Well, I do go on to say

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1 the alleged act of interference must influence, induce, or
2 coerce one of the parties of the contract to abandon the
3 relationship or breach the contract. So, and the plaintiffs
4 must show that, but for the interference, the contractual
5 relationship would have continued. So, I do believe I'm
6 saying that.

7 MR. BATTLE: I understand that, Your Honor.

8 THE COURT: Okay. All right. What else?

9 MR. BATTLE: There must actually be a breach of the
10 underlying contract.

11 THE COURT: And I believe the charge says that. I think
12 -- and again, that's maybe another philosophical difference I
13 have. Judge Anderson tends to repeat himself over and over,
14 and I don't think that's necessary. I think telling the jury
15 one time is enough, and I don't want to unintentionally by
16 repeating something make them think it's more important than
17 anything else I'm telling them. It's all important. So, no,
18 I don't say that. I think I do say it in the charge, but I
19 don't repeat it. Okay? So, that's all I'm gonna say.

20 Okay. What else?

21 MR. BATTLE: Bear with me, Your Honor.

22 THE COURT: Yes, sir, not a problem. That's why we --
23 that's why I gave the jury the time I did so we could talk
24 about it.

25 MR. BATTLE: Oh, Your Honor, I did make a note. In your

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1 general charges, I did not hear you indicate that you were
2 going to charge circumstantial evidence and ---

3 THE COURT: Okay. In direct and circumstantial evidence.

4 MR. BATTLE: Yes, Your Honor.

5 THE COURT: Okay. Yeah, I ---

6 MR. BATTLE: I just didn't hear it.

7 THE COURT: Yeah, I just skipped over that, yes.

8 MR. BATTLE: Thank you.

9 THE COURT: It's in here; I just skipped over it. I'm
10 sorry.

11 Now, let's talk about that, just so that we're clear.
12 When we're talking about circumstantial evidence, we are
13 talking about a charge that says to the extent the party
14 relies on circumstantial evidence, the circumstances must be
15 consistent with each other in essence. Is that -- any problem
16 with that?

17 MR. BRITTAIN: I believe that's an accurate statement of
18 law.

19 THE COURT: Isn't that what you're asking me to do, Mr.
20 Battle?

21 MR. BATTLE: Yes, Your Honor, just charging that
22 circumstantial evidence could be as significant as direct
23 evidence.

24 THE COURT: Certainly, yeah, and the law doesn't make any
25 distinction between the two but, if somebody relies on

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1 circumstantial evidence, all of the circumstances have to be
2 consistent with other. Sure, absolutely.

3 MR. BATTLE: In the page 421, in the large Anderson
4 charge, in the fourth paragraph, the exercise in good faith of
5 the legal right by a party to a contract affords no basis for
6 an action by the second party when intentional interference
7 with a contract, even though the consequences of the legal
8 right by the first party is to cause the third party not to
9 perform another contract with the second party.

10 MR. BRITTAIN: Your Honor, he left out the first sentence
11 of that paragraph.

12 MR. BATTLE: Well ---

13 MR. BRITTAIN: If you're gonna -- well, I mean, let me
14 ---

15 THE COURT: All right. So, what is it you wanted me to
16 add?

17 MR. BATTLE: I wanted you to -- did you charge that? And
18 I would want you to add that if you did not.

19 THE COURT: All right. So, the whole paragraph?

20 MR. BATTLE: The whole paragraph is fine.

21 THE COURT: Is there a problem with that?

22 MR. BRITTAIN: No, sir. I mean, you've already said it
23 once, but you can certainly say it again as far as I'm
24 concerned.

25 THE COURT: All right.

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1 MR. BRITTAIN: I think that that first sentence is
2 important. The absence of justification may be inferred.

3 THE COURT: All right.

4 MR. BRITTAIN: It helps to have an impact on what
5 follows.

6 THE COURT: Okay. Very good. All right. So, there
7 being no objection, I will charge the entire paragraph.

8 All right, Mr. Battle?

9 MR. BATTLE: And you're going to strike the punitive
10 damages?

11 THE COURT: Yes, I'm not talking about punitive damages.

12 MR. BATTLE: Well, the ---

13 THE COURT: Yes, sir.

14 MR. BATTLE: One thing that I would like to add, you
15 don't need to add the whole 5-7-30, but I would like to charge
16 that the City has the authority to abate nuisances under 5-7-
17 30.

18 THE COURT: Okay. Where is that? All right. Let me
19 hear from you on 5-7-30?

20 MR. PLAYER: Your Honor, I don't think we have an
21 objection to it.

22 THE COURT: All right. If I'm gonna charge it, I'm gonna
23 charge the whole thing.

24 MR. BATTLE: Okay.

25 THE COURT: Not just parts of it.

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1 MR. BATTLE: That's it.

2 THE COURT: All right. Very good. All right, gentlemen,
3 I appreciate it, and we'll come back at 2 o'clock. We'll do
4 -- obviously, plaintiff opens in full, defense gives their
5 full and complete argument; then you got the right to reply to
6 the matter, but obviously not reiterate your complete
7 argument. Okay? It's a reply.

8 MR. PLAYER: Yes, Your Honor.

9 THE COURT: All right.

10 MR. BATTLE: Just so I'm clear. If he goes outside of
11 new matters I may have raised, can I stand up and object?

12 THE COURT: Yes, sir, you can -- well, you can object
13 anytime that you ---

14 MR. BATTLE: Well, I know I can object, but I was just
15 want to say is ---

16 THE COURT: Yes, absolutely, yes. If you believe you
17 have a proper objection, please stand up and object, and the
18 Court will rule on it. Not a problem.

19 MR. BATTLE: I understand that, but it's a ---

20 THE COURT: Basically, what you're doing in the reply is
21 your -- if you are replying to a matter that you didn't talk
22 about or that the defendant talked about it in a different
23 fashion than you talked about it, so it's not the same
24 argument you've already made. Now, again, you can conclude by
25 asking them to do what you asked them to at the very

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CHARGE CONFERENCE

1 beginning, you know, in your first part but, you know, we're
2 not rehashing your first part. Okay? It's new matter or
3 they've put a different spin on it that you didn't talk about
4 then you can address that.

5 MR. PLAYER: And, Your Honor, just for clarification,
6 what -- I think what our plan is, I was gonna do the initial
7 opening, and then Tommy was going to do the rebuttal. And I
8 am going to discuss some of the damages, but in terms of
9 giving them a number, I was gonna allow Tommy to do that at
10 the end.

11 THE COURT: I think -- no, I think it's proper and the
12 rule does require, you give them your full and complete
13 argument. Okay? Including what it is you're gonna be asking
14 them to give you at the end. Now, it does not mean in the
15 reply you can't end with, after you've made your reply, we are
16 again, you know, we believe we proved the case and we're
17 asking you to do X, Y, and Z.

18 MR. PLAYER: Yes, Your Honor.

19 THE COURT: So, you can certainly say it again.

20 MR. PLAYER: Okay.

21 THE COURT: But -- but you need to -- you need to tell
22 them everything in the beginning, because then that way it
23 gives the defendant the ability to address everything.

24 MR. PLAYER: Yes, Your Honor.

25 THE COURT: Okay?

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BY THE COURT

1 MR. PLAYER: Yes, sir.

2 THE COURT: All right. Anything else from the plaintiff?

3 MR. PLAYER: No, Your Honor.

4 THE COURT: From the defense?

5 MR. BATTLE: No, Your Honor.

6 THE COURT: All right, gentlemen. At 2 o'clock, we'll
7 resume. Thank you very much.

8 MR. PLAYER: Thank you.

9 **RECESS - 12:01 P.M.**

10 *****OFF THE RECORD*****

11 **ON THE RECORD - 1:56 P.M.**

12 BY THE COURT:

13 THE COURT: All right. Is the plaintiff ready for the
14 jury to come in?

15 MR. PLAYER: Yes, Your Honor.

16 THE COURT: And the defense?

17 MR. BATTLE: Yes, Your Honor.

18 THE COURT: Ask the jury to come in, please, sir. Thank
19 you.

20 (REPORTER'S NOTE: Jury enters courtroom @ 2:02 p.m.)

21 THE COURT: All right. Ladies and gentlemen, as I
22 explained to you, we've now reached the stage of the trial
23 where the attorneys are going to give you their closing
24 arguments. Now, these closing arguments are important.
25 They're each side's summation of what they believe the

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CLOSING BY PLAYER

1 evidence has shown to you during the course of the trial.
2 Remembering of course, that you are the judges of the facts.
3 And remembering, you know, though important, what they tell
4 you is their comments; they're not evidence. You've already
5 heard all of the evidence in this case. All right.

6 Yes, sir?

7 MR. PLAYER: Thank you, Your Honor. Good afternoon,
8 y'all.

9 CLOSING BY PLAYER:

10 MR. PLAYER: Tommy introduced me in the beginning. I
11 haven't introduced myself; I'm Tucker Player. I represent the
12 Brewingtons along with Tommy, and we both want to thank you
13 for your service this week. You came, you saw, you listened,
14 and in a little while you're going to make some truth, because
15 you decide what the truth is. That's your function. It's an
16 awesome power, and these days truth is a little hard to come
17 by no matter what source you like at, what side of the fence
18 you're on. But when Judge John hands you the case, when he
19 delivers it to you, when he gives you the evidence and the
20 exhibits, that's what you do; you make truth. It's power and
21 it shouldn't be taken lightly. And these summations are our
22 positions about what we all saw, read ,and heard in the last
23 three days, and like Judge John said, it's not evidence. And
24 I'm going to have a timeline I'm going to go through a lot
25 like Mr. Battle had in the beginning; this isn't evidence.

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CLOSING BY PLAYER

1 It's based on the evidence, and I will direct you where it's
2 pulled from, but it's not evidence. So, when you get back
3 there, don't ask to see it, because you can't. This is just
4 for my closing arguments; it's not evidence, but you -- I will
5 tell you where you can find this in this stuff. Okay?

6 So, let's get to what this case is about. It's about
7 Henry Brewington, son of sharecroppers. Okay? We all know
8 what the American dream is and we have our own idea what it
9 is, but at its core is that you can make yourself anything you
10 want to be in this land of opportunity, no matter where you
11 came from. Henry Brewington ain't a trust fund baby. He
12 never had any advantages. He had to work. As soon as he
13 could stand up and he could -- as soon as he could work in the
14 fields, he did. If he didn't work in the fields, he didn't
15 eat. He didn't go to school unless it rained. Why? Because
16 if it's raining, you can't be in the fields. That's who Henry
17 Brewington -- that's where Henry came from.

18 His entire life he worked abiding by two rules.
19 Everybody knows them. Number 1, do unto others as you would
20 have them do unto you, the golden rule. The other one is the
21 Good Samaritan rule. If somebody needs help and you know it,
22 you ought to do what you can to help them. That's Henry
23 Brewington.

24 So, Henry was born in Hemingway. He travels up to New
25 York City wanting to get away from the farm, meets his wife,

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CLOSING BY PLAYER

1 marries her, opens a club back home. Eventually, they come
2 home. They have two clubs; Henry's Starlight and Club 261.
3 Ran them for years without a problem. His American dream was
4 working. He was able to save a nest egg of \$300,000 for their
5 retirement. That dream was alive until he came to Myrtle
6 Beach. Excuse me.

7 As the Judge just explains, he's gonna give you the law.
8 I'm gonna talk about it for a few minutes. There's really one
9 cause of action -- there's two of them, but it's the same
10 thing -- tortious interference with a contract. If you have a
11 contract with somebody, somebody else can't come along and do
12 something to make them breach it. That's what this case is
13 about. The Judge is gonna tell you there's five elements that
14 we have to prove in order to recover.

15 The first is the existence of a contract. There's no
16 dispute, there was a contract with Melvina Davis. There was a
17 contract with Natalie Litsey. It's not in dispute.

18 Number two, knowledge of the contract. We know they
19 knew. They sent a letter to Melvina Davis; she was the owner,
20 she had the lease. The City knew there was a contract. You
21 heard the conversation with Lisa Robertson. We introduced the
22 contract with Natalie Litsey. They knew that contract
23 existed. Number two, not in dispute.

24 Let's move to number three. Intentional procurement of a
25 breach. That's a lot of lawyer words. What it means is they

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CLOSING BY PLAYER

1 did something that they knew or should've known would lead to
2 the breach of a contract.

3 That one and the next one, which is with the absence of
4 justification, which means they didn't have a good faith or
5 legitimate reason to do whatever they did to interfere with
6 the contract.

7 Number five is damages. Mr. Battle told you in the
8 beginning this case is really about motive. I completely
9 agree, because you have to find that the five joints and the
10 sparkler that was used to shut down Levelz wasn't enough to
11 make them a nuisance and we'll get into that. I think it's
12 ridiculous, but that's what they want you to believe, that
13 this was a legitimate threat to the safety, that's the word
14 they used, that's the word that's in the statute. Five joints
15 and a sparkler were such a threat to the safety of the
16 citizens of Myrtle Beach their business had to be shut down
17 and they couldn't anything out of it. That's what you have to
18 believe to rule for the City. And if you think that's what
19 should happen, we have a very different view of it.

20 So, let's talk about ---

21 MR. BRITTAIN: Tucker, I put you some water up there.

22 MR. PLAYER: I apologize.

23 MR. BRITTAIN: I set you some right there on the table.

24 MR. PLAYER: Oh, thank you. I feel like Mark Rubio.

25 All right. So, what do we know about the motive? Listen

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CLOSING BY PLAYER

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1 to the City. I'm going to say this over and over and over
2 again, this, what we're getting ready to go through is not in
3 anything that we put up here. This is in Ms. Robertson's
4 notes that she had such difficulty reading or telling the
5 truth about it yesterday.

6 July 14, now, Ms. Robertson said in 2014 she became a
7 regulatory officer. So, when they opened -- they paid
8 \$300,000 to open the club. First incident, October 18th,
9 Levelz is cited for having -- again, I'm stupid, I said
10 sprinkler, not sparkler -- sparklers in a drink. What did
11 Henry do? Okay. I didn't know I wasn't supposed to do it;
12 I'll never do it again. See, if you have a problem, you need
13 to fix it; he did it. So, he went in, he pled guilty, they
14 waived the fine.

15 On the next day, they caught a person with a joint on the
16 dance floor, cited them for simple possession. They did not
17 cite him for selling anything.

18 December, SLED comes in, obviously in a sting because
19 they asked to be served a drink, which Ginny told you they
20 didn't stock, and he said give me a drink. He knows it's
21 after hours. He's asking Levelz to break the law; that's
22 called entrapment. But they don't fight it. Okay. We served
23 after 2:00; we won't do it again is what they said. And there
24 is no evidence, none, that they refused to do anything the
25 City asked, except guarantee that no crime occurred in the

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CLOSING BY PLAYER

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1 building, in the shared parking lot, next-door, the church
2 across the street, you know, it could reach all the way to
3 Conway if we let them run with it.

4 So, concerned, they got a sparkler and they got one
5 joint. You're on our radar. It's in her notes. I'm gonna
6 show you right now, when you go back there, you don't have to
7 look far. This is Ms. Robertson's notebook. It is Exhibit 8
8 by the defense. The first page is her letter on the 27th to
9 shut them down. The juicy stuff, all of this stuff, is the
10 next document. If you don't believe what we're saying, go
11 read it because it says what this says.

12 So, December 17th, you're on our radar. You had a
13 sparkler. That's when this meeting is with -- free pour,
14 there were bottles on the table; it's illegal. They're from
15 New Jersey, didn't know; we won't do it again is what they
16 testified to, and there was no other charge for that
17 violation.

18 Then we get to the important issue. January 18th, 2015,
19 there's a fight in the club. What does the club do? Put them
20 outside. What does the club also do? Call the cops. There's
21 a fight, they're in the parking lot, one of them might have a
22 gun. Did the cops come running? Nope. Two blocks away,
23 Levelz cleans up, shuts down, and they're walking out the door
24 when the cops show up. They're not worried about safety; they
25 don't care. And the only evidence -- sorry -- the only

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1 evidence they have, because nobody is arrested, is the word of
2 Ginny Brewington and her security service, because they both
3 called; it's in the notes. We got a fight. Y'all want to
4 come do something about it? There's an intervening where
5 Robertson says on the 20th, I saw something happened at
6 Levelz. I called the Brewingtons; no answer. But then on
7 the 22nd, Robertson called Ginny Brewington and specifically
8 tells her, the fight on 1/18/15 will not be held against
9 Levelz since they called it in. Think about it for a second.
10 If you punish the Brewingtons for calling the cops, you are
11 punishing the victim for reporting the crime. You think
12 you're gonna get a lot of reports of crime if that's what
13 happens? No. It certainly helps the City of Myrtle Beach's
14 numbers, but it doesn't help the Brewingtons or anybody else
15 they shut down. But this is key, it will not be held against
16 you, and they did. They did. It's on the first page in her
17 notebook. One of the nine calls is the call where she said
18 they're fighting. So, she calls it in, and they use it
19 against her. Where I come from, that's called a lie. At the
20 very least, it's untrue.

21 Armageddon weekend, 1/25/15. You heard the testimony,
22 uncontradicted, six cop cars, lights on all night. Now, if
23 there was gonna be a hit, as they claimed, and they were
24 trying to protect folks, that makes sense. They don't need
25 their lights on. What did they find? What kind of

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CLOSING BY PLAYER

1 devastating criminal activity did they find? Guy smoking a
2 joint in his car, in the parking lot that is shared with other
3 clubs. That's not Levelz. Police found one guy with a bag of
4 marijuana in the Levelz bathroom. Okay. They've got two
5 crimes. Two women get in a fight in the club. What does the
6 club do? Outside, call the cops. The cop showed up. Fud it
7 take six cop cars to break up a chick fight, because that's
8 what -- is that what they're claiming? But this is not in
9 Levelz; it has nothing to do with Levelz. It was patrons that
10 started inside and they made them go outside. Again,
11 complying with what's requested. And again, it's in the
12 parking lot, shared.

13 Then, just for giggles, there's a drunk guy walking
14 through the parking lot, public disorderly, which I believe we
15 heard say that that's not that big of a deal when they're
16 going through the -- and he had a joint in his pocket.
17 There's joint number 5.

18 So, Ginny -- now, this scared the devil out of Henry.
19 Henry ran -- Armageddon weekend was enough for Henry. He's
20 lived it; son of a sharecropper, lived in the south during
21 segregation. You don't mess with the man, because the man is
22 gonna mess with you. And their message on the 25th was loud
23 and clear; we don't want you here. But it didn't work with
24 Ginny, because Ginny wants to fight, Ginny wants to fight.
25 Henry runs to Natalie and says, I've got to get some of this

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CLOSING BY PLAYER

1 money back. Ginny calls Robertson on January 26th. I think
2 we're being treated unfairly; I think you're treating other
3 clubs differently. She specifically mentions the Heat Lounge,
4 and she mentions that she saw the cops there hanging out with
5 the owner on a regular basis. She also mentioned in her
6 testimony, I didn't put it up here, that she said she thinks
7 they're getting bribes. Myrtle Beach didn't like that. What
8 does Robertson do? You heard Ginny's testimony and you heard
9 me ask her four times who she called, because Ginny said I
10 called to complain. Robertson said, I got to go. Why? Is
11 she going to make an internal affairs investigation report?
12 Is she going to try and figure out if her cops are tied up the
13 state trooper that's helping launder money at Club Heat?
14 Nope. We don't know who she called, because she doesn't
15 recall. What do we know? She called back later that day and
16 said, oh, come on down and we'll talk about it on February
17 2nd. That was a lie. She called Tom Ellenberg and said,
18 they're complaining about cops, and Ellenberg told her, nope,
19 they gone. Start it now. The very next day after she
20 complained of police harassment and points out she saw
21 officers hanging around with the owner at the Heat Lounge,
22 Robertson pulls the file, and she drafts the memo to Chief
23 Gall, who you did not hear from, and you won't, they got to
24 go. The last thing she said, this is the nine calls including
25 on January 18th there was a fight. Do you remember she said

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CLOSING BY PLAYER

1 it wasn't gonna be held against her, right there, number 5; I
2 tried to get her to read it yesterday. The last line, based
3 on the number of above calls for service, I recommend they be
4 shut down as a nuisance or they get an abatement letter. That
5 sounds an awful lot like retaliation to me; it's the next day.
6 Setting them up for that day.

7 Now, Mr. Battle is gonna do everything in his power to
8 start here. He wants you to focus on this, the shooting. It
9 was bad, because it's a shooting and somebody died. We'll get
10 to that, because it certainly wasn't Levelz fault. But what's
11 important is, this didn't matter. This is the 15th, two weeks
12 before that, which is February 2nd. Right? She walks in
13 thinking we're gonna talk about problems, we'll work it out
14 with the City. And they are told in no certain terms, we're
15 gonna run you out of here on a rail. You won't be able to
16 take a glass from your establishment if you don't turn your
17 stuff in and get out of town, right now. Does that sound
18 fair? Does that sound like good faith? That sounds like
19 something from the 50s, where they didn't wanted, and killing
20 dreams is no skin of their back.

21 So, February 4th, she tells them about Natalie, because
22 Henry was worried about Ginny because he's scared of the wife
23 like the rest of the smart men in the room, and he knew she
24 was gonna be upset that he wanted to sell, but he's got to
25 tell her after Ellenberg said I'm gonna run you out of town.

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CLOSING BY PLAYER

1 So, she called and says, we're gonna sell it. You know, no
2 mas. We're gonna sell it and get half our money back, and
3 you'll never see us again. That wasn't good enough. Whoa, I
4 need her name and number. They tried to make you think that
5 Ginny asked for that phone call, and you know that's not true,
6 because the transcript clearly shows the woman said I need a
7 number ASAP. I need to talk to that woman. I need to let her
8 know this is not the business she wants to buy. That is
9 interference with a contract, and you heard her testimony.
10 This is not some crackhead that is, you know, defecating in
11 the parking lot. This is a decorated military veteran who
12 served in Afghanistan and treated our wounded soldiers, and
13 they don't want her there. And she made sure Natalie doesn't
14 buy Levelz.

15 So, by this point, the letter is out. The City has taken
16 the step. Who did they send the letter to? The landlord.
17 Now, to a lot of us, the landlord is the rich guy. You got to
18 pay him. That's not the way it works. Melvina Davis -- she's
19 passed away now -- she's elderly. And all of your life you
20 make money and you accumulate things and one of those things
21 you accumulate is a property. So, instead of maybe you owned
22 a business, maybe you did your own thing, so you don't have a
23 401K, an IRA. What you have is your property and the rent
24 coming from that property. So, when they called Melvina
25 Davis, you got a nuisance. How many times they tell you the

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CLOSING BY PLAYER

1 statute says we can shut you down for a year -- we're going to
2 shut you down for a year. If your livelihood is going to be
3 shut down for a year, you're gonna get them people out as fast
4 as you possibly can. And this -- the shooting had nothing to
5 do with it. They -- going down the transcript; it's on page
6 42. Melvina Davis: You ruined my business; you ruined it.
7 Who told her that? You think the Brewingtons did? No.

8 Another thing they're gonna bring up is that if they ask
9 for advice and we give the advice, you can't say that we
10 interfered with the contract. Well, what that says -- I'll
11 read it to you. It's a justification for speaking to somebody
12 with a contract that eventually leads to a breach. The advice
13 had to be requested; we don't know if Melvina requested
14 anything. It's not in the statement. We know Natalie didn't
15 ask for it. Robertson wanted -- Robertson called -- Natalie
16 never asked for it. It doesn't apply to her. But even if it
17 did, the advice given to be within the scope of the request.

18 Number three, the advice be honest. Let's look at that.
19 Melvina is not here, her transcript was read in the record.
20 It's not really a transcript; it's written stuff. Number 10
21 tells you all you have to know. Let's read it. Plaintiffs
22 allege in early February of 2015, the representatives of the
23 defendant City and the defendant County began to inaccurately
24 notify the defendant Davis that her tenant, plaintiffs
25 business, became a public nuisance and was being used for the

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CLOSING BY PLAYER

1 sale of controlled substances. There is not one shred of
2 evidence, there is not one moment or word of testimony that
3 drugs were ever sold at Club Levelz, never, hadn't happened.
4 And if you think if it happened, they would bring ten cops up
5 here and talk about all the drugs coming out of there. But
6 the important thing is what Ms. Davis said. I still have the
7 information and belief about the business being a public
8 nuisance or used for the sale of controlled substances. And
9 here's the key. I was simply -- that is simply what I was
10 told. Do you think the Brewingtons told their landlord we're
11 selling drugs? No, somebody from the City lied to her.
12 Somebody from the City said they're selling drugs, and they
13 weren't. They lied. They lied to Virginia and they lied to
14 Melvina. That's interference with a contract.

15 Number five -- well, we're still not done with those.
16 Y'all heard a lot about CAD reports and if you really want to,
17 it is your prerogative, some may say duty. Go through all the
18 exhibits. Now I got to go read all this stuff; all you got to
19 do is look at it. How is this never cited? How is this still
20 open? And they ran them out on a rail. They filed a special
21 hearing to shut them down over that shooting next-door, a
22 professional hit. That's what the solicitor said, a
23 professional hit. So, now if you own a business in Myrtle
24 Beach, you better start hunting down hit men or they're gonna
25 shut you down. That is insane. But this is all you need to

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CLOSING BY PLAYER

1 know that they were treated differently. Just -- I mean,
2 Chief Prock, I mean, you saw her flipping through it, and
3 flipping, and flipping, and flipping until she could find the
4 ninth one. Go read it. Tell me how many drugs, fights,
5 everything else, public disorderly, calls to police; it was
6 more than nine and this is more than 91. They were not
7 treated fairly; they were treated differently. Club Heat,
8 uncontradicted testimony there was a shooting in July of '14.
9 According to the City, maybe it was a sparkler. I don't think
10 they found a sparkler; maybe that's why they didn't try and
11 shut them down. But regardless, in February of '15, while
12 they're shutting the Brewingtons down, the owner and officers
13 are indicted for laundering money through that club. Show me
14 where they shut them down; they didn't. That's called
15 differential treatment. It has special significance because
16 of the 26th when she says I'm being treated unfairly and I
17 think the cops are dirty at Heat. At Heat. The next day,
18 they're gone. The first -- and they knew it; that was their
19 intent and got away with it, at least until now.

20 Then we get to damage. This is really within your
21 purview. What the testimony was, they spent \$298,000
22 upfitting the location. They had 150 grand they were gonna
23 get from Natalie to try and recover something. They didn't
24 get any of that money, but the Judge is going to instruct you
25 with regards to the law that I have -- about what damages can

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CLOSING BY PLAYER

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1 be recovered for this cause of action. All right? Unforeseen
2 expenses, damage to reputation, damage of loss of employees,
3 for loss of customers, damage for loss of goodwill.

4 The Brewingtons didn't come down here to make their money
5 back. You don't do that; you come to make money. And they
6 were starting to make money in January. They made \$34,000 in
7 those six weeks in the offseason when they're only open two
8 nights a week. Ginny said, we would have made the 300 back
9 that summer. And if they hadn't of messed with Melvina Davis,
10 they could've been there for five years. If you made 34 grand
11 a month for 12 months, that's close to \$400,000, and of
12 course, you have expenses. But that is again, just taking
13 January. We don't have a real in season month, because they
14 never let them operate after the first year. You know, when
15 they opened, they had two months in season. Nobody knew who
16 they were, but the following year, especially after making 34
17 in January, they're going to make money. Our position is they
18 could've made their money back and more. Clearly, we think
19 they'd a made a profit of \$100,000 a year or -- the business
20 was worth that. The business was worth at least twice what
21 you invest in it. \$600,000, that's what they took from the
22 Brewingtons, but that's up to you. That's what we'd like; you
23 get to choose and you can put a bigger number up there because
24 it would be justified. If they're gonna make \$100,000 a year;
25 do the math.

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1 Of course, there's two sides and you'll notice that most
2 of the stuff I've pointed to has a blue sticker on it. That
3 means it's their exhibit, their documents. Let's talk about
4 what they've said. Safety, sparkler/sprinkler, someone
5 smoking a joint, SLED asking to get a drink, another joint,
6 they self-report the fight that wasn't supposed to be used
7 against them and it was. Where is the danger here? You got a
8 fight, okay, I think the folks fighting probably voluntarily
9 did it, nobody else got hurt except the cop breaking it up,
10 but that was in the parking lot. Show me where the danger is.
11 If they're allowing people to -- if they're allowing
12 businesses to sell bongs on the boardwalk, they're not really
13 that concerned with marijuana, folks. You heard Ms. Robertson
14 say, yeah, they were allowing them to sell them.

15 She bent over backwards for the Brewingtons. She said
16 she loved the Brewingtons. I'd hate to see what she did to
17 people she didn't like. But the one thing that you hear over
18 and over again and you're gonna hear in the charge is
19 compliance. Compliance, compliance, compliance. It reminds
20 me of a quote from a movie. You say that word a lot; I don't
21 think it means what you think it means. Compliance means, I
22 ask you to do something and you do it. And they keep saying
23 -- Robinson, Prock -- they wouldn't comply. With what? Have
24 you heard anything that they asked them to do that they didn't
25 do? No. Somebody smoking a joint, what you want me to do?

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CLOSING BY PLAYER

1 I'm gonna hire five new guards, and I'm going to ban all
2 smoking in my establishment. That sounds like an attempt to
3 comply to me. Go back, go back to October, the sparkler. The
4 true culprit of danger in this case. The sparkler, never do
5 it again. Okay. And this is all in the testimony,
6 uncontradicted. December, the search by the cop, found
7 another joint. You're on our radar. Fix it. 2 o'clock it
8 was done; they're out the door. That's what they said; they
9 never got cited for it again. They complied. January 18th,
10 there's a fight and they call the cops; that's compliance.
11 They were told it wouldn't be held against them, and it was.
12 They are complying. Armageddon, it's just marijuana, a drunk
13 out in the parking lot, and two chicks fighting. What are
14 they supposed to do? Tell me, tell them. Better yet, why
15 didn't they tell them? Why has there been no testimony, we
16 asked the Brewingtons to do this and they refused. Did you
17 hear that one time? I didn't. So, if they're supposed to
18 comply, they got to have something to comply with.

19 But even though they have a contract to sell the
20 business, they are trying to get out. They know they're goose
21 is cooked. What did they do? They still hired five more
22 guards, they still made this place smoke free; just to get the
23 cops off of their back. And what does that lead to? It leads
24 to a dude smoking in the club, he gets kicked out, and then
25 he's killed by a professional hit man. And the City says, oh,

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CLOSING BY PLAYER

1 that's Levelz' fault. How? We live in a country, we have a
2 system of justice, and it's just simple morality. You don't
3 punish somebody unless they did something wrong. What did
4 they do wrong? Tell me; tell them. You can't, because
5 there's no evidence to show that.

6 As they get up here and give their closing arguments, ask
7 yourself who is not here. Our folks are here. The people who
8 wrote the tickets, not here. People who found the joints, not
9 here. The people who were in the meeting other than Lisa
10 Robertson -- and you heard her, I didn't say nothing. And the
11 meeting with Gall and Ellenberg, when they said we're gonna
12 run you out of town on a rail -- are they here? Nope.

13 I was raised, if somebody accuses you of something, you
14 stand up for yourself. I think they're making some pretty
15 damaging accusations. The policy chief -- they bring the new
16 chief; they bring the good one, Amy Prock. I like her. She's
17 trying to protect her department. She's not the one that made
18 these decisions, and they didn't bring the man who did.
19 There's a reason for that. You know what that reason is? If
20 they brought him, he'd sit right there, and Tommy and I would
21 eat him alive. That's why they're not here.

22 I get bent out of shape sometimes. It makes me sweat and
23 pace. But I want to get back to Henry. Henry was the
24 American dream; he was living it. He made something out of
25 himself. You saw the difficulty he has with some of the

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1 things we take for granted, but his own -- oh, another thing,
2 this man is -- they ran three clubs before they came to Myrtle
3 Beach. The only thing they didn't have experience with were
4 the people at the City of Myrtle Beach, because that's a whole
5 new ball game. They learned and they had to pay for that.
6 And now is the time to make them halt. That's what we want
7 you to do. The evidence, in my opinion, overwhelming. I am
8 biased and I do have an interest in that, but you heard our
9 side and whatever it was they put up. I can't tell you one
10 thing we didn't do to comply. They say that's why they shut
11 us down, but they can't tell us what we didn't do. They can't
12 tell us what we didn't do. When you listen to these statutes,
13 because you're going to hear about nuisance. Listen to what
14 it says. The person has to do something illegal. They can do
15 something awful, but they have to do it in a way that caused
16 the breach of the peace. What did Henry and Ginny do? The
17 only thing in this case they didn't do was guarantee that no
18 crime occurred in their building or anywhere close to it.
19 That is the police's problem, not theirs, and they didn't
20 deserve to have everything they had taken away by the City.

21 Now, Tommy is gonna talk at the end and close us out.
22 Again, I want to thank y'all for your service. Please give
23 Mr. Battle your attention and listen to what he has to say.

24 THE COURT: Mr. Battle?

25 MR. BATTLE: Thank you, Your Honor.

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CLOSING BY BATTLE

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1 CLOSING BY BATTLE:

2 Q: Let me start off by saying how much I appreciate y'all
3 being here. You're here because this is a very, very
4 important case to the City of Myrtle Beach. One of the most
5 important tools we have for preventing crime and making the
6 city and the bar life and the nightlife safe is the ability to
7 bring a nuisance. The statutes recognize that; they've been
8 on here a hundred years or more, and they've been used for a
9 hundred years or more, and they're used in every state in this
10 country. Now, the plaintiffs want to tear all that down.
11 They want to say we don't care that we consented and agreed we
12 were a nuisance; we want to retry the whole nuisance case
13 again. Two years after we've already consented to the fact
14 and told the Judge, yeah, we were a nuisance, close us down or
15 at least close us down; we want to close down.

16 Now, to me when you -- in this country and under our
17 system of justice, when do you fight something that is charged
18 against you? You do it the first time. You don't wait until
19 after you pled guilty or consented to having a judgement
20 entered against you, and then turn around say, well, I don't
21 think that was right; I don't like the way I come up with it;
22 I know I did it, but hey, it's too bad; I want to try the
23 whole thing over again. And that means that every nuisance
24 case we bring, we'd have to try them twice. First in front of
25 a Judge and the Magistrate or the Master, and then the second

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1 time in front of a jury on breach of interference with a
2 contract, because every time you have a business that comes in
3 that's under a lease agreement and some lawful agency, and
4 it's not just the City of Myrtle Beach; it's throughout the
5 state. I have done nuisances throughout the whole Pee Dee
6 area, and it's not just there. That is a situation where we
7 come in and we say, okay, now is the time you get your one day
8 in court. Now is the time that you're allowed to come in and
9 say, what we said is not true; the evidence is bad; we're not
10 a nuisance, don't find it against us. That didn't happen in
11 this case. Instead they said, close us down for a year; we
12 don't want to be in business anymore.

13 So, I want to thank you for coming. You've been here on
14 time, you've paid attention, and you, I believe just from the
15 looks on your faces, you appreciate the seriousness of the
16 case and the ramifications of this case that are gonna be had
17 for the City of Myrtle Beach, the solicitor's office, who they
18 lumped in as they, but the City of Myrtle Beach has no
19 control, has nothing to do with the solicitor's office. They
20 do refer crimes to them; they do refer nuisances to them; but
21 they do not -- they are not the same and don't let them trick
22 you into believing that they're one and the same.

23 Now, also I want to say the City is sorry for the
24 Brewingtons' opinion of them. We try to work with the
25 businesses. We try to get them to learn to comply with the

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1 rules and regulations of the City, business licenses, and with
2 the -- how to operate a business. But if you cannot come into
3 compliance, if you cannot operate within the rules and
4 regulations, you cannot run your business so you don't disturb
5 the peace and quality of life of your neighbors, then maybe
6 you ought not to be in business, at least where you are. So,
7 I am sorry for the experience. I'm sorry that we weren't able
8 to do that, but when they cannot bring them into compliance
9 one way, the only other way that's available to us is through
10 the nuisance action and that is what was done and that is what
11 was done with the consent of the Brewingtons at the time.

12 Now, the case is a he-said-she-said type of situation the
13 way we listen to Mr. Player talk about it, and what he wants
14 you to believe is that Melvina Davis, Lisa Robertson, Chief
15 Amy Prock, James Battle, and all the people with the City of
16 Myrtle Beach are ball-faced, crooked liars. He said he's
17 proved that somehow, and he wants you to say that is what the
18 situation is and we will -- for that reason, we want you to
19 find in favor of the plaintiffs. We say that that is not the
20 case and we have faith in you and your ability to see the
21 truth and see through that kind of a smoke screen, that kind
22 of smoke and mirrors.

23 All right. I'm not going to take that much time. I want
24 to walk through with you the law and try to help you
25 understand the law as I understand it and walk you through how

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1 I organize the facts as they plug into the law. So, that when
2 you get back there, you'll be able to understand the evidence
3 as it applies to the law, because your job is to apply the law
4 to the evidence as the judge charges you.

5 So, the first thing you have to do, as he's talked about
6 those contracts, is you have to have an existing contract.
7 There are two existing contracts. One was from Melvina Davis
8 to the Brewingtons. The second one was from Mr. Brewington to
9 Ms. Litsey. Now, controlling or over those contracts of
10 course was Ms. Davis, who was the property owner, who said who
11 can lease the property and who cannot lease the property. So,
12 this contract depended on Ms. Davis' consent to allow Ms.
13 Litsey to rent the property. So, who was the third party in
14 each one of these contracts that had to be convinced to or
15 convinced to breach the contract, or who was the third party
16 that you had to procure the breach from? And the question you
17 have to ask yourself is who communicated with Ms. Davis? The
18 City of Myrtle Beach, you heard Ms. Robertson say she did not
19 communicate with the City of Myrtle Beach; and you heard Amy
20 Prock, Chief of Police, say she did not communicate with the
21 City of Myrtle Beach. You have Ms. Davis' own testimony that
22 the only person she called was the person whose name was on
23 the letterhead and was directly in the letter. That would've
24 been the solicitor's office. This is the solicitor's
25 stationary; it was written on the solicitor's stationary.

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1 That's who she contacted. So, contact 1 or 2. You heard
2 James Battle testify, yes, I talked to Ms. Davis. I did
3 explain to her what the situation was and what was in this
4 letter. The important part here is that James Battle, even
5 though he is my son and even though he does some work for the
6 City of Myrtle Beach, when he was acting in this capacity, he
7 was acting as the solicitor. He works for the solicitor's
8 office; he gets his insurance and gets paid by the solicitor.
9 Now, some people may not understand that, but lawyers wear
10 many hats at many times. We really are only who our clients
11 are. We are the same as our client. Mr. Player and Mr.
12 Brittain, they represent the Brewingtons for all purposes.
13 For all legal or practical purposes, they are the Brewingtons.
14 James Battle, for all practical purposes, when he talked with
15 Melvina Davis, was the solicitor's office. And she -- he is
16 the only one that we have any information about, and all of
17 these telephone conversations that they claim they taped and
18 all that sort of stuff, you don't have any conversations from
19 anybody with the City of Myrtle Beach and Melvina Davis. You
20 don't have any -- you have the questions asked to her, and she
21 says, well, I had only one or two, and the questions were
22 what, if anything, were you told, and I don't have sufficient
23 information.

24 Now, one of the things I want to jump a little bit. One
25 of the things is what was the thing about sale of narcotics.

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1 That's what the plaintiff alleged in his complaint and that's
2 what was asked of Ms. Davis. That did not come from the City,
3 that was not part of the reasons for why the City made the
4 requests and passed them on the complaint to the solicitor's
5 office. That was something that was taken solely from the
6 plaintiffs -- you said you did not know that any of this was
7 going on. How did you find out or how did you make this
8 response? And they said, well, I don't know; I just don't
9 know; I still don't know. I was told that and she was told
10 that in the letter that was sent to her. So, that's what you
11 have to show. You have to show that the City, who is not on
12 this board, somehow convinced Ms. Davis to breach the contract
13 with the Brewingtons. Now, the question is, did she breach
14 it, or did the Brewingtons breach it, or did the Brewingtons
15 simply walk away, which is what we said they did. They didn't
16 want to practice anymore; they wanted to sell the business,
17 but then they told the Judge, go ahead and close it down for a
18 year and have that -- because we don't want to be in business
19 anymore.

20 Then the next thing is, did the City somehow or other
21 interfere with the Brewingtons contract with Ms. Litsey? And
22 you've got Ms. Litsey talking about the reason -- and I'll
23 read that information in just a minute. The reason I did not
24 start looking for new property is because I was waiting to see
25 what Melvina Davis would do and that was in March. The club

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1 had been closed February the 20th and she waited around until
2 March, March the 16th -- and it's in her deposition that was
3 read and I'll publish it again in just a second. She waited
4 around until March to see what Melvina Davis was doing. So,
5 and our position is Davis is the key to the whole matter.

6 And there was talk that Ms. Litsey had her problems.
7 They said for some reason we do not want Ms. Litsey to rent
8 that bar. We assisted in getting her into another bar just
9 around the corner. They said we didn't want anybody to rent
10 the Levelz place again, because we were trying to build some
11 library or something. Bear in mind, that somebody else was
12 actually approved to go in there and the reason they were not
13 allowed to go in there is because of the church, Mr.
14 Brittain's church objected to them serving alcohol within a
15 hundred feet of the church. That's why the Levelz building
16 was not opened again until some later date and then two years
17 later, purchased by the City.

18 So, how do you determine what is tortious interference
19 with a contract. First of all, as I said, you have to have
20 existence of the contract. You have to have defendant's
21 knowledge of the contract. The only City employee that had
22 knowledge of the contract -- it wasn't any of the other ones
23 that we had proof of -- it was Lisa Robertson, and that's
24 because of the fact of Ms. Brewington put them in touch with
25 each other. And you ask yourself, well, why did she want to

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1 know about who she was and what she was doing. You heard the
2 solicitor, the assistant solicitor, say we did not want a
3 Levelz 2; we were just getting ready to shut it down because
4 we had all these problems and all these complaints. So, we
5 wanted to try and get somebody in there who was going to be
6 not the same sort of business or create the same problems; we
7 wanted to check them out along those lines. That's the reason
8 she was asking those questions, and that was because Ms.
9 Brewington had asked her to run it by the attorney.

10 Then you have the intentional procurement of the breach.
11 What was the intent of the City in turning the matter over to
12 the solicitor; the intent was to abate a nuisance. Now, you
13 know that you had a sale -- if you didn't have the sale, but
14 you had actually the use of drugs and contrary to what Mr.
15 Player says, use of drugs on the premises is just as much a
16 violation of that statute as the sale of drugs.

17 You also have individuals complaining, and this is in
18 evidence; you'll get a chance to read it. We have a complaint
19 from Andrew Paulussen, he owns House Parts, Inc. I have
20 personally witnessed public urination and disorderly conduct
21 in the form of fighting in the parking lot as well as open
22 sexual activities resulting in the disposal of condoms in the
23 parking lot. This was an affidavit submitted as a result of a
24 complaint made by Mr. Pauleson to the City of Myrtle Beach
25 about Levelz. Okay. This is what he said and this is how he

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1 backed up his complaint.

2 You have a complaint from Marie Sahnger, who is a
3 hairdresser who business on Hair by Midtown. She says, Came
4 into my business on Saturday morning finding trash, bottles --
5 and again, let me just say this, this is in response to the
6 request, why do you want to make a complaint against Levelz,
7 and this is what she says. Came into my business on Saturday
8 morning finding trash, bottle, needles, also smashed
9 windshield in parking lot, wristband from Club Levelz, just a
10 mess; street is a mess with trash, also. They asked
11 permission to park in my lot; I told them absolutely not.
12 Still, they let the patrons park in my lot.

13 You heard the testimony from and you heard the letter
14 here from the First United Methodist Church and what they
15 said. Now, you see there's parts here that have been
16 redacted. That's at the request of the plaintiff that there
17 are opinions in there, and if you get evidence into business
18 records, subjective opinions are not allowed.

19 So, we look at the intent. It's not just the nine
20 problems they had or the problems that the, you know, the
21 complaints we have along those lines; it was also their
22 assessment on how they were complying with the law, what they
23 were doing, who all was citing them, and how the problems were
24 occurring, and what was the nature of the problems. Now, the
25 nature of the problems, you had two -- you had one shooting

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1 where there was a shooting, I believe Reverend Miller [sic]
2 testified about a shooting outside the Club Levelz where they
3 shot out the windows in the church next-door, and there was
4 also the shooting that took place as the fellow was leaving
5 Levelz. These are the people that are the people at -- it
6 doesn't have to be the Brewingtons doing this, contrary to
7 what Mr. Player says. It's not the Brewingtons that are doing
8 it; it's who you attract to your business. You remember I
9 told you in opening statement, if you have a fraternity house
10 and you started to attract all sorts of wild college people
11 there and they started doing crazy things, throwing beer cans
12 and kegs and chairs and everything and you -- you have a
13 remedy. Please don't take that remedy away from the City and
14 from the public by finding in favor of the plaintiff who says,
15 we can't control what people coming in our house do. How can
16 you stop them? You can't arrest them each time; you're not
17 going to be there.

18 Fourth, absence of justification. The City -- and the
19 Judge will charge you -- is authorized and has a duty to abate
20 nuisances. That's part of their charge, 5-7-30. So, if we
21 seek to abate a nuisance, we are acting within our authority
22 and with justification. We don't take that role over and we
23 don't pass that complaint along, because the solicitor isn't
24 out patrolling the streets of Myrtle Beach. The solicitor
25 doesn't have investigators to do that sort of thing; it's the

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1 police and it's the police everywhere that report crimes and
2 report problems, even if they're civil problems, nuisance
3 problems to the solicitor. Absence of justification.

4 And then finally, we have to have some sort of damages
5 along those lines. Well, I'm gonna leave that to you as to
6 what you think the damages are. The damages are going to be
7 -- they're going to talk about all -- well, they've talked
8 about all sorts of high damages, but the Judge is gonna charge
9 you it's the value of the business, less whatever is received
10 upon the sale of the remnants or what's left over in the
11 business. Here we have the business that they valued at
12 \$150,000. They came in and took all the furniture out the
13 following Monday with the permission of the solicitor, my son,
14 and took that out. And then so, what you would do is you look
15 for damages and say, okay, you could've had that, but we're
16 going to subtract from that whatever value we assign to the
17 furniture and whatever else they put in there.

18 Now, when you start looking at what was the motive or
19 what was the intent of the plaintiff, what was the intent of
20 the defendant, these are the things that the court -- and the
21 Judge is gonna tell you -- these are the things you need to
22 look at it, and these are the things you need to weigh. What
23 was the motive of the City of Myrtle Beach; what was the
24 motive -- was the motive to abate the nuisance? Was it some
25 personal vendetta they had against the Brewingtons? What was

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1 their motive. Would they have had a problem or would they
2 have had a nuisance complaint filed against them from their
3 neighbors and from the City if they weren't having problems
4 with how their clientele and how they ran their club and who
5 they had -- and who they were advising for their club. And
6 you ask yourself, well, you know that doesn't make sense. How
7 could we possibly know or control what the people were? Well,
8 you look in here and you'll see in this book advertising, how
9 they marketed themselves. And then you've got Young Dolph,
10 this is their Saturday, 2/21/15; this is who they're going to
11 have after the shooting. Young Dolph, performing live; music
12 by DJ Money, DJ Kush Blowa. And I believe Cush Blowa -- I may
13 be wrong, I'm not that much into the drug market, but I
14 believe Cush is a reference to some narcotic. You now have
15 several other types of things, but that's what they were gonna
16 put on and promote after there was a shooting, a gang
17 shooting, and this is what they were -- and this is who they
18 were gonna have to come in and throw a party with the
19 possibility -- facing the possibility of retaliation. I think
20 they said, we don't know of any retaliation, but they were
21 told, and there was a strong, strong possibility that these
22 things go back and forth. And you heard the testimony going
23 into the ways about why we feel like they are -- or the
24 solicitor felt like there's a strong possibility of
25 retaliation. And that's why he rushed up the temporary

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1 injunction to try to keep them from opening Friday and
2 Saturday night and keep DJ Kush Blowa from going after and
3 attracting a large crowd to Mr. Brewington's club, Club
4 Levelz.

5 This next one is social interest. And what that means,
6 you have to consider the social interest, and that's the
7 importance -- importance of the City -- well, you now the
8 statute isn't limited just to cities and the attorney general
9 and the solicitors. Private citizens can use the statute,
10 too. That is the interest in having people preserve the
11 quality of life in the community versus the contract interest
12 of a person saying I can do whatever the hell I want to in my
13 club; y'all don't bother me. You're interfering with my right
14 to run my club as I see fit. And if you try to prevent crime
15 and try to send your police people in here to try to help me
16 come into compliance, that's wrong, and that is something that
17 you should be punished for and you shouldn't be allowed to do
18 that.

19 Then the question becomes more about causal connection.
20 He'll talk to you about causal connection. And causal
21 connection goes back to what caused Melvina Davis to stop or
22 tell the Brewingtons to leave. Now, the Brewingtons had
23 already decided to leave before the Judge entered his order.
24 They decided -- matter of fact, before they even left with the
25 City, Mr. Brewington had already signed the contract to get

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1 out of the club. So, I don't think that we caused the
2 Brewingtons to leave, and we certainly didn't talk to Ms.
3 Davis. But, when Ms. Davis said you caused a nuisance and
4 then you closed my club down, you're in breach and you've
5 poisoned everything is correct; she did say that. That was --
6 then you ask yourself, well, what caused Ms. Davis to not rent
7 to Ms. Litsey, and Ms. Litsey was waiting on a decision from
8 Ms. Davis about what she was gonna do. In the deposition that
9 was read to you, when did you start looking for that other
10 property? After we closed. After I realized that Levelz
11 wasn't going to go through. Question: And that would have
12 been in March of 2015? Yes, because I was still waiting for
13 Ms. Mel Davis to see what she was able to do with the City.
14 Now, Ms. Davis was not talking to the City. She said she was
15 not talking -- she did not contact the City, but that's what
16 she told. Or at least, through hearsay that's what Natalie
17 Litsey said that Mel Davis told her or what she was doing.

18 We have the parties' relations. This is where if I was
19 in competition with Kay, the court reporter, and I wanted her
20 job, and I went to the Judge and I said, Kay is a bad person;
21 she is -- does drugs or whatever along those lines, you need
22 to fire her. That is how I interfere with the contract and
23 the relationship would be we are competitors and I'm doing it
24 to gain a competitive advantage. Here we have the City, who
25 is trying to make its clubs and its neighborhoods and the

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CLOSING BY BATTLE

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1 quality of life in these clubs safe. That's the relationship
2 and you have a club owner who is having problems with his
3 neighbors and he's having problems within the club itself with
4 the law. And it's not just the police, the Myrtle Beach
5 Police coming in and citing you, it was also South Carolina
6 Law Enforcement Division.

7 In the event that you do find -- well, maybe -- maybe Ms.
8 Robertson went too far in telling her what she thought about
9 the situation or something along those lines, or maybe she
10 went too far in telling her, well, Levelz is not a club name
11 you can use because it looks like it's the same thing, and
12 that's as a result of request from the -- trying to get
13 information as a request from Ms. Brewington and Ms. Litsey as
14 to how we can get this thing -- how can we make sure that this
15 nuisance doesn't follow us. That's called truthful advice.
16 And if the advice is requested, what can we do to make sure
17 that the nuisance doesn't follow the club or the sale of the
18 club, they say what can we do, the advice she gave them was
19 within that request saying this is what I think you should do,
20 this is how it can be done, along those lines. And the advice
21 is honest. You know the advice is honest at least as far as
22 Ms. Litsey was concerned because she said everything that Ms.
23 Robertson told her and everything anybody from the City of
24 Myrtle Beach told her was the truth.

25 For those reasons, I'm gonna ask you to return a verdict

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1 for the City, for the defendant. You're gonna have a verdict
2 form that says do you find that the City tortiously
3 interfered, gone through all those elements of the contract
4 between Ms. Davis and the Brewingtons, and you can say yes or
5 no. And for the reasons I've just told you, I'd ask you to
6 check the box that says no.

7 Did the City interfere with the contract with Ms. Davis
8 and Ms. Litsey? Did the City say anything to Ms. Davis to
9 cause her to say, you know, not just the -- the -- the
10 business of bringing the nuisance action, the City
11 intentionally procured it. Now, here's the point, first of
12 all the letter came from the solicitor. The solicitor comes
13 in -- the assistant solicitor comes in and says, okay, you've
14 got ten days to abate this nuisance. What can happen and what
15 often does happen is that the business owner and the property
16 owner get together and they say, okay, what can we do to make
17 sure that this club continues to operate? We can agree to
18 certain limitations, 1 o'clock closings, we can agree to at
19 least close and not open this weekend after this shooting,
20 along those lines, or we can agree to either temporarily close
21 and get a chance to get our security beefed up and everything
22 going along those lines, we can do that. And then the Court
23 or the solicitor, at that point, because that's before there's
24 a court order. The solicitor at that point can say, okay,
25 well, if you operate under those conditions, we can enter into

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1 a consent order and you'll be allowed to operate. Never
2 happened. Instead, we're going to go full speed ahead. We're
3 gonna have Young Dolph and various DJs coming in. Even again,
4 you could've had Ms. Davis and Ms. Litsey, even after the
5 order was ordered, could have approached the Judge and said
6 we'd like to open under these situations and continued on and
7 been allowed to take the lease, and if she wanted to purchase
8 the property or purchase the business, that could have
9 occurred. It's not that draconian of a remedy as long as
10 people are willing to say, we're gonna do what it takes to
11 abate the nuisance. We're gonna try to bring public safety
12 and quality of life to our group. So, that never happened.
13 Instead, Ms. Davis says I'm not renting to you and mainly
14 because of your connection with the Davis' with whom she felt
15 like poisoned her relationship; I don't know. Nobody knows.
16 There's no proof of that. It just simply says -- and you've
17 got some telephone conversations, but she simply says the
18 failure to pay rent, having the business shut down, vacating
19 the premises, and the court order all have the effect of
20 violating their lease. That's the Davis lease. And then for
21 that, for whatever reason, she says I'm not gonna go to the
22 next step with Ms. Litsey and take her situation or take on
23 her as a new tenant. For that reason, we're asking you to
24 find in the second box that you have to check, no, there was
25 no interference by the City in that situation or in that

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REPLY CLOSING BY BRITTAIN

1 contract. If there was any interference, if somebody -- I
2 mean, it's easier to believe a conspiracy a lot of times than
3 it is to believe the truth. But if there was -- if you still
4 feel like there was some sort of communication or something
5 along those lines, you still have the fact that we were
6 justified, because I believe the public nuisance and public
7 safety was adequate justification. And, also, we have the
8 right and we have a duty as public services to give truth
9 advice.

10 Again, I thank you for your time. I thank you for your
11 support, and I have faith that you will reach the right
12 decision in this case.

13 Thank you.

14 THE COURT: Final argument, Mr. Brittain?

15 MR. BRITTAIN: Yes, sir.

16 REPLY CLOSING BY BRITTAIN:

17 MR. BRITTAIN: Ladies and gentlemen, let me suggest a
18 slightly different approach to your decision making. You've
19 heard a lot of technical arguments and charts, comments. What
20 you have and what I have is common sense. You bring that with
21 you.

22 Now, there was no problem with the Brewingtons and
23 Melvina Davis; they were working; they were doing fine.
24 Paying the rent, had a contract, significant contract.
25 Something happens to impair that relationship. This case is

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1 no longer about a nuisance. You've heard all about the
2 nuisance. The nuisance was a vehicle to end the Brewingtons
3 business operation. It amazes me that the City has purchased
4 that property. That is disrespectful even to you. They
5 wanted them out of that property; this is governmental
6 overreach. You talk about thin, ladies and gentlemen, what
7 did they produce on that witness stand? The preacher, my
8 preacher, never saw a thing. They were talking about a
9 business that had \$300,000 in it and hundreds of thousands of
10 dollars of financial possibility, and they're talking about a
11 chicken bone that he never even saw who put it down. Is that
12 mine? They're going to take that kind of information; it
13 wasn't even competent testimony. And Chief Prock, a wonderful
14 person, she told you she doesn't know anything about this
15 situation. She had no personal knowledge. I would never call
16 Mr. Battle a liar; that is not true. I state it right here,
17 never would. His testimony helped our case. I think he tried
18 to tell it like it happened. He admitted talking to her. He
19 admitted he never even sued Melvina Davis. So, why would the
20 City do this? What's the common-sense approach of why the
21 City did it? They wanted to own the property, which they own.
22 They got it for nothing to speak of. It's -- it's -- it was
23 Mr. Brewington's. It's no longer Mr. Brewington's. It's
24 almost like they didn't even try to put on a defense. You got
25 the preacher who doesn't know anything; Amy Prock, who wasn't

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1 involved in this situation; Mr. Battle, who essentially agreed
2 with the Brewingtons in terms of what happened; and Lisa I-
3 don't-recall Robertson. She doesn't remember and does she
4 care? She's not sitting over there. She's gone.

5 Let's ask this question. Let's ask this common-sense
6 question. When Tom Ellenberg gets mad about the complaint
7 that the Brewingtons made -- you heard it all. They're
8 killing people at Riptides; nothing. Sharkey's got 360 pages
9 of complaint; nothing. Landshark's got all those complaints,
10 you can see them; nothing. Doesn't it make sense to say, hey
11 look, man, you got me for a sparkler, some marijuana, and you
12 sent a SLED agent in there to talk my bartender into selling
13 you something at 2:10. I mean, come on, own it -- that's a
14 pretty legitimate conversation. Ellenberg, though, he gets
15 them in there and he challenged them. Even Robertson said,
16 he's pointed with everybody. Nobody has contradicted what he
17 told that couple. He told them, you are gone, I will get you
18 gone. And we're getting ready to see today, whether what he
19 told them is true. I never lost a case; I never lose; I'll do
20 what I want to, kick you out, buy that property and that jury
21 won't do nothing to me. They won't do a thing. I'll get by
22 with it because I always win.

23 Now, let me tell you something, if that wasn't true, put
24 him on that witness stand right there. Where are all these
25 people? Do they send one police officer here that went into

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REPLY CLOSING BY BRITTAIN

1 that place? Not one. There is no police officer that went in
2 there and issued these citations, no SLED officer, no city
3 manager, no city attorney, no mayor, no councilman. Lisa
4 Robertson can't remember, and nobody else knows anything.
5 This is governmental overreach, running people out of town for
6 their own purpose, and it's wrong. What do you think the
7 development or the Downtown Redevelopment Commission is? Come
8 on, they want what they want down there. They don't care what
9 happens to these two. 300,000, so what; if you give them a
10 big verdict, it don't do nothing to the City. They're sitting
11 on Henry Brewington's property right now.

12 It's crossed your path, ladies and gentlemen. You come
13 from all different walks of life. Most of the time we're just
14 kind of knocking along. The most powerful force in our
15 country is government. They must be checked. You can't let
16 them run roughshod over the Henry Brewingtons of the world.
17 You can't do it. You'll ruin this country.

18 We need a substantial verdict. Don't know what it's
19 going to end up putting in Henry Brewington's pocket; I don't
20 want to be greedy. I'm not going to suggest a number to you
21 fine folks. That's in your purview. But let me tell you
22 something, you've got one way to communicate with Henry
23 Brewington; and Tom Ellenberg, who ain't here; Lisa Robertson
24 ain't here; the mayor isn't here; the councilmen aren't here;
25 city manager aren't here. A number. That's it. You don't get

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1 to come out and say what a good person Henry Brewington is or
2 how tough his ole saucy wife is; you don't get to write
3 anything about that. You don't get to tell what you think.
4 It's a number, but that number says everything. Give us one.

5 BY THE COURT:

6 THE COURT: All right. Ladies and gentlemen, I want you
7 to go in your jury room for just about five minutes. We'll
8 take a short break, we'll come back in, I will give you the
9 law, and then I'll give you the case. Take a short break,
10 five minutes. Leave your pads and pens.

11 (REPORTER'S NOTE: Jury exits courtroom @ 3:21 p.m.)

12 THE COURT: Gentlemen, the court reporter reminded me of
13 this. There was something that y'all agreed to that we needed
14 to put on the record about an exhibit.

15 Ms. Kay, what was that?

16 MR. BATTLE: I remember, Your Honor.

17 THE COURT: All right.

18 MR. BATTLE: We had, during the course of the trial,
19 agreed that we would put into evidence a audio recording of
20 the telephone statements. We were unable to find one that
21 would successfully transcribe. I've tried twice. I kept
22 getting a static message, and for that reason the plaintiff's
23 attorney and I have agreed that the transcript would be
24 sufficient, and I'll withdraw -- or if they offered it, they
25 will withdraw any requests or admission of an audio recording

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1 of the telephone conversations between the parties.

2 THE COURT: Is that correct, counsel?

3 MR. PLAYER: Yes, Your Honor.

4 THE COURT: And, Ms. Kay, what exhibits are we talking
5 about here?

6 COURT REPORTER: The number that we assigned for the
7 actual audio was Defendant's 5.

8 THE COURT: All right. So, that's being removed.

9 COURT REPORTER: And Defendant's 4 is the actual
10 transcript of the phone conversations which has been admitted.

11 THE COURT: All right. So, Defendant's 4 then is in
12 evidence without objection.

13 MR. BATTLE: Correct.

14 THE COURT: All right. Thank you, gentlemen.

15 MR. BATTLE: Thank you.

16 MR. PLAYER: Thank you.

17 THE COURT: We'll take a short break and we'll come back
18 in and have the charge.

19 MR. PLAYER: Thank you.

20 **RECESS - 3:23 P.M.**

21 *****OFF THE RECORD*****

22 **ON THE RECORD - 3:31 P.M.**

23 THE COURT: Thank you very much. You may be seated.
24 Thank you.

25 All right. Is the plaintiff ready for the jury to come

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1 in?

2 MR. BRITTAIN: Yes, Your Honor.

3 THE COURT: And the defense, Mr. Battle?

4 MR. BATTLE: Yes, Your Honor.

5 THE COURT: Ask the jury to come in.

6 MR. BRITTAIN: Judge, could we have one moment?

7 THE COURT: Yes, sir.

8 MR. BRITTAIN: The verdict form I've got has the City of
9 North Myrtle Beach on it.

10 THE COURT: Oh, good Lord. It sure does.

11 MR. PLAYER: And just one other thing, Your Honor, and
12 Word and WordPerfect both do this, they will correct our legal
13 spelling of tortious from t-o-r-t-i to t-o-r-t-u-o-u-s, which
14 is technically not right word.

15 THE COURT: That is right. You're right.

16 MR. PLAYER: Sorry, dude.

17 Thank you, Your Honor.

18 (REPORTER'S NOTE: Jury enters courtroom @ 2:02 p.m.)

19 CHARGE TO JURY:

20 THE COURT: All right. Ladies and gentlemen, it's now my
21 duty and responsibility to give you the law of this particular
22 case. I told you at the very beginning that I would not
23 indicate to you in any fashion what I believe the facts of
24 this case are. It's not my job and responsibility; it's your
25 duty, job, and responsibility. Now, if you came to this

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1 courtroom with any preconceived ideas in what the law is,
2 ought to be, should be, hoped it would be or what you were
3 told it is, you'll disregard it. You will take the law as I
4 now give it to you and apply it to the facts and evidence
5 you've heard in this case.

6 I told you at the beginning one of your jobs, duties, and
7 responsibilities is to judge the credibility, and that is the
8 believability, of the witnesses that come before you and
9 testify under oath. You can believe one witness against
10 several, several against one. You can believe a portion of
11 what a witness says and disregard the remaining portion of it.
12 If you got good and sound reasons for doing so, you can
13 disregard it in its entirety the testimony of a particular
14 witness. You look at whether they exhibit to you any kind of
15 interest, motive, bias, prejudice they have in giving you the
16 testimony. Also, you consider the opportunity for knowledge;
17 how did they come about that information that they gave to
18 you.

19 Now, in doing this, we're asking you to use your good
20 common sense. The good common sense that you use in
21 conducting your own affairs. Apply it to the facts and
22 evidence you've heard in this particular case. In examining
23 the evidence, you apply the law I give to you and arrive at a
24 verdict. Your verdict can't be the result of any pattern,
25 passion, prejudice, or sympathy. You don't have any friends

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1 to reward or enemies to punish. You look at the testimony and
2 you apply the law.

3 I told you about notetaking and remind you again, some
4 people are better notetakers than others. Just because
5 somebody has something written down doesn't make it more
6 certain that somebody's memory. We ask you to use your
7 collective judgment as to the facts in this matter.

8 In this case and virtually every single case that's
9 tried, there's two basic types of evidence, direct, and
10 circumstantial evidence. Direct evidence, that's the
11 testimony of a person that tells you I saw this, I heard this,
12 this took place in my presence. Circumstantial evidence is
13 proof of a chain of facts indicating the existence of a fact.
14 The law doesn't make any distinction. But, to the extent that
15 a party relies on any circumstantial evidence, proof of a
16 chain of facts, all those circumstances have to be consistent
17 with each other.

18 This type of case is called tortious interference with a
19 contract, intentional interference with a contract. The
20 standard of proof in this matter is called the greater weight
21 or the preponderance of the evidence. That's the standard the
22 plaintiff must prove its case to you. The plaintiff brought
23 this case; they have the burden of proof. The greater weight
24 or preponderance of the evidence we use -- just imagine those
25 scales, to tip those scales ever so slightly in your favor.

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1 That's carrying the greater weight or the preponderance of the
2 evidence, and that's the burden of proof that the plaintiff
3 has.

4 I'm going to read to you, certain statutes and codes that
5 are in existence. While I tell you that is the law, it is
6 your job to decide whether or not the facts of this case fall
7 within those statutes or not. Because I read it to you, I am
8 not making, again, any comments on the facts; that's your job.
9 I'm just telling you these statutes exist.

10 Each municipality of this state, in addition to the
11 powers inferred to that government, may enact regulations,
12 resolutions, and ordinances that are not inconsistent with our
13 state constitution and our general law, and that includes the
14 exercise of powers over roads, streets, markets, law
15 enforcement, health, order of a municipality, or respecting
16 any subject which it appears or is necessary for security,
17 general welfare, or the convenience, or preserving health,
18 peace, order, and good government. That includes the
19 authority to levy and collect taxes, real and personal
20 property taxes, and as otherwise authorized to make
21 assessments, and establish uniform charges related to them,
22 and as well as the authority to abate nuisances.

23 When persons come together at a place, this is not a
24 nuisance unless such persons do unlawful acts or they do
25 lawful acts in such a way as to affect the health, happiness,

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1 or peace of the community. If the acts were done in such a
2 way as to affect the health, happiness, or peace of the
3 community, this can amount to a nuisance. A person who rents,
4 establishes, continues or maintains, occupies, leases, any
5 building or other place used for the purposes of lewdness,
6 prostitution, repeated acts of unlawful possession or sale of
7 controlled substances, or continuous breach of the peace can
8 be found guilty of a nuisance, and the building, place, or
9 ground upon which these types of things, the lewdness,
10 prostitution, repeated acts of possession, or sale, of
11 controlled substances, breach of peace, carried on or exists,
12 as well as the furniture and fixtures therein can also be
13 declared a nuisance and enjoined and abated.

14 Continuous breach of the peace means a pattern of
15 repeated acts or conduct, which either directly disturbs the
16 public peace or disturbs the public peace by inciting
17 violence. Nothing in the section alters or limits the -- a
18 statutory or common law right of a person to bring an action
19 in court or the right of the state to prosecute a person for
20 violation.

21 If the existence of a nuisance is established in an
22 action, an order of abatement shall be entered as part of a
23 judgment. The order shall direct the removal from the
24 building of fixtures, furniture, movable property used in
25 conducting the nuisance, shall direct the sale thereof and

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1 shall direct and affect the closing of the building or place
2 and keep it closed for a period of one year unless sooner
3 released. If the owner appears and pays all the costs of the
4 proceedings and files a bond, the Court can in this matter,
5 enter into an order that would allow the owner to conduct
6 business, but in this, the attorney general, the solicitor,
7 any citizen of the state can also maintain an action regarding
8 this particular matter to enjoin perpetually the nuisance and
9 the person conducting and maintaining the nuisance and the
10 owner or agent upon which the nuisance exists.

11 Now, the plaintiff has brought an action called
12 intentional interference with a contract or sometimes called
13 tortious interference with a contract. Two ways to say the
14 same thing. A person who intentionally and improperly
15 interferes with the performance of a contract between another
16 and a third person by inducing or otherwise causing the third
17 person not to perform the contract is subject to liability for
18 the loss resulting from the failure of the third person to
19 perform a contract. Now, remember, this has to be proved to
20 you by the greater weight or the preponderance of the
21 evidence. The theory is that the parties to a contract have a
22 property right in the contract, which a third person has no
23 right to maliciously deprive or injure. Such an injury
24 amounts to a wrong from which the injured party may seek
25 damages. To establish an action for intentional interference

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1 with an existing contractual relationship, again, sometimes
2 it's called tortious interference with an existing contract.
3 The plaintiff has to prove the existence of a contract, the
4 wrongdoer's knowledge of the contract, the intentional
5 procurement of the contract's breach, the absence of
6 justification, and the resulting damages. There has to be a
7 valid and enforceable contract for a cause of action for
8 tortious interference with the relationship to exist. The
9 particular agreement must be in full force and effect at the
10 time of the breach.

11 Now, absence of justification may be inferred.
12 Interference with a contract is justified when it is motivated
13 by a legitimate business purpose. The exercise in good faith
14 of a legal right by a party to a contract affords no basis for
15 an action by the second party for the intentional
16 interference, even though the consequence of the legal right
17 is to cause a third party not to perform another contract with
18 the second party.

19 The plaintiff has to prove to you that an outsider to the
20 contractual relationship, somebody outside of that contract,
21 intentionally induced a third person not to perform their
22 contract with the plaintiff. The essential element is the
23 intent to cause the resulting act of interference, and it must
24 influence or induce or coerce, have one of the parties to the
25 contract, abandon the contract, abandon the relationship, or

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1 breach the contract. The plaintiffs must show that but for
2 this interference with the contractual relationship, that
3 contract would have continued. An essential element of the
4 tort of interference with a contractual relationship is that
5 damages resulted from the breach. In an action for
6 interference with a contract, plaintiff may recover such
7 damages sustained by him as are a direct or natural
8 consequence of the interference.

9 So, the measure of damages could include unforeseen
10 expenses, damages to reputation, damage for loss of employees,
11 damage for loss of customers, damage for loss of goodwill.
12 Where damages alleged are lost profits, the plaintiff must
13 prove that it is reasonably certain that the profits would
14 have been realized but for the interference, and that the lost
15 profits can be ascertained and measured from the evidence
16 produced to you with reasonable certainty. It doesn't have to
17 be to a mathematical certainty, but they have to be to a
18 reasonable certainty. Where the result of the interference is
19 to put the plaintiff out of business, his damages are the
20 difference between the value of his business in the absence of
21 the interference and the amount realized by liquidation of the
22 business, if any.

23 The factors in determining whether an interference is
24 improper. In determining whether a defendant's conduct in
25 intentionally interfering with a contract of another is

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1 improper, you consider these following factors. The nature of
2 the defendant's conduct; the defendant's motive, if any; the
3 interest of the other with which the defendant interferes; the
4 interest sought to be advanced by the defendant; the social
5 interest in protecting the freedom of contractual interest;
6 the proximity or remoteness of the defendant's conduct to the
7 interference; and finally, the relations between the parties.

8 One who intentionally causes a third person not to
9 perform a contract or not to enter into a prospective
10 contractual relationship with another does not interfere
11 improperly with the others by giving the third person either
12 truthful information or honest advice within the scope of
13 requesting advice. There is no liability for interference
14 with a contract or with a prospective contract on the part of
15 one who gives truthful information to another. As to honest
16 advice, that requires (1) that the advice be requested; that
17 the advice be given within the scope of the request for the
18 advice; and finally, that that advice be honest.

19 That, ladies and gentlemen, is the law you're gonna apply
20 to the facts and evidence you've heard. Now, I've had
21 prepared for you a verdict form, which will go into the jury
22 room with you to help you in writing out your verdict. It has
23 the caption of the case, Henry Brewington, Plaintiff versus
24 The City of Myrtle Beach, and there are two questions. Did
25 the defendant, City of Myrtle Beach, tortiously interfere with

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1 the plaintiff's contract with Melvina Devine Davis? Yes or
2 no. Now, I have to put one before the other. Don't assign
3 anything to that I've put one before the other. When you've
4 reached a unanimous verdict on that question, you proceed to
5 Question 2. Did the defendant tortiously interfere with the
6 plaintiff's contract with Natalie Litsey? Yes or no. If you
7 answered yes to Question 1, or Question 2, or both, then you
8 go on to the next page. If you answered no to both of them,
9 that's the end of the case; you're done. You knock on the
10 door, let the bailiff know you've reached a verdict. But if
11 you answered yes to either one or both, then you go on to the
12 next page. Henry Brewington versus the City of Myrtle Beach,
13 please state the total amount of actual damages, if any,
14 sustained by the plaintiff, and there's a space to write it
15 out if that's your verdict. Or, we, the jury, find for the
16 defendant. And why is that "or" there? Because the plaintiff
17 has the burden of proof on everything. Got to prove it to you
18 by the greater weight or preponderance of the evidence. Got
19 to prove it to you that the City of Myrtle Beach tortiously
20 interfered with the contract, if they did, then they got to
21 prove to you by the greater weight or preponderance of the
22 evidence that they were damaged. So, you answer that
23 question, however you answer it.

24 So, Madame Forelady, it will be your job to check the
25 appropriate block or indicate the check or write out the

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1 amount if that's the jury's verdict. You sign your name, put
2 the date on there. In doing so, you are telling the Court --
3 when this verdict is read out by the clerk's representative,
4 you're telling the Court every single member of the jury
5 agrees. That's their verdict. So, if called upon by the
6 clerk's representative to raise your hand after the reading of
7 the verdict, every single member of the jury will be able to
8 do so.

9 What I want you to do, Madame Forelady ---

10 Unanimous, means exactly what you think it means. This
11 verdict, whatever it is, whatever block you check, whatever
12 words you write, whatever check mark you make and sign your
13 name, unanimous verdict 12/0, not 11/1, 10/2, any combination
14 thereof. This verdict must be the verdict of each and every
15 member of the jury.

16 I want you to take the jury to the jury room. Mr.
17 Alternate, you stay with us. Do not, do not begin your
18 deliberations until the bailiff hands to you the verdict form
19 and the exhibits. Once he does that, then you may begin your
20 deliberations. Take your pads and pens with you. Mr.
21 alternate, stay with us.

22 (REPORTER'S NOTE: Jury exits courtroom @ 3:21 p.m. The
23 following takes place outside the presence of the jury.)

24 THE COURT: All right. At this point in time, is there
25 any reason that the Court should not excuse the alternate from

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1 this case?

2 From the plaintiff?

3 MR. BRITTAIN: No reason, Your Honor.

4 THE COURT: From the defense?

5 MR. BATTLE: None from defense.

6 THE COURT: All right. I want to thank you for your
7 service. I can't tell you how many times -- I mean, within
8 the past two months, I've had a jury trial every week, four of
9 them I had to substitute in an alternate for various reasons.
10 So, it happens all the time; it just didn't happen in this
11 particular case. But you served a valuable purpose and I
12 thank you for your service. I'm gonna excuse you from your
13 jury service for this week, and you've earned an exemption for
14 three years from coming back to Circuit Court jury duty. If
15 your local city judge or a magistrate or federal judge calls
16 you, you go to go see them; you don't have to come see us.
17 Thank you, sir, I appreciate your service. You're excused.

18 (REPORTER'S NOTE: Juror 269 excused and exits courtroom @
19 3:55 p.m.)

20 THE COURT: Exceptions, deletions, additions to the
21 charge from the plaintiff?

22 MR. BRITTAIN: None, Your Honor.

23 THE COURT: From the defendant?

24 MR. BATTLE: Yes, Your Honor.

25 THE COURT: All right, sir.

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1 MR. BATTLE: Let's start with the specific one, page 423
2 of tortious interference with a contract factors determining
3 whether interference is improper. Subsection 5, I believe I
4 heard you read the social interest in protecting the action of
5 the defendant and the -- I thought I heard you read the
6 interest -- social interest of protecting the freedom of
7 action and the contractual interest of the other.

8 THE COURT: What I said was for 5, the social interest in
9 protecting the freedom of contractual interests.

10 MR. BATTLE: Right.

11 THE COURT: That's what I said.

12 MR. BATTLE: And I object to it.

13 THE COURT: All right. Thank you.

14 MR. BATTLE: Thank you.

15 THE COURT: Anything else?

16 MR. BATTLE: Well, the same objections ---

17 THE COURT: That you had earlier?

18 MR. BATTLE: That I had earlier.

19 THE COURT: All right. Very good.

20 MR. BATTLE: And I'm protected on those?

21 THE COURT: Yes, sir, absolutely, no question about that.

22 I respectfully decline to recharge the jury. I believe
23 that the charges I gave them properly set forth the basic
24 tenets of the law that they need to know to apply to the facts
25 of this case and respectfully decline to change that.

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BY THE COURT

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1 Before we call you up and let you look at the exhibits,
2 for the plaintiff and the defense, Gentlemen, I want to tell
3 you I appreciate how each of you tried this case and presented
4 it to the jury. Y'all did exactly what the Court would expect
5 of you in representing your competing interests in this case,
6 and I want to thank you for how you did that and how you tried
7 the case.

8 Thank you.

9 MR. BRITTAIN: Thank you, Your Honor.

10 MR. PLAYER: Thank you, Your Honor.

11 MR. BATTLE: Thank you, Your Honor.

12 THE COURT: Would y'all come forward and get with Ms. Kay
13 and make sure we got the proper exhibits going to the jury.

14 Give a copy of that to each one of them and let me have
15 the original.

16 THE CLERK: Yes, sir.

17 THE COURT: Regarding the corrected verdict form,
18 anything else from the plaintiff?

19 MR. PLAYER: No, Your Honor.

20 THE COURT: From the defense?

21 MR. BATTLE: No, Your Honor.

22 THE COURT: Thank you very much.

23 All right. Look at the exhibits, please.

24 MR. PLAYER: I looked at them before closing and they're
25 all there.

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1 MR. BATTLE: They're all there.

2 COURT REPORTER: Yeah, but let's go through them so that
3 y'all know what's going back.

4 MR. BATTLE: Okay.

5 (REPORTER'S NOTE: Counsel review and agree to exhibits
6 submitted to the jury.)

7 THE COURT: Gentlemen, y'all looked at the exhibits and
8 everything is proper going to the jury?

9 MR. PLAYER: Yes, Your Honor.

10 MR. BATTLE: Yes, Your Honor.

11 THE COURT: All right. Very good. Thank you.

12 (REPORTER'S NOTE: Deliberations commence at 4:03 p.m.)

13 **RECESS - 4:03 P.M.**

14 *****OFF THE RECORD*****

15 **ON THE RECORD - 5:20 P.M.**

16 THE COURT: Let her mark this.

17 The jury, gentlemen, wants a copy of Ms. Litsey's
18 deposition. It was read into the record, but the deposition
19 itself was not placed as an exhibit. Y'all object or agree or
20 what?

21 MR. BRITTAIN: I think they should have it.

22 MR. BATTLE: I don't have any problem with them having
23 it.

24 THE COURT: Okay. Can we get a copy of it then,
25 somebody; where's the original, Ms. Kay; did I give it to you?

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1 COURT REPORTER: No, sir, we never entered it.

2 THE COURT: Okay. Let's see who has the original.

3 MR. BRITTAIN: I've got a copy, Judge, but I don't have
4 the original.

5 THE COURT: Okay. Who took the deposition?

6 MR. BRITTAIN: Mike took it.

7 MR. BATTLE: I took -- well, actually there were two
8 depositions. One was taken by Tommy, and one was taken by me.

9 THE COURT: Okay. Well, make sure that's the ---

10 MR. PLAYER: Tommy is mostly background information.

11 THE COURT: All right. Well, let's make sure we got the
12 right ---

13 MR. BATTLE: It would be this one.

14 MR. PLAYER: They're both the same one.

15 MR. BATTLE: So, they're both the same deposition.

16 THE COURT: So, look through it, Mike, and make sure.

17 MR. JAMES BATTLE: I was up here -- I'm gonna offer to be
18 a runner. I'm not up here to interfere at all, but I'll be a
19 gopher, which is actually more fun.

20 MR. BATTLE: This is it. This is not all we published,
21 but I have no objection to the whole thing going in rather
22 than taking the time at 5:20.

23 THE COURT: And having to read the whole thing all over
24 again.

25 MR. BATTLE: Yes.

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BY THE COURT

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1 THE COURT: Any problem with that one.

2 MR. BRITTAIN: No objection. All right.

3 COURT REPORTER: We're marking this as?

4 THE COURT: Better as a Court's exhibit then just by
5 agreement; it goes to the jury by agreement or something. Is
6 there way you can mark it?

7 COURT REPORTER: I can mark it a mutual exhibit.

8 THE COURT: There you go; why don't you do it that way.

9 MUTUAL EXHIBIT NUMBER 1

10 ADMITTED INTO EVIDENCE

11 RECESS - 5:21 P.M.

12 *****OFF THE RECORD*****

13 ON THE RECORD - 6:28 P.M.

14 THE COURT: Thank you. All right. Counsel, I understand
15 that the jury has returned a verdict in this matter.

16 Obviously, we have asked this jury to do a difficult thing,
17 that is to resolve a dispute that the parties were unable to
18 resolve. I know you will, but I would ask that you receive
19 the verdict with respect and silence. Thank you very much.

20 Ask the jury to come in, please.

21 (REPORTER'S NOTE: Jury enters courtroom @ 6:30 p.m.)

22 THE COURT: All right. Madame Forelady, has your jury
23 reached a verdict in this matter?

24 FORELADY: Yes, Your Honor.

25 THE COURT: All right. Very good. Could you hand the

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VERDICT OF THE JURY

1 verdict form to the clerk's representative, please?

2 All right. Madame Clerk, you may publish the verdict.

3 VERDICT OF JURY:

4 THE CLERK: In the State of South Carolina, County of
5 Horry, Henry Brewington, plaintiff versus the City of Myrtle
6 Beach, defendant in the Court of Common Pleas, Fifteenth
7 Judicial Circuit, case number 2017-CP-26-00685. Verdict, did
8 the defendant tortiously interfere with the plaintiff's
9 contract with Melvina Devine Davis? No.

10 Did the defendant tortiously interfere with the
11 plaintiff's contract with Natalie Litsey? Yes.

12 Please state the total amount of actual damages, if any,
13 sustained by the plaintiff. In the amount of \$500,000, signed
14 by Patricia J. -- Foreperson -- Forelady.

15 THE COURT: All right. Madame Forelady, ladies and
16 gentlemen of the jury, if this is your verdict, so indicate by
17 raising your right hand?

18 Thank you. You can put your hands down.

19 All jurors having affirmed the verdict -- their verdict
20 by the raising of their right hand.

21 Does the plaintiff wish the jury polled?

22 MR. BRITTAIN: No, Your Honor.

23 THE COURT: Does the defense wish the jury polled?

24 MR. BATTLE: No, Your Honor.

25 THE COURT: Thank you.

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BY THE COURT

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1 BY THE COURT:

2 THE COURT: Ladies and gentlemen, I want to thank you for
3 your service in this particular case. You did everything the
4 Court asked you to do, that is to listen to the evidence, pay
5 attention, listen to the law, and to resolve this dispute in
6 accordance with the law. I appreciate your service. We
7 understand we asked you to do something that you did not
8 volunteer to do, but hopefully now you understand how our
9 justice system works. It can't operate without participation
10 of its citizens. That's the only way our system works, and I
11 appreciate very much your service in this case. You are done
12 for your service for this week. You've earned an exemption
13 from coming back to Circuit Court jury duty for the next three
14 years. Unfortunately, if your city judge or county magistrate
15 or federal judge asks you to go see them, you got to see them,
16 but you don't have to come back and see us for the next three
17 years.

18 So, with that you are now excused. Thank you very much.
19 (REPORTER'S NOTE: Jury exits courtroom @ 6:34 p.m. and is
20 excused.)

21 THE COURT: Any motions from the plaintiff?

22 MR. PLAYER: None, Your Honor.

23 THE COURT: Motions from the defense?

24 MR. BATTLE: Yes, Your Honor. Shall I make the motions
25 now, or can I have them reserved?

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MOTIONS

1 THE COURT: I appreciate if you would make them now,
2 basically, because for the next three weeks I'm gonna be out
3 of the circuit. So, I really don't want to wait that long. I
4 appreciate it. Thank you.

5 MOTIONS:

6 MR. BATTLE: I would like to have a motion for a judgment
7 notwithstanding the verdict. I don't think the evidence
8 supports the finding that we interfered with the contract with
9 Nancy Litsey -- Natalie Litsey. I'd like to ask for a new
10 trial on the grounds that the jury -- the amount that he was
11 to get from the contract that was interfered with was a
12 \$150,000. I believe \$500,000 is well in excess of that
13 amount. I don't believe there was any evidence of any
14 reputation damage or loss of profits or any of those things
15 along those lines. There was a -- some talk of about an
16 investment of \$300,000, but this far exceeds any of that, and
17 so I'd ask that you would do a nisi rule for a new trial with
18 remittitur. And then I also would ask that you would reduce
19 the amount within the Tort Claims Act of 300,000 and if you
20 don't grant any of my other motions. New trial, remittitur,
21 judgment notwithstanding the verdict, and reduction of the
22 Tort Claims Act.

23 THE COURT: All right. Very good.

24 Let's start off with the judgment notwithstanding the
25 verdict.

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1 MR. PLAYER: Yes, Your Honor, instead of wasting the
2 Court's time, I think the evidence clearly was sufficient to
3 give the issue to the jury and they made their decision. So,
4 I think the evidence clearly supports the verdict in favor of
5 finding that they interfered with Natalie Litsey's contract.
6 And from that standpoint, there's nothing deficient about the
7 jury verdict.

8 THE COURT: All right, sir. How about remittitur?

9 MR. PLAYER: Remittitur, I don't think there's the
10 grounds for remittitur. I believe the grounds are the Court
11 would have to find that they were driven by prejudice or some
12 factor beyond the scope of their duty as jurors, which I do
13 not believe happened in this case. They were clearly -- we
14 asked for 600 and they gave us 500, so the verdict is not that
15 excessive to demonstrate the type of prejudice that is
16 necessary with a remittitur. So, I'll respectfully object to
17 that motion made by Mr. Battle.

18 THE COURT: All right. Let me -- let me ask you a
19 question about that. The jury having found that the City did
20 not interfere with the contract with Ms. Melinda Davis.

21 MR. PLAYER: Yes, Your Honor.

22 THE COURT: Can then the jury look at the investment,
23 look at the potential future profits, those types of things,
24 if we're talking about the interference with the contract with
25 Ms. Natalie Litsey?

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1 MR. PLAYER: I believe that that was charged to the jury
2 that with regards to if they find there was a tortious
3 interference, the Court went through several listings
4 including loss of customers, loss of reputation -- did we
5 specifically say reputation, no, but they were labeled, and
6 they said it in their own testimony, they were labeled as a
7 gang club, and there is no corporate entity here. Everything
8 that they said about Levelz was said about Henry Brewington
9 and, by association, his wife. And I think those factors are
10 within the purview of the jury. And, you know, the investment
11 part, without Melvina Davis, I understand there may be a
12 causal question there, but that question was for the jury and,
13 you know, I don't believe that it stops them from getting -- I
14 will freely admit that we got one occasion we're gonna be
15 capped at 300. I don't know how to get around that.

16 THE COURT: Yes, sir.

17 MR. PLAYER: So, but I think the jury's verdict at that
18 amount should stand because -- because they were given the
19 purview to go beyond the contract with regards to lost
20 customers, lost business, and lost goodwill. That's a very
21 fluid term, and if they found that the deal -- the deal with
22 Natalie, you know, cut them off from something they could've
23 -- something that could've been borne from that contract,
24 that's within their purview, it was put in front of them, and
25 we think the verdict is justified.

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1 THE COURT: All right, sir.

2 MR. PLAYER: Thank you.

3 THE COURT: You do agree that the judgment should be
4 reduced though under the Tort Claims Act?

5 MR. PLAYER: I don't think -- I think the law is about as
6 black letter as you can get on that point, Your Honor. If we
7 had had two contracts violated, I think we could've got six,
8 but we only had one contract, that's one occurrence. As much
9 as I despise the statute, it says we can only get 300, so I
10 would concede to that point.

11 THE COURT: All right, sir.

12 What about the argument, Mr. Battle, that when you're
13 talking about the contract with Ms. Litsey, that damage to
14 reputation, could not the jury have awarded an amount for that
15 damage even with the contract for Ms. Litsey?

16 MR. BATTLE: Your Honor, first of all, there was no
17 evidence of damage to reputation. The word was never
18 mentioned, and it was never any evidence offered along that
19 line. Second part of it is, is that the Litsey contract was a
20 contract for the sale of the business for \$150,000. There was
21 no loss, interference with a business, he wasn't gonna
22 continue the business. I didn't interfere with his business,
23 I simply interfered with his ability to, according to the
24 jury, get in -- got in the way of his getting \$150,000 to walk
25 away. I do not see how you can come in to say there were

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1 other damages when there was never mentioned any other damages
2 or evidence offered of any other damages. It was offered --
3 obviously, evidence offered of loss profits, but there were no
4 profits to be made in a flat fee of \$150,000. So, I would
5 take the position that the most that they could get from the
6 Litsey contract, because of the way it was worded and the
7 limitations in it, would be \$150,000 less whatever amount
8 would be paid for the liquidation of the business when they
9 were allowed to get their furniture and everything out the
10 following week. Now, that was not gone into, but I just don't
11 feel that the issues that you're talking about with regard to
12 reputation, none of those issues were raised or discussed in
13 any way during the course of the case and there is no
14 evidence. Thank you.

15 THE COURT: All right.

16 Yes, sir?

17 MR. PLAYER: Your Honor, I would disagree with that. I
18 mean, what the charge says is find what it costs because of
19 the interference with the contract and these other things.
20 So, the 150 is a starting point and I think you have to take
21 this and look at everything as a whole. If they had been able
22 to sell their business to Natalie Litsey, there never would've
23 been a hearing with Judge -- with Judge Culbertson where he
24 held that they were a nuisance. There never would've been a
25 one-year prohibition on the location. I mean, this was in

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1 every paper in -- in Myrtle Beach when they got shut down.
2 So, to argue -- now, that's not in there, but Ginny
3 Brewington's testimony, and also Henry's, was they made us
4 look like a gang club. I mean, they were -- were run out of
5 town. They couldn't have opened another club because of what
6 they did and without -- you know, obviously we think that
7 Melvina was interfered with, but even Natalie, it would have
8 ended it. They would not have an order in the public record
9 of Horry County that they were shut down as a nuisance. That
10 is going to follow them, because I guarantee you, if it
11 happened before anywhere in their lives, Myrtle Beach would
12 have used it against them in this case. So, that is the
13 reputation and that's within the purview of the jury, and they
14 can find whatever number they want to for that, and it matches
15 the charge, and I don't think we're limited. If we're talking
16 about a breach of contract, yeah, we don't get anything other
17 than 150, but the Court charged the jury you can find loss of
18 reputation, everything the Court gave them the purview to
19 award damages for, I think the evidence is there. The one
20 time that they said in this trial, we're a gang club. That's
21 enough to say, you know, from their own testimony, that their
22 reputations were damaged. But the more important damage is
23 the order, because that order would've never happened if the
24 City had not objected, interfered with, Natalie Litsey. They
25 would have sold the business, they'd have gone home with half

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1 their money, and it would've been over. But since they
2 interfered with Natalie, the process went forward, now there's
3 a public record against the Brewingtons that will follow them
4 in every jurisdiction if they ever tried to open another
5 business. So, I think that part of the -- that element of the
6 damages, which is loss of reputation, loss of goodwill,
7 because they had no goodwill anywhere in Myrtle Beach when
8 they got hit with the order from Judge Culbertson, which would
9 not have happened without the interference of the contract
10 with Natalie Litsey. So, I do think there is sufficient
11 evidence in the record to justify the additional funds, the
12 additional 150 in this case, once the tort claims cap is
13 applied.

14 THE COURT: All right, sir. Thank you.

15 Ms. Kay, give the Order of Judge Culbertson, please.

16 MR. PLAYER: I think it's Defendant's 2.

17 RULING OF THE COURT:

18 THE COURT: All right. Regarding the judgment NOV, again
19 the Court views the evidence and all reasonable inferences in
20 the light most favorable to the non-moving party, again, to
21 the plaintiff. I do believe that the factual findings of the
22 jury should not be disturbed. I do find that the evidence
23 submitted reasonably supports the verdict in favor of the
24 plaintiff.

25 Now, in this particular matter, the plaintiff -- the

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1 defendant has also asked for a new trial remittitur and/or a
2 new trial. Now, while I do have wide discretionary powers to
3 reduce the amount of the verdict, if the Court considers the
4 judgment to be excessive or that the jury was unduly liberal
5 in determining the damages. I find in this particular case
6 that there was evidence that the City, through its agent, Ms.
7 Robertson, communicated with Ms. Litsey prior to the order
8 granting the motion for permanent injunction and in the
9 testimony of Ms. Litsey, as set forth in her deposition which
10 was read into the record, that the information coming from the
11 City was that, if she went forward with the contract, it
12 wouldn't look good; she'd have a hard time with the City of
13 Myrtle Beach; that the club wasn't gonna be open; you need to
14 look somewhere else. And because of that, she says she used
15 her -- what she classified as a contract, the 10-day window,
16 under the other casualty clause saying that communications
17 from the City indicated they would not be open. So, clearly,
18 there's evidence to indicate that the City interfered with the
19 contract between Henry Brewington and Ms. Natalie Litsey. As
20 to the -- therefore, the motion for new trial is denied as
21 well as the motion for judgment NOV.

22 Leaving the matter of new trial -- excuse me -- nisi
23 remittitur. Clearly, the damages under the contract amount to
24 \$150,000. And are there any other damages that the jury could
25 have considered regarding that particular contract that they

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1 interfered with; as I instructed the jury, the essential
2 element of tort of interference with a contractual
3 relationship is that damages resulted from the breach.
4 Plaintiff may recover such damages sustained by them as are a
5 natural consequence of the interference.

6 I do find that damage to the reputation of the plaintiff
7 is a natural and probable consequence of the interference as
8 set forth by the testimony of Ms. Litsey. Plaintiff agrees
9 that the Tort Claim Act applies. So, the verdict is hereby
10 reduced to the sum \$300,000.

11 What I would ask -- what we need to do, I think, is a
12 short order to that effect for the Clerk of Court's records.
13 So, I'll have counsel for the plaintiff, I want y'all to do
14 that, and I'm going to have to ask you to do it by Friday at
15 noon because of the fact that I'm going to be out of the
16 circuit for the next three weeks, and I don't wait for that to
17 be accomplished.

18 MR. PLAYER: You'll have it tomorrow, Your Honor.

19 THE COURT: All right. Thank you very much.

20 MR. PLAYER: Thank you, Your Honor.

21 THE COURT: Thank you, counsel.

22 MR. BREWINGTON: Thank you, sir.

23 **ADJOURNED - 6:53 P.M.**

24

25

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CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

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I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Henry Brewington v. City of Myrtle Beach, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on June 21-23, 2021.

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

Kay H. Richardson

Official Court Reporter

September 6, 2021.