

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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APPELLATE CASE No.: 2021-000886  
ADMINISTRATIVE LAW COURT CASE No.: 21-ALJ-17-0143-CC

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

v.

Agua Pina, LLC, d/b/a Hookah on the River.....Appellant.

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**RECORD ON APPEAL**  
**Volume 1 of 3**  
**Pages R-001 through R-143**

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**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,	)	Docket No. 21-ALJ-17-0143-IJ
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Agua Pina, LLC, d/b/a Hookah on the River,	)	
	)	
Respondent.	)	
_____	)	

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) on a Motion for Emergency Suspension and Expedited Hearing (Motion) filed on May 18, 2021, by the South Carolina Department of Revenue (Department) in relation to its determination that Agua Pina, LLC, d/b/a Hookah on the River (Respondent or Agua Pina) poses an imminent threat to the public safety or welfare. Respondent holds an on-premises beer and wine permit and a business liquor by the drink license. The Department moves pursuant to Rule 68 of the Rules of Procedure for the Administrative Law Court (SCALC Rules), Rule 65 of the South Carolina Rules of Civil Procedure (SCRCP), section 1-23-370(c) of the South Carolina Code (2005), and section 12-60-1340 of the South Carolina Code (2014) to suspend Respondent’s permit and license until a hearing on the merits can be held in this matter. A conference call was held on the Motion at 3:00 p.m. on May 18, 2021.

**BACKGROUND**

Agua Pina is located at 2700 Broad River Road, Suite B, Columbia, South Carolina. Respondent’s business is permitted/licensed to sell beer, wine, and liquor to its patrons. Respondent is owned by Jack Oliver (Oliver).

The Department asserts that since October 23, 2020, there have been approximately fourteen complaints and violent incidents at Respondent’s business or its parking lot. The Department further asserts these incidents have included multiple incidents involving firearms, including two that resulted in a member of the public being shot. The Department supports its assertions with the affidavit of Captain Steven Tapler of the Richland County Sheriff’s Department and several incident reports from the Richland County Sheriff’s Department.

Captain Tapler avers that Richland County Sheriff's Department has responded to Respondent's location fourteen times since October 23, 2020, for increasingly violent incidents to include assaults, weapon law violations, or shooting incidents. Captain Tapler further avers that despite law enforcement's efforts and conversations with Respondent's ownership or management to curtail criminal activity at the premises, the frequency and severity of the activity persists. Captain Tapler asserts the business is an unreasonable strain on law enforcement. Captain Tapler identified specific incidents that occurred at Respondent's premises, including an incident on May 2, 2021, during which shots were fired and law enforcement discovered eleven (11) 9mm shell casings in the parking lot.<sup>1</sup> While law enforcement was investigating, several more shots were fired, and law enforcement discovered a security guard had been shot in the head. Because of the large number of individuals in the parking lot, additional units were needed to get the crowd under control. This incident was documented in an incident report attached to the Department's motion, which indicates the shooter was not identified.

Captain Tapler described another incident on May 8, 2021, in which law enforcement responded to Prisma Richland Hospital in reference to a shooting victim. The victim alleged he was at Respondent's premises when he was shot in the stomach, and someone from the premises drove him to the hospital. Richland County Sheriff's Department did not receive a call from Respondent's premises the night the victim was allegedly shot there. This incident was also documented in an incident report attached to the Department's motion.

Captain Tapler acknowledged Respondent's owner/management expressed a desire to work with the Sheriff's Department in a meeting with them the week of May 3, 2021. However, based upon Captain Tapler's ongoing interactions with Respondent's business, and Respondent's "ongoing failure and inability to control the behavior of its patrons," Captain Tapler attested Respondent's business is an imminent danger to the public safety and welfare and emergency action is imperative to protect the safety and welfare of the citizens of Richland County. Captain Tapler further attested that, in his opinion, Respondent's business "provides an atmosphere that is perceived as tolerant, thereby perpetuating the opportunity for criminal activities, including violence, to escalate."

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<sup>1</sup> Although Captain Tapler's affidavit does not specify the parking lot where the initial shots were fired and casings were recovered, the Richland County Sheriff's Department incident report details that the officers were initially called to the parking lot at 2640 Bush River Road (a Rush's restaurant) and, while the officers were in the Rush's parking lot, they heard additional shots from the parking lot in front of the licensed premises.

In addition to the two incidents described above, two other incident reports were attached to the Motion but were otherwise unverified by affidavits. On February 11, 2021, Corporal John Hawkes of the Richland County Sheriff's Department observed Respondent's business was still open after 2:00 a.m. and loud noise was emanating from the premises. Corporal Hawkes asked to speak with the manager who was not present; he spoke to the public relations liaison instead. Eventually, Corporal Hawkes spoke with Respondent's owner, Oliver, to communicate the noise issue and explain business hours pursuant to the Governor's state of emergency mandate. Corporal Hawkes requested access to the premises to ensure all Covid-19 guidelines were being met but was "emphatically denied access" by the owner.

Prior to the above incident, on February 7, 2021, Corporal Hawkes responded to a call from Respondent's business about an unruly crowd at approximately 3:00 a.m. Corporal Hawkes monitored the situation and observed a man emerge from the club carrying an AF-15 assault rifle who claimed to work at SLED and provide security. Corporal Hawkes was then called away to respond to another incident, but he returned to the premises quickly and was informed that patrons were causing a disturbance at the door to the premises. Corporal Hawkes was also informed the business was trying to close. Corporal Hawkes proceeded to advise the crowd to leave because the club was closing; however, he observed that after the crowd began to disperse, security began to allow patrons to reform a line to enter. That same night at approximately 4:00 a.m. Corporal Hawkes responded to another disturbance at the premises. Upon arrival, he discovered security had discharged pepper spray inside the premises. Corporal Hawkes did not find a manager or owner at the premises at the time of the incident and was referred to the public relations liaison. Corporal Hawkes believed the location did not have a beer and wine permit at the time, but he observed patrons carrying red solo cups from inside the business. He was informed patrons were allowed to bring their own alcoholic beverages because no alcoholic beverages could be sold.

Oliver, Respondent's owner, responded to the Department's Motion in an email that was not accompanied by an affidavit and is therefore unverified. Counsel for Respondent joined the conference call and argued on Respondent's behalf. Counsel argued the location and the other businesses surrounding Respondent's premises are the cause of the incidents that have occurred. Counsel argued the concert venue next door to the premises, which is known as Marquee Event Center, hosts rap concerts and, when those concerts end, the patrons spill into the parking lot and become unruly. Counsel contended that problems arise when Respondent denies entry to these

unruly patrons. Counsel further asserted that a rap concert had just ended on the night of May 2, 2021, when the shooting of the security guard took place, and that whether the shooter was a patron of Respondent is unknown. Counsel claimed the Richland County Sheriff's Department reviewed video footage from the night of May 8, 2021 and found no evidence of a shooting inside the premises on that night. Counsel asserted Respondent pays \$2,000 a night on Friday and Saturday nights for SLED-certified security to protect the premises, and all patrons are checked at the door for weapons using a wand and/or a pat down.

### DISCUSSION

The Department brings this case pursuant to SCALC 68, Rule 65, SCRCPC, section 1-23-370(c), and section 12-60-1340. SCALC Rule 68 allows the South Carolina Rules of Civil Procedure to be applied to contested case proceedings before this Court at the discretion of the presiding judge. Rule 65, SCRCPC, addresses injunctive relief and is the appropriate rule to refer to under this Court's rules. *See* SCALC Rule 16. Despite citing Rule 65, SCRCPC, the Department's argument is centered on suspending Respondent's permit and license pursuant to section 1-23-370(c), which provides:

No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. **If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.** These proceedings shall be promptly instituted and determined.

(emphasis added). Section 12-60-1340 further provides "[a]nything else in this chapter notwithstanding, if the department determines that public health, safety, or welfare requires emergency action, it shall seek an emergency revocation order from the Administrative Law Court, pursuant to Section 1-23-370(c)."

Based upon the above-alleged incidents and the supporting affidavit and incident reports, the Department argues that the continued operation of Respondent's business, pending a hearing on the merits, is an imminent threat to public safety and welfare and it is appropriate to issue an emergency suspension of Respondent's license and permit pursuant to section 1-23-370(c) and section 12-60-1340.

The triggering event for the Department's Motion in this case was the shooting that allegedly occurred within the premises on May 8, 2021, and therefore the evidence tending to show this incident either occurred or did not occur at the licenses premises is particularly important to this Court's decision on this Motion. In his affidavit, Captain Tapler acknowledges there were no calls made to the Richland County Sheriff's Department from the premises on May 8, 2021. However, Captain Tapler avers the victim alleges he was shot on the premises and driven to the hospital by someone from the licensed premises.

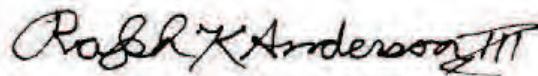
As a result of the conference call, the Court requested the Department verify whether the video footage from the premises for the night of May 8, 2021 revealed evidence of a shooting or was inconclusive. In response to the Court's request, the Department submitted an affidavit of Investigator Clay Short of the Richland County Sheriff's Department in which he attests that although the video evidence does not capture an actual shooting, it is consistent with a shooting taking place inside the business. More specifically, the video shows people fleeing from Hookah on the River and the victim exiting the premises clutching his stomach where he was shot.

Because the evidence reflects the alleged shooting did occur on May 8, 2021, I conclude at this stage of the proceedings that the licensed premises is a sufficient threat to public safety and welfare such that its beer and wine permit and liquor-by-the-drink permit should be suspended until a hearing on the merits can be held on June 9, 2021. § 1-23-370(c); § 12-60-1340. In particular, the incidents on May 2, 2021 and May 8, 2021 represent an imminent threat to public safety and welfare because of the seriousness of the incidents, their close proximity in time to each other, and Captain Tapler's attestation that these are only two of fourteen incidents that have occurred since October 23, 2020, which reflects a pattern of increasing violence taking place at the premises that are a drain on the Richland County Sheriff Department's resources. *See id.*

**ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that Respondent's beer and wine permit and liquor-by-the-drink license is suspended until a merits hearing takes place on June 9, 2021.

**AND IT IS SO ORDERED.**

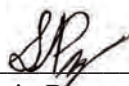


Ralph King Anderson, III  
Chief Administrative Law Judge

May 20, 2021  
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



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Stephanie Perez  
Judicial Law Clerk

May 20, 2021  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,	)	Docket No. 21-ALJ-17-0315-IJ
	)	
Petitioner,	)	
	)	
v.	)	<b>FINAL ORDER</b>
	)	
Agua Pina, LLC, d/b/a Hookah on the River,	)	
	)	
Respondent.	)	
_____	)	

**APPEARANCES:** For the Petitioner: Patrick McCabe, Esq.  
For the Respondent: Burnet Maybank, III, Esq. & Andrew Saleeby, Esq.

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a request for injunctive relief filed by the South Carolina Department of Revenue (Department) in relation to their determination issued on May 13, 2021. In their determination, the Department found Agua Pina, LLC, d/b/a Hookah on the River (Respondent or Hookah on the River), who holds an on-premises beer and wine permit and a business liquor-by-the-drink license, knowingly permits acts that constitute a public nuisance, poses an imminent threat to public health, safety, or welfare, and lacks a reputation for peace and good order. As a result, the Department now seeks to permanently revoke Respondent’s permit and license pursuant to section 61-4-270 of the South Carolina Code (2009), section 61-4-580 of the South Carolina Code (Supp. 2020), section 61-6-1820 of the South Carolina Code (2009), section 61-6-1830(1) of the South Carolina Code (2009), and sections 1-23-310 *et seq.* of the South Carolina Code (2005 & Supp. 2020).<sup>1</sup> The Court held a hearing on June 9, 2021, at the Court’s offices in Columbia, South Carolina.

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<sup>1</sup> This matter originally came before the Court pursuant to a Motion For Emergency Suspension and Expedited Hearing (Motion) filed by the Department on May 13, 2021. In its Motion, the Department moved to suspend Respondent’s permit and license until a hearing on the merits could be held in this matter. The Department supported its Motion with the affidavit of Captain Steven Tapler of the Richland County Sheriff’s Department and several incident reports from the Richland County Sheriff’s Department. Captain Tapler attested Respondent’s business was an imminent danger to the public safety and welfare and emergency action was imperative to protect the safety and welfare of the citizens of Richland County. Captain Tapler further attested that, in his opinion, Respondent’s business “provides an atmosphere that is perceived as tolerant, thereby perpetuating the opportunity for criminal activities, including violence, to escalate.” Also on May 13, 2021, the Department filed its Final Determination, in which it notified Hookah on the River of its intent to revoke their on-premises beer and wine permit and restaurant liquor-by-the-drink license. Following a conference call on the Motion, the Court granted the Department’s request to suspend Respondent’s permit and license until the merits hearing.

## **FINDINGS OF FACT**<sup>2</sup>

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

### **General Findings**

Hookah on the River is located at 2700 Broad River Road, Suite B, Columbia, South Carolina. Respondent's business is permitted/licensed to sell beer, wine, and liquor. Jack Oliver (Oliver), the owner of the business since April 2020,<sup>3</sup> described Hookah on the River as primarily a restaurant/lounge, yet it has a DJ and rents hookahs to its patrons. Hookah on the River is located in a strip mall next door to an event center, Exquisite Event Center, and across the street from Rush's, a fast-food restaurant, neither of which have a beer and wine permit or a liquor license.

Oliver asserted he is present at the business two to three times a week and the manager has control of the business when he is not there. If the manager is not on duty, the assistant manager is in control of the premises. Kiera Nelson is the current manager. Chris Sullivan (Sullivan) used to be a manager. He currently holds the position of Respondent's public relations liaison as well as a promotional manager and consultant. Sullivan's job mainly consists of handling interactions with the government, media, and staff on behalf of Hookah on the River. Oliver testified Sullivan does not have day-to-day control of his business when he is not present. Although Sullivan is purportedly no longer a manager, he is the business's representative who has consistently interacted with law enforcement upon their arrival at the business.

### **Security at the Licensed Premises**

In terms of security at the premises, Respondent has a total of eight cameras and hires SLED-certified armed security through SC Security Protection to protect the outside of the

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<sup>2</sup> Pursuant to Rule 201 of the South Carolina Rules of Evidence (SCRE), the Court takes judicial notice of its own order in a prior case involving Respondent's business, in which the Court lifted the Department's summary suspension of Respondent's permit and license. *See S.C. Dep't of Revenue v. Agua Pina, LLC, d/b/a Agua Pina Lounge*, Docket No. 20-ALJ-17-0315-IJ (January 13, 2021). The Department had issued the summary suspension because Respondent violated the Governor's Executive Order by permitting the sale and consumption of beer, wine, and alcoholic liquor after 11:00 p.m. *Id.*

<sup>3</sup> In the prior case (Docket No. 20-ALJ-17-0315-IJ), Oliver testified he opened the business in April 2020 as Agua Pina but rebranded and reopened it in October 2020 as Hookah on the River. Although in this matter Oliver testified the business has been open since October 2020, Oliver has owned the business as an LLC since April 2020.

premises and control the entry of patrons into the business. Richard Higgins (Higgins), owner of SC Security Protection, explained he typically has two to six guys working at Respondent's location depending on the event.<sup>4</sup> According to Oliver, all patrons are checked at the door for weapons using a wand and/or a pat down and then patrons are patted down again once inside the premises. Sullivan also testified security pats down every patron at least twice. Additionally, Respondent employs security to maintain order inside the premises who they refer to as "bouncers." These individuals are not employees of SC Security Protection.

Although Respondent employs security, Corporal Hawkes and Sergeant Torres, both with the Richland County Sheriff's Department, observed that Respondent's security fails to correctly frisk or pat down patrons, which can result in patrons walking into the business with weapons. Sergeant Torres also opined that Respondent's security cannot handle the magnitude of patrons and chaos that occurs at the location. In fact, Respondent's security has lost their weapons when fighting patrons and, recently, two guns were found in the floorboards of Respondent's business. Still, Oliver claims Respondent has reported to law enforcement every weapon that has been discovered at the premises.

### **Incidents at the Licensed Premises**

Since October 23, 2020, Richland County Sheriff's Department has responded to calls at Respondent's location over 100 times<sup>5</sup> for increasingly violent incidents including assaults, weapon law violations, and shootings. In fact, as Sergeant Torres specifically explained, there have been 102 calls for service since January 2021 at Respondent's location. Recently, two shootings occurred within two weeks in which someone was shot. These two incidents exemplify the escalating violence.<sup>6</sup>

The first shooting incident occurred on May 2, 2021. On that date, shots were fired and law enforcement discovered eleven (11) 9mm shell casings in the parking lot at 2640 Bush River Road (Rush's restaurant) across from Respondent's business where Respondent's patrons sometimes park. While the officers were investigating the incident in the Rush's parking lot, they

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<sup>4</sup> Higgins hires former law enforcement and military as security guards. All of Higgins' employees are trained on how to correctly pat down a patron.

<sup>5</sup> The exact number of service calls is disputed by the parties but the overall testimony from the Sheriff's Department indicates there have been at least 100 calls for service to Respondent's location.

<sup>6</sup> Oliver was not present at the business during these incidents and did not know which manager or assistant manager was on duty on those days.

heard additional shots from the parking lot in front of Respondent's business. Law enforcement then discovered a security guard from Respondent's business had been shot in the head. Because of the large number of individuals in the parking lot, additional units from other regions and officers from the City of Columbia were dispatched to get the crowd under control and the shooter was never identified. Sullivan was present that night and he admitted the crowd was out of control and that there were "multiple fights and shootings" but asserted a rap concert had just ended next door and it is unclear whether the shooter was a patron of Respondent.<sup>7</sup> Sullivan testified that after he heard shots, he went to the front door where he saw the security officer lying down bleeding. Higgins was also present on May 2, 2021, and witnessed his employee get shot. Higgins stated that was the last day his company worked for Respondent.

Investigator Short described the second incident that occurred on May 8, 2021,<sup>8</sup> in which law enforcement responded to Prisma Richland Hospital in reference to a shooting victim. Investigator Short interviewed the victim who alleged he was at Respondent's premises when his friend was involved in an altercation and, as a result, the victim was shot in the stomach. Investigator Short testified the evidence establishes that the victim was shot inside Respondent's business.

Video footage from May 8, 2021, is consistent with a shooting taking place inside Respondent's business. The video footage shows patrons running from the entrance of Hookah on the River and the victim exiting the premises clutching his stomach. Additionally, one of Respondent's security guards is seen facing the entrance of the business and brandishing his weapon in response to the commotion.<sup>9</sup> Approximately eighteen minutes after the shooting occurred, security is still seen holding its weapon in a defensive posture.<sup>10</sup> Additionally, some

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<sup>7</sup> At the hearing, Respondent claimed its employees provided the name of the shooter to law enforcement, yet no one has been arrested. Sullivan admitted that none of Respondent's employees witnessed the shooting, but they reviewed the video footage afterwards and found the shooter on Facebook. The Sheriff's Department's investigation is still on-going.

<sup>8</sup> Notably, SC Security Protection was not present to secure the entrance of the business the date this shooting occurred. Rather, security was being provided by some other company.

<sup>9</sup> Respondent argues the video footage does not reflect a shooting since the footage shows some patrons walking in and out of the premises freely shortly after the incident occurred. However, the actions of some patrons shortly after the incident do not reflect the immediate chaotic scene that occurred right after the incident took place or the reactions of the security guards and other patrons, which are consistent with a shooting.

<sup>10</sup> Although Higgins asserted his employees were not there on May 8, 2021, and that he did not know who the guards were in the video, he testified guards are trained to pull a weapon when they are threatened or if they hear gun shots.

patrons appear to hide behind a parked car until a security officer escorts them away. It also appears that a club employee returns a bullet proof vest or safety vest to a car after the incident is over.

Respondent disputes that a shooting occurred. Sullivan testified he was in the kitchen that day when he heard a commotion, but he claims the commotion occurred because a hookah fell and broke and not because of a shooting.<sup>11</sup> Respondent also argues the Sheriff's Department is withholding footage from its surveillance van that should have captured the shooting if it occurred. However, Investigator Short explained that the distance between the Sheriff Department's van and the front door of Hookah on the River was at least 200 feet, and a Jack Oliver Pool & Spa van was parked in front of their van, which blocked their view. Moreover, the shooting also took place inside the premises, which would have prevented the van from capturing any footage of the shooting itself. Nevertheless, the video footage from Respondent's own security camera is consistent with a shooting occurring on May 8, 2021, in its premises.

Thus, the evidence indicates a shooting occurred inside Respondent's premises on May 8, 2021. Accordingly, despite Respondent's adamant contentions to the contrary, I find the shooting occurred within its business. However, Richland County Sheriff's Department did not receive a call from Respondent's premises on May 8, 2021, which suggests Respondent failed to report the incident to law enforcement. In fact, the Sheriff's Department was not aware of the shooting until the hospital reported it to them the next day.

The video footage not only indicates that a shooting occurred, but it also supports the conclusion that Respondent's security was failing to properly frisk its patrons. The footage shows security failing to fully frisk each individual, thus creating an opportunity for weapons to enter its business. Additionally, after the incident occurred, the entry line in front of security dissolves—with the ropes and standards creating the line-up area having been knocked over—and patrons appear to be coming in and out of the business without having to go through security. Corporal Hawkes also stated he has personally been present at Respondent's business around thirty times and each time witnessed Respondent's security frisk patrons poorly.

In addition to the two shooting incidents described above, other incidents have occurred at Respondent's location. On November 18, 2020, law enforcement attempted to conduct a

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<sup>11</sup> Interestingly, in its Response to the Department's Motion for Emergency Suspension, Respondent indicated the commotion was due to a pushing and shoving match in the club that resulted in bottles breaking.

compliance check related to Respondent's license and permit, but Sullivan denied them access. On February 7, 2021, Corporal Hawkes responded to a call from Respondent's business about an unruly crowd at approximately 3:00 a.m. Corporal Hawkes observed a man emerge from the club carrying an AF-15 assault rifle who claimed to work at SLED and provide security. Corporal Hawkes was then called away to respond to another, higher priority incident. When he returned to the location, he was informed that patrons were causing a disturbance at the door to the premises and the business was trying to close. Corporal Hawkes then began asking the crowd to leave because the business was closing; however, after the crowd began to disperse, Respondent's security began to allow patrons to reform a line to enter the business again. Later that same night, at approximately 4:00 a.m., Corporal Hawkes responded to another disturbance at the premises. Upon arrival, he discovered security had discharged pepper spray inside the premises. Consequently, the fire department had to shut down Respondent's business due to a lack of oxygen inside the premises. Corporal Hawkes did not find a manager or owner at the premises at the time of the incident and was again referred to Sullivan.

Then, on February 11, 2021, Corporal Hawkes responded to a call at Respondent's business and observed Respondent's business was still open after 2:00 a.m. and loud noise was emanating from the premises. Corporal Hawkes asked to speak with the manager, who again was not present. He was directed to speak to Sullivan instead.<sup>12</sup> Eventually, Corporal Hawkes spoke by phone with Oliver and explained the noise issue and the business hours permitted pursuant to the Governor's state of emergency mandate. Corporal Hawkes also requested access to the premises to ensure all Covid-19 guidelines were being met but was "emphatically denied access" by the owner. Therefore, law enforcement was again denied entry into the business, this time directly by the owner, Oliver.

Overall, interactions between Respondent's staff and law enforcement have not been cordial or cooperative. For instance, Corporal Hawkes has been denied access numerous times, including one time when there was an injured patron inside the premises. Sergeant Torres and

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<sup>12</sup> Respondent presented an offer of proof that Corporal Hawkes had a conversation with Sullivan and told him to shut down Hookah on the River that night pursuant to the Governor's state of emergency mandate. However, that testimony does not change this Court's determination, and, in fact, Corporal Hawkes acknowledged he was incorrect about Respondent violating the Governor's state of emergency mandate as it had already been lifted, unbeknownst to him.

Corporal Hawkes also explained Respondent's staff and patrons are hostile towards law enforcement.

### **Respondent's Defense**

Respondent presented several arguments suggesting that it was not responsible for the criminal activity occurring at the location but is merely a victim of its location and a victim of targeted attempts to harm the business. Respondent argues the patrons of the other businesses surrounding Respondent's premises are the cause of the incidents that have occurred. Specifically, Oliver testified the Exquisite Event Center hosts rap concerts and, when those concerts end, the patrons spill into the parking lot in front of Respondent's business and become unruly.

However, the incidents to which law enforcement has responded have been calls for assistance at Respondent's location, suite B, and not the event center location, suite A. Furthermore, the evidence establishes the rap concerts that Respondent asserts are the egis of the criminal activity at the location occurred infrequently. In fact, Corporal Hawkes is aware of only one concert being held at the event center. Similarly, Sergeant Torres and Corporal Hawkes testified they do not get calls for service from the event center, and the event center typically is not open when they respond to calls at Respondent's location. Finally, although Respondent attributes many of the law enforcement issues to Exquisite Event Center, since May 22, 2021, when the Court granted the Department's Motion to suspend Respondent's permit and license pending a hearing, there has only been only one call for service at Respondent's business. If rap concerts are held frequently and are the primary source of calls to law enforcement as Respondent suggests, then the Court would have expected more than one call to have come in since the suspension considering the frequency of the calls prior to the suspension.

Respondent also argues some incident reports are the result of fake 911 calls. It contends these calls were made to make its business look bad. Yet, Sullivan only enumerated three fake calls—two fake police calls, along with a fake fire alarm being pulled.<sup>13</sup> Moreover, Respondent did not present evidence showing which incident reports were the result of fake 911 calls or when these calls even occurred. On the other hand, Corporal Hawkes explained that sometimes the Sheriff's Department receives a 911 call and, when they show up, the issue is resolved and they

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<sup>13</sup> Oliver, who was never at the location when law enforcement arrived, claimed 20-30 fake calls have occurred. However, even if Sullivan's testimony were credible, Oliver's claim was plainly not persuasive. In fact, Respondent's attorney only claimed that there were ten fake 911 calls.

are not needed. Nonetheless, he was not aware of any fake 911 calls occurring at Respondent's location. Thus, it is questionable whether the Sheriff's Department responded to any fake calls at Respondent's location. But, even if the calls Sullivan referenced that the Sheriff's Department responded to at Respondent's location were fake, those calls were a small portion of the over 100 calls received since January 2021, and do not diminish this Court's concerns regarding the overall frequency and severity of the calls for assistance at Respondent's location.

Respondent further argues the Sheriff's Department is targeting its business because the Sheriff's Department has had a surveillance van near their business for three months. However, the evidence simply did not support this theory. Employees of the Sheriff's Department specifically denied that they were targeting Respondent's business, and I found their testimony credible. Furthermore, law enforcement's presence at the location was primarily a response to the criminal activity taking place at Respondent's location.

Respondent also argues the Sheriff's Department is unfairly targeting it because other businesses that have had more violent incidents have not had their licenses revoked. In support of this theory, Respondent submitted incident reports for McCary's Sports Bar & Grill (McCary's), which retains its permit and license. The Court finds the incident reports for McCary's location are not comparable to the incident reports for Respondent's location. There are only 60 incident reports in a period of ten years for McCary's, whereas law enforcement has been called to Respondent's location 102 times since January 2021, a span of five months, to include three incidents involving the discharge of a weapon.<sup>14</sup> Additionally, the Sheriff's Department avowed that if McCary's had the same number of violent incidents and calls for service in the same time span and pulled the same number of resources from the Sheriff's Department like Respondent, then it would support the revocation of McCary's license. Also, Joanna McDuffie (McDuffie), the Sheriff's Department Deputy Chief of Legal Affairs, stated she is aware of McCary's incidents and does not believe McCary's business is worse than Respondent's business.<sup>15</sup> Thus, the frequency and severity of the activity at the two businesses is not comparable.

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<sup>14</sup> Moreover, some of the incident reports for McCary's resulted from traffic stops and, thus, were not attributable to the business's actions.

<sup>15</sup> Notably, Respondent emphasized that a murder had occurred at McCary's in the last ten years. Ms. McDuffie acknowledged that in the last ten years an individual had been charged for murder that had occurred outside of McCary's, but the Sheriff's Department later determined the individual acted in self-defense.

Respondent also cited to Wal-Mart and a nearby convenience store to support its argument that there are other businesses that have more incidents or calls for service that are allowed to continue operating. However, a Wal-Mart does not exist in the same location as Respondent and, moreover, because Wal-Mart is a large retail establishment and not a bar, I do not find it to be comparable to Respondent's business. As for the convenience store, it also has a completely different alcohol permit/license, and it operates twenty-four hours a day, seven days a week, which would increase the opportunity for crimes to occur compared to Respondent's more limited business hours. Therefore, these businesses are not comparable and do not support Respondent's argument that it is being unfairly targeted.

### **Burden on Law Enforcement**

Sergeant Torres and Corporal Hawkes classified Respondent as a "problem" location due to the large number of calls and crowds at its business. More specifically, Sergeant Torres asserts the business is an unreasonable strain and burden on law enforcement. She explained that she often must get units from another region to assist on calls to Respondent's business, and sometimes she must ask the City of Columbia for help too. Consequently, responding to calls from Respondent's business takes away resources from other areas, which puts officer safety and community safety in jeopardy in reduced-staffed areas.

Notably, Corporal Hawkes asserted he did not think Respondent's business is a burden on law enforcement because the Sheriff's Department has the ability to adequately respond to all incidents at Respondent's location. However, simply because the Sheriff's Department is capable of responding to the incidents that occur at the location does not mean that the business is not creating a burden upon law-enforcement. Indeed, Corporal Hawkes's testimony repeatedly undermined his assertion that the location is not a burden. Corporal Hawkes explained that violent crimes were escalating at Respondent's location and, as a result, the Sheriff's Department has had to expend a significant amount of manpower to respond to respond to calls at the location. He further testified the incidents at Respondent's location were redirecting resources away from the rest of the County on a regular basis. This testimony indicates Respondent's business is creating a burden on law enforcement and frequently leaving other parts of the community with fewer officers and, thus, leaving those parts of the community more vulnerable. Therefore, the Court finds Corporal Hawkes's testimony supports finding Respondent's business is a burden on law enforcement despite his assertion to the contrary. Furthermore, even if the Court were to rely

solely on Corporal Hawkes’s statement that the location is not a burden and ignore his other testimony, the testimony of his superior officer, Sergeant Torres, clearly explained why Respondent's business is a burden upon law-enforcement.

In lieu of the foregoing findings, and the evidence showing Respondent’s business, and not the other businesses surrounding it, is the cause of the incidents at the location, I find the business is an unreasonable strain and burden on law enforcement.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, I conclude the following as a matter of law:

#### **General Conclusions**

The Department issued a Final Determination finding Respondent is in violation of section 61-4-580(A)(5) of the South Carolina Code (Supp. 2020) because Respondent’s business knowingly permits a public nuisance on the licensed premises. Furthermore, the Department found that Respondent’s business constitutes an “immediate threat to the public’s health, safety, and welfare” pursuant to § 1-23-370(C), § 12-60-1340, § 61-6-1820(2), and § 61-6-1830. The Department also found Respondent no longer has a reputation for peace and good order in the community in violation of § 61-6-1820. Finally, the Department also determined that revocation was the appropriate penalty for the violations of § 61-4-580 and § 61-6-1820. Respondent challenges those determinations.

Section 1-23-600 of the South Carolina Code (Supp. 2020) grants the ALC jurisdiction to hear contested cases under the Administrative Procedures Act.<sup>16</sup> Furthermore, section 61-2-260 of the South Carolina Code (2009) grants the Court the responsibility to determine contested matters governing alcoholic beverages, beer, and wine. *See also Palmer v. S.C. Alcoholic Beverage Control Comm’n*, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984) (“[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed. . . .”).

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<sup>16</sup> This case comes before the Court in an unusual procedural posture. Ordinarily, the party whose permit or license is suspended or revoked would request relief from this Court, but in this case, the Department brought this matter before the Court requesting an emergency suspension of Respondent’s license and an expedited hearing pursuant to SCALC Rule 68; Rule 65, SCRCP; § 1-23-370(c); and § 12-60-1340. The Court granted the emergency suspension pursuant to § 1-23-370(c) and § 12-60-1340 until this Court could hear the case on the merits based upon the Department’s determination to revoke Respondent’s permit and license. Accordingly, although this case began as a request for injunctive relief, this Court held a hearing on the merits without objection.

The standard of review in this case is a preponderance of the evidence. *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998) (“Absent an allegation of fraud or a statu[t]e or a court rule requiring a higher standard, the standard of proof in administrative hearings is generally a preponderance of the evidence.”). Because the Department is seeking to permanently revoke Respondent’s license and permit, the Department has the burden of proof to show by a preponderance of the evidence that Respondent’s permit and license should be revoked. SCALC Rule 29(B) (“In matters involving the assessment of civil penalties, the imposition of sanctions, or the enforcement of administrative orders, the agency shall have the burden of proof.”).

Section 61-2-20 of the South Carolina Code (2009) authorizes the Department to administer and enforce the laws and regulations involving alcoholic beverages, including beer and wine. Generally, neither a license for the sale and consumption of alcoholic beverages nor a beer and wine permit is a contract or a property right. It is, rather, a privilege granted in the exercise of the State’s police power “to do what otherwise would be unlawful to do. . . .” *Feldman v. S.C. Tax Comm’n*, 203 S.C. 49, 26 S.E.2d 22, 25 (1943). These privileges may be used and enjoyed only so long as the holder complies with the restrictions and conditions governing them. *See id.*

### **Violations**

The Department contends the on-premises beer and wine permit and liquor-by-the-drink license for Hookah on the River’s should be revoked because: (1) Respondent’s business is permitting a public nuisance in violation of § 61-4-580(5); (2) the location is no longer suitable as defined § 61-4-520 and § 61-6-910; (3) Respondent’s business constitutes and immediate threat to the public’s health, safety, and welfare pursuant to § 1-23-370(C), § 12-60-1340, § 61-6-1820(2), and § 61-6-1830; and (4) Respondent’s business has failed to maintain a reputation for peace and good order in its community in violation of § 61-6-1820.

Respondent contends its permit and license should not be revoked. Respondent argues the other businesses surrounding Respondent’s premises are the cause of the incidents that have occurred. Specifically, it argues the concert venue next door to the premises, Exquisite Event Center, hosts rap concerts and, when those concerts end, the patrons spill into the parking lot and become unruly. It contends that problems arise when Respondent denies entry to those unruly patrons. Respondent further asserts no shooting occurred in its premises on the night of May 8, 2021. Instead, it asserts the incident was a hookah breaking on the floor. In addition, Respondent

argues that the Sherriff's Department is targeting their business because other businesses in the area have violent incidents that occur on their premises, but their licenses are not being revoked.

#### Beer and Wine Permit

Section 61-4-580(A)(5) prohibits the holder of a beer or wine permit from “knowingly” permitting “any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State.” S.C. Code Ann. § 61-4-580(A)(5) (Supp. 2020). A violation of section 61-4-580 “is a ground for the revocation or suspension of the holder's permit.” § 61-4-580(B). The Department argues Respondent has knowingly permitted acts that tend to create a public nuisance in violation of section 61-4-580(A)(5).

To constitute a public nuisance, the nuisance must be located in a public place where the public frequently congregates or where members of the public are likely to come within the range of its influence. *Neal v. Darby*, 282 S.C. 277, 318 S.E.2d 18 (Ct. App. 1984). “The difference between a public nuisance and a private nuisance does not consist in any difference in the nature or character of the thing or activity itself.” *Home Sales, Inc. v. City of North Myrtle Beach*, 299 S.C. 70, 81, 382 S.E.2d 463, 469 (Ct. App. 1989). In other words, “[a] nuisance is public because of the danger to the public which might have been created.” *Id.* Further, a public nuisance it is not based on “the number of persons annoyed, but the possibility of annoyance to the public by invasion of its rights, the fact that it is in a public place and annoying to all who come within its sphere.” *Belton v. Wateree Power Co.*, 123 S.C. 291, 115 S.E. 587 (1922). Finally, whether an act(s) constitutes a nuisance depends upon the facts of the case and “no definite rule can be laid down for the determination of the question.” *Winget v. Winn-Dixie Stores, Inc.*, 242 S.C. 152, 160, 130 S.E.2d 363, 367 (1963).

Section 61-4-580(A)(5) also requires the act creating the public nuisance to be knowingly permitted. The term “knowingly” includes not only actual knowledge but also knowledge that could be gained by reasonable inquiry when the circumstances are such as would cause a prudent man to inquire. *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 26 S.E.2d 22, 25 (1943). A person may also be found to act “knowingly” where it appears that the person “[shut] his eyes to avoid knowing what would otherwise be obvious.” *State v. Thompkins*, 263 S.C. 472, 484, 211 S.E.2d 549, 554 (1975). Furthermore, the permittee is responsible for the acts of his servants, agents, or employees and cannot seek to avoid the consequences of a violation for lack of personal knowledge. *See, e.g., Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306,

309, 257 S.E.2d 496, 497 (1979) (“It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority.”). Our Supreme Court has also approved the following language describing the knowing permittance of a public nuisance:

Although the defendants may have a license for the sale of wine and beer, and the drinking of it on the premises violates no statutory law, they have no right to habitually allow the assembling in and around the Circle Bar of noisy, drunken, boisterous crowds, whose noise and profanity disturb the peace and quiet of the public coming within the range of its influence. One who knowingly suffers or permits such conduct commits a public nuisance.

*State v. Turner*, 198 S.C. 487, 18 S.E.2d 372, 375 (1942). The Supreme Court likewise approved the following language: “If one maintains a place where people are allowed to frequent for immoral purposes, such a place would be a common or public nuisance, because it is a criminal offense and affects the happiness, the tranquility and the morals of the community. And it is not necessary that such a place for such purposes be conducted openly or notoriously to constitute a nuisance.” *Id.* at 487, 18 S.E.2d at 376.

I conclude the evidence shows Respondent’s business knowingly permitted acts that tend to create a public nuisance in violation of § 61-4-580(A)(5). Since January 2021, Richland County Sheriff’s Department has responded to over 100 calls at Respondent’s location for increasingly violent incidents to include assaults, weapon law violations, and shootings. Two of these incidents resulted in persons being shot: on May 2, 2021, law enforcement discovered a security guard from Respondent’s business had been shot in the head, and on May 8, 2021, a patron was shot in the stomach inside Respondent’s establishment. The incidents taking place at Respondent’s business are violent, frequent, and incontrovertibly dangerous to the public because, although Respondent’s business is privately owned, it is located in a shopping center, which is a place where the public is likely to gather and does gather. *See Home Sales, Inc.*, 299 S.C. at 81, 382 S.E.2d at 469 (holding “[a] nuisance is public because of the danger to the public which might have been created”).

Indeed, the evidence shows the business draws public crowds that are often large and unruly. Sergeant Torres and Corporal Hawkes classified Respondent as a “problem” location due to the large number of calls and crowds at its business. Similarly, Corporal Hawkes responded to a call from Respondent’s business about an unruly crowd at approximately 3:00 a.m. on February 7, 2021. And, on May 2, 2021, the crowd was so large and out of control that law enforcement had to call in extra units and could not track down the shooter. Therefore, the evidence shows that

members of the public frequently congregate at Respondent's location and are "likely to come within the range of its influence." *See Neal*, 282 at 277, 318 at 18.

Moreover, that Respondent suffers the presence of large, unruly crowds on a regular basis is indicative of its knowing permission of the crowds and their activities. *See Turner*, 198 S.C. at 487, 18 S.E.2d at 375. The crowds inside and outside the establishment have engaged in numerous criminal acts, like assaults and weapons violations, as documented by the Sheriff's Department's numerous incident reports. Respondent is clearly aware, or "knows" of the criminal activity occurring at its premises because it has discussed the issue with law enforcement and even admitted the crowd was chaotic during certain incidents. However, despite Respondent's discussions with law enforcement about how to curtail the criminal activity, those efforts have not reduced the frequency and severity of the activity. Thus, the issue is not whether Respondent is necessarily responsible for the criminal activity because Respondent knowingly approves or openly encourages it, but rather Respondent knowingly suffers its continued occurrence at the location. *See Turner*, 198 S.C. at 487, 18 S.E.2d at 376 ("And it is not necessary that such a place for such purposes be conducted openly or notoriously to constitute a nuisance.").

Respondent's indifference to, if not acquiescence to, the criminal activity at its location is demonstrated by its failure to report the shooting that occurred on May 8, 2021.<sup>17</sup> It is also demonstrated by Respondent's inability to adequately prevent the presence of weapons on the premises. Oliver's testimony indicates he is aware that guns occasionally slip by security and are carried inside the premises by patrons, yet guns continue to be an issue at the location. For example, Respondent's security has lost their weapons when fighting patrons at the location and, recently, two guns were found in the floorboards inside Respondent's business. Additionally, the video footage from the incident on May 8, 2021, supports the Sheriff's Department's testimony that Respondent's security does a poor job patting down patrons and a patron could have slipped inside with a gun that evening.<sup>18</sup> Further, if Respondent was truly concerned about abiding by the law, and reducing criminal activity in concert with law enforcement, it would not regularly deny

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<sup>17</sup> Although Respondent may not have been aware of the specific individual who was shot at its location on May 8, 2021, it certainly should have been aware of shots being fired at its location based upon the reaction of its patrons and staff.

<sup>18</sup> It is also noteworthy that Higgins asserted his trained employees were not present on May 8, 2021. In fact, Respondent never confirmed who exactly was working as security that night but only that they had guards there.

law enforcement access to its business on numerous occasions, including when a patron was injured.

Respondent contends the surrounding businesses, and not Respondent's business, are responsible for the incidents creating the nuisance. However, Respondent only provided testimonial evidence about one business causing problems—Exquisite Event Center. Sullivan testified that on the night of May 2, 2021, a rap concert ended at the event center before the shooting occurred in the parking lot outside Respondent's business and suggested that a patron of the rap center likely caused the incident. Even if a rap concert occurred that night, the event center was not open and a concert was not on-going when the incident occurred and police arrived. Rather, Respondent's business was open and operating. Therefore, even if the shooter had originally come from the rap concert, Respondent's open business and its attendant unruly crowd provided the opportunity for the shooter to engage in a criminal act that put the public in danger.

Furthermore, Respondent did not present evidence, beyond conclusory arguments and speculation, that the event center was active when law enforcement responded to other incidents at Respondent's location. In contrast, multiple officers with the Sheriff's Department testified the event center is typically not open when they respond to calls at Respondent's business. Indeed, Corporal Hawkes was aware of only one concert being held at the event center. Further, since the Court issued the order granting the suspension of Respondent's permit/license pending the merits hearing, there has only been one call for service at the location, which is indicative of the Respondent's business being the cause of the criminal activities occurring in and around the location. Thus, I find the preponderance of the evidence indicates Respondent's business, and not the surrounding businesses, is the nuisance.

A further consideration when determining whether a business is a nuisance is whether it is a burden on law enforcement. *See Winget*, 242 S.C. at 160, 130 S.E.2d at 367 (holding that whether an act constitutes a nuisance depends upon the facts of the case and “no definite rule can be laid down for the determination of the question”). Normally, whether a location is a burden on law enforcement is discussed in the context of whether a location is “proper” or suitable for the *issuance* of a beer and wine permit. § 61-4-520(5) (“A retail permit authorizing the sale of beer or wine must not be issued unless: (5) The location of the proposed place of business of the applicant is in the opinion of the department a proper one.”); *Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 250, 317 S.E.2d 476, 478 (Ct. App. 1984) (upholding the denial

of a beer and wine permit because the location was “unsuitable” because it was in a “rural residential area, in close proximity to other residences, and . . . there have been law enforcement problems in the area”). Here, the Court is considering whether Respondent is in violation of its beer and wine permit, not whether Respondent should be issued a beer and wine permit. Accordingly, I do not find that whether the location is “proper” or suitable is necessarily the correct inquiry or ground upon which to determine this case.

Nevertheless, I find whether the location is a burden on law enforcement to be an inextricable factor in determining whether Respondent’s business is a public nuisance. It is inextricable because, when law enforcement is burdened by a location, its presence is removed from other locations, which leaves the public in those other locations more vulnerable. *See Home Sales, Inc.*, 299 S.C. at 81, 382 S.E.2d at 467 (explaining a “[a] nuisance is public because of the danger to the public which might have been created”). The testimony of the officers shows the nature of the calls coming from Respondent’s business and its reputation requires a heightened law enforcement response that removes officers from other areas of the community. In particular, Sergeant Torres testified the business is an unreasonable strain and burden on law enforcement, and she further explained that she typically requests units from another region to assist on calls to Respondent’s business and sometimes she asks the City of Columbia for help too. For example, during the incident on May 2, 2021, when Respondent’s security officer was shot in the head, officers from other regions and deputies from the City of Columbia were dispatched.

Based on all the above, I find Respondent has knowingly permitted acts that constitute a public nuisance to take place at its establishment in violation of § 61-4-580(A)(5).<sup>19</sup>

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<sup>19</sup> The Department also argues that by Respondent knowingly permitting acts that constitute a public nuisance, it has become an “immediate threat to the public’s health, safety, and welfare” pursuant to § 12-60-1340 and § 1-23-370(c). The Court agrees that the nature and frequency of the incidents at Respondent’s location are an “immediate threat to the public’s health, safety, and welfare”; however, this is not a ground for revocation on its own. Rather, it is a ground for summary suspension of a permit or license pending revocation. *See* § 12-60-1340 (providing “[a]nything else in this chapter notwithstanding, if the department determines that public health, safety, or welfare requires emergency action, it shall seek an emergency revocation order from the Administrative Law Court, pursuant to Section 1-23-370(c)”) ; § 1-23-370(c) (“If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered *pending proceedings for revocation* or other action.” (emphasis added)). In this case, the fact that Respondent’s business poses an immediate threat to the public’s health, safety, and welfare supports the Court’s conclusion that Respondent’s business is a public nuisance and supports revocation pursuant to § 61-4-580(B).

### Liquor-By-The-Drink License

Section 61-6-1820(2) provides an individual holding a liquor license must be of good moral character or, if a corporation or association, it must have “a reputation for peace and good order in its community, and its principals [must be] of good moral character.” S.C. Code Ann. § 61-6-1820(2). The Department contends that in knowingly permitting a public nuisance and creating an immediate threat to the public’s health, safety, and welfare, Respondent has sacrificed its reputation for peace and good order in the community in violation of § 61-6-1820(2).

The evidence established that Respondent does not have a reputation for peace and good order in the community.<sup>20</sup> Sergeant Torres’s and Corporal Hawkes’s testimony revealed that Respondent’s business is a “problem” location due to the large number of calls and crowds at its business. Again, the frequency and escalating severity of the incidents—over 100 calls for service since January—shows a pattern of criminal activity that frequently occurs at the location. Moreover, despite Oliver’s efforts to control the behavior of his patrons with armed security, security cameras, and pat downs, these security measures have been ineffective and, in the case of pat downs, appear to have been poorly executed. Weapons have been found in the floorboards of Respondent’s establishment, and Respondent also failed to report to law enforcement that a shooting occurred inside its premises on May 8, 2021. Although Respondent may not have been aware of the specific individual who was shot at its location on that date, it certainly should have been aware of shots being fired at its location based upon the reaction of its patrons and staff. Furthermore, Respondent’s contentions that the event center is the cause of the unruly crowds and incidents at its location are unpersuasive. The evidence reflects the Sherriff’s Department does not receive calls for service from the event center, and the event center is typically not open when they respond to calls at Respondent’s location.

Proper management also appears to be absent at Respondent’s business, creating more opportunity for incidents to escalate rather than being dealt with appropriately. Often, the manager was not present during the incidents reported by law enforcement. This kind of management is particularly concerning considering the frequency and type of criminal incidents that have taken place at the location. And, when law enforcement interacts with Respondent’s staff, not only is management usually absent, but both Corporal Hawkes and Sergeant Torres testified Respondent’s

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<sup>20</sup> Importantly, this finding reflects the reputation of the business and its location rather than Oliver’s personal reputation.

staff and patrons are hostile towards law enforcement. A hostile attitude does not reflect a willingness to work with law enforcement to promote peace and good order in the community.

Based upon the above reasons, and because I find Respondent's business is knowingly permitting a public nuisance (and a nuisance, by its very definition, is not compatible with peace and good order), I conclude Respondent does not have "a reputation for peace and good order in its community" in violation of § 61-6-1820(2).

### **Penalty**

The Department, and therefore this Court, has the authority to revoke Respondent's beer and wine permit and liquor-by-the-drink license upon finding Respondent has failed to comply with the requirements for the permit and license. S.C. Code Ann. § 61-4-580(B) (2009) (providing "a violation of any provision of [§ 61-4-580] is a ground for the revocation or suspension of the holder's permit"); S.C. Code Ann. § 61-6-1830(1) (2009) ("The department may suspend, revoke, or refuse to renew a license issued pursuant to subarticle 1 of this article upon finding that: (1) the applicant no longer meets the requirements of Section 61-6-1820."). Furthermore, where the General Assembly authorizes a range of alternatives for an administratively imposed penalty, the administrative fact-finder may set the amount of the penalty after a hearing on the dispute. *Walker v. S.C. ABC Comm'n*, 305 S.C. 209, 407 S.E.2d 633 (1991). In this case, I conclude Respondent has violated its beer and wine permit pursuant to § 61-4-580(A), and it has violated its liquor-by-the-drink license pursuant to § 61-6-1820(2). I further find that based on the severity of the violations, revocation is the correct penalty. § 61-4-580(B); § 61-6-1830(1).

### **ORDER**

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

**IT IS HEREBY ORDERED** that the on-premises beer and wine permit and business liquor-by-the-drink license for Agua Pina, LLC, d/b/a Hookah on the River are **REVOKED**.

**AND IT IS SO ORDERED.**

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Ralph King Anderson, III  
Chief Administrative Law Judge

June 28, 2021  
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



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Stephanie Perez  
Judicial Law Clerk

June 28, 2021  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,	)	Docket No. 21-ALJ-17-0143-CC <sup>1</sup>
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER ON RECONSIDERATION</b>
	)	
Agua Pina, LLC, d/b/a Hookah on the River,	)	
	)	
Respondent.	)	
_____	)	

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a Motion for Reconsideration (Motion) filed by Agua Pina, LLC, d/b/a Hookah on the River (Respondent or Hookah on the River). On June 28, 2021, after a hearing on the merits, the Court issued a Final Order revoking Respondent’s on-premises beer and wine permit and liquor-by-the-drink license for its location at 2700 Broad River Road, Suite B, Columbia, South Carolina. Respondent now moves this Court to reconsider its order pursuant to Rule 29(D) of the Rules of Procedure for the Administrative Law Court (SCALC Rules) and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). The South Carolina Department of Revenue (the Department) filed a Response in opposition to the Motion. Having thoroughly reviewed the parties’ filings, I do not find the Court misunderstood, failed to fully consider, or misapprehended any facts or arguments before it. Accordingly, the Court denies Respondent’s Motion.

**DISCUSSION**

SCALC Rule 29(D) provides that “[a]ny party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP.” Although Rule 59(e), SCRCP, does not use the words “motion for reconsideration,” it has long been viewed as providing for motions for reconsideration. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Typically, a motion for reconsideration is filed in two circumstances. First, it must be filed if a

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<sup>1</sup> The Court notes the caption has been amended to reflect the correct docket number. Furthermore, the caption was changed from an “IJ” designation (injunction type proceeding) to a “CC” designation (contested case). This change reflects the transition of the case from a determination of whether to temporarily suspend Respondent’s permit and license to a determination of whether to revoke its permit and license.

party seeks to preserve an issue for appellate review where an issue was raised to the trial court but not ruled upon. *Id.* at 24, 602 S.E.2d at 780. Second, a party may file a motion for reconsideration when the party “believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.*; *see also Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (“The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’”). Here, Respondent has filed its Motion based on the second circumstance and argues the Court made several errors in its Final Order. Citing to *Rouse v. Neilson*, 851 F. Supp. 717, 734 (D.S.C. 1994), the Department argues Respondent is improperly using its Motion to rehash the testimony and evidence that was previously presented. While the Court agrees that many of the issues raised by Respondent in its Motion simply reiterate the evidence presented at the hearing, Respondent has also taken issue with the burden of proof applied in this case, which is appropriate to argue in a motion for reconsideration. Each of Respondent’s issues raised in its Motion will be addressed in turn below.

### **Failure of Proof**

Respondent argues the Department failed to meet its burden of proof to show Respondent’s permit and license should have been revoked. Respondent contends that when the “moving party” fails to support its case through testimony from its own witnesses, the case should be dismissed.<sup>2</sup> More specifically, Respondent argues the Court should reconsider its order because the Department “failed to put up a single witness from the Department to prove its case.” Respondent dismisses the fact the Department subpoenaed four witnesses from the Richland County Sheriff’s Department and instead, insists that the Department has the responsibility to call a witness from its Alcohol and Beverage Licensing (ABL) section.

Upon a thorough review, the Court finds nothing it misunderstood or failed to consider in determining the Department met its burden of proof to show Respondent’s permit and license should be revoked. Indeed, nothing in our statutes or laws governing the burden of proof requires

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<sup>2</sup> Curiously, Respondent repeatedly refers to the Department’s “Motion” when making its argument. The Court presumes Respondent is referring to the Department’s case on the merits presented at the hearing and not the Department’s Motion for Emergency Suspension and Expedited Hearing that was previously resolved in this case. Furthermore, at the beginning of the hearing in this matter, the Court clearly questioned the procedural posture of this case, and the Department indicated the injunction was in response to the Motion for Emergency Suspension and that in this merits hearing, they were seeking revocation of the permit in relation to their determination issued on May 13, 2021. Respondent did not object to that purpose of the hearing.

the Department to put up a witness from their ABL section. The Department is only required, regardless of the source of its witnesses or evidence, to meet its burden of proof—a preponderance of the evidence. *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998) (“Absent an allegation of fraud or a statu[t]e or a court rule requiring a higher standard, the standard of proof in administrative hearings is generally a preponderance of the evidence.”). In this case, the Department subpoenaed four witnesses from the Richland County Sheriff’s Department and elicited testimony from each of them. Based upon the Court’s review of this testimony and the testimony from the two witnesses presented by Respondent, the Court determined the Department showed by a preponderance of the evidence that Respondent’s permit and license should be revoked. *See MRI at Belfair, LLC v. S.C. Dep’t of Health & Env’t Control*, 392 S.C. 314, 324, 709 S.E.2d 626, 631 (2011) (holding that “as the fact-finder, the ALC was free to make factual findings based on its view of the credibility and weight of the evidence”); *see also S.C. Dep’t of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 279, 731 S.E.2d 330, 337 (Ct. App. 2012) (“In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the de novo contested case proceeding.”). This is not a case in which the Department failed to produce any witnesses or present any evidence.

Similarly, Respondent contends it “appears unprecedented” for revocation to be ordered when “no witness from the Department of Revenue requested revocation or testified in support of it and the Sheriff’s Office did not request it.” It is unclear to the Court what purpose would be gained by a witness from the Department testifying that the Department is actually seeking revocation of Respondent’s permit and license. In fact, there simply is no dispute that the Department issued a final determination that Respondent’s permit and license should be revoked. Moreover, the Department’s legal counsel clearly made that argument throughout the hearing in this matter. If Respondent is seeking to aver that the Department is not the author of this enforcement action and, therefore, is here pursuing an enforcement action at the bidding of an invisible hand (presumably the Sheriff’s Department), Respondent failed to establish such nefarious conduct at the hearing. Finally, the Sheriff’s Department does not have the authority to revoke Respondent’s permit or license and, thus, it is not surprising witnesses from the Sheriff’s Department did not testify that they initiated the revocation proceedings. *See S.C. Code Ann. § 61-4-590(A)* (“The department has jurisdiction to revoke or suspend permits authorizing the sale of beer or wine.”); *S.C. Code Ann. § 61-6-1830(1)* (2009) (“The department may suspend, revoke, or

refuse to renew a license issued pursuant to subarticle 1 of this article upon finding that: (1) the applicant no longer meets the requirements of Section 61-6-1820.”).

Citing to *Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc.*, Respondent argues South Carolina law has long held that a party’s failure to call a witness within his control creates a presumption that the testimony would be harmful. 648 S.E.2d 585, 374 S.C. 171 (2007). First, I do not find this presumption applies here. The principle cited by *Gadson* relates to the presumption that a *defendant* who fails to testify raises an inference that his testimony would have been unfavorable to his position. *Id.* at 178, 648 S.E.2d at 589 citing *Crocker v. Weathers*, 240 S.C. 412, 126 S.E.2d 335 (1962)). The Department is not in the position of the defendant in this case. Moreover, as discussed by the South Carolina Supreme Court in another case cited by Respondent:

A litigant is not required to produce as a witness every person who may give evidence in his favor; and his failure to do so does not necessarily imply a design on his part to suppress the truth. Inference from the unexplained failure of a party to call an available witness that the testimony of such witness would have been unfavorable may be drawn only where, under all of the circumstances of the case, the failure to produce such witness creates suspicion of a wilful attempt to withhold competent testimony.

*Davis v. Sparks*, 235 S.C. 326, 334, 111 S.E.2d 545, 549 (1959). In this case, Respondent has presented no credible testimony tending to show, after a review of all the circumstances of the case, that the Department has willfully attempted to conceal the truth.

Respondent further asserts the Department’s witnesses from the Sheriff’s Department refused to testify whether the incidents at Respondent’s business warranted revocation of Respondent’s permit and license and, therefore, the Department’s case was deficient. First, whether revocation is warranted is a legal determination for this Court, not any particular witness. *See Walker v. S.C. ABC Comm’n*, 305 S.C. 209, 407 S.E.2d 633 (1991) (holding that where the General Assembly authorizes a range of alternatives for an administratively imposed penalty, the administrative fact-finder may set the amount of the penalty after a hearing on the dispute). Next, Respondent’s assertion that witnesses from the Sheriff’s Department would not comment on their opinion of the appropriateness of revocation is simply incorrect. Investigator Short specifically testified that he thought revocation of Respondent’s permit and license was appropriate based upon “the numerous calls and reports combined with the two shootings.” Tr. 38:1-6. Sergeant Torres similarly testified she supported revocation of Respondent’s permit and license based upon the

problems with alcohol, shooting, fights, and car break-ins at the location, just as she would support revocation at any location with a similar magnitude of problems. Tr. 80:25-82:10. In discussing her support of revocation, she also cited more than 102 times the Sheriff's Department had responded to Respondent's business since January of this year and the resources Respondent's business pulled from other areas. Tr. 87:13-19; 91:6-11. Corporal Hawkes similarly testified that he supported revocation. Tr. 176:6-12. Moreover, Corporal Hawkes clarified it is not a single incident that informs his support for revocation but rather "the totality of the circumstances." Tr. 179:19-180:10.

Respondent next argues none of the Department's witnesses testified Respondent's business (1) was a threat to public safety, (2) did not have a reputation for peace and good order, or (3) that revocation was an appropriate penalty. Again, these three conclusions are not simply factually conclusions, but legal determinations within the province of the Court based on the Court's analysis of the facts presented. A witness can testify to factual elements of these determinations, but ultimately it is up to the Court whether the facts show that a business is a threat to public safety or does not have a reputation for peace and good order. *See MRI at Belfair, supra*. For example, Sergeant Torres testified she would classify Respondent's business as a nuisance and a problem for the community and the Sheriff's Department. Tr. 64:2-7. Additionally, Sergeant Torres later stated Respondent's business was an imminent danger to the community. Tr. 113:12-24. It was unnecessary for Sergeant Torres to specifically testify "Respondent's business is a threat to public safety" for the Court to make such a conclusion based upon the totality of the facts presented.

Furthermore, although the Court recognizes Respondent had SLED-certified security guards who policed the exterior, made an effort to secure the interior of its location by frisking patrons and using metal detector wands, and had surveillance cameras, these security measures were ineffective. As a result, its business became a burden upon law-enforcement and the business did not have a reputation for peace and good order. The Court is unpersuaded by Respondent's argument that it misunderstood or failed to fully consider the Department's burden of proof in this matter. *See Elam*, 361 S.C. at 21, 602 S.E.2d at 780.

### **Revocation Standard**

Respondent poses the question, "What is the Standard for Revocation?" Respondent fails to assert the Court erred in interpreting or applying the standard for revocation. Instead,

Respondent cites to a litany of offenses committed at another bar that was not the subject of revocation in this case presumably to suggest that this other bar's permit and license should have been revoked if Respondent's permit and license were revoked. In merely referencing offenses committed at another bar, Respondent has failed to present a cogent argument supported by legal authority regarding how this Court misunderstood or failed to fully consider the standard for revocation. *See Elam*, 361 S.C. at 21, 602 S.E.2d at 780.

Nevertheless, in the Conclusion of its Motion, Respondent argues "[t]he ALC Order sets a precedent whereby a bar with SLED certified security guards policing the exterior, frisking and using metal detector wands, bouncers on the inside, and numerous surveillance cameras is subject to revocation – for the simple reason it was situated next to a rap club." The Court never concluded in its Order that Respondent's license should be revoked because it was located next to a rap club. Rather, the Court concluded Respondent's permit and license should be revoked because Respondent was in violation of § 61-4-580(B) and § 61-6-1820 and, based on the severity of the violations, revocation was the correct penalty under § 61-4-580(B) and § 61-6-1830(1). Thus, the standard for revocation was clearly cited to and applied in the Court's Order.

### **Burden on Law Enforcement**

Respondent argues this Court's order heavily relied on law enforcement testimony that the Richland County Sheriff's Department has been called to Respondent's location over one-hundred times since January 2021 when only five incident reports were entered into evidence. Respondent asks "Why?" these other ninety-five reports<sup>3</sup> were not entered into evidence. Respondent then poses several more questions ("Could the other 95 incident reports – which were in the Courtroom – have reflected calls regarding the rap concerts?") to suggest the Department did not introduce the other ninety-five reports because they (1) did not originate from calls to Respondent's business, but rather originated from other businesses in the area, or (2) would have validated Respondent's claims that the Sheriff's Department was targeting Respondent's business. Essentially,

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<sup>3</sup> The Court notes that Respondent incorrectly interchanges the phrase "calls for service" for "incident reports." Although the Sheriff's Department typically fills out incident reports for calls they receive, not every 911 call has a corresponding incident report. In fact, when Respondent's counsel questioned Sergeant Torres about them not receiving 102 "incident reports," Sergeant Torres responded saying, "I'm testifying that as calls for service, there was 102 times that I have personal knowledge, because I work for the Sheriff's Department—and I know that 102 times we've responded to your business for calls for service." Respondent's counsel then asked, "Okay. So it'd be 102 911 calls?" in which Sergeant Torres replied, "For service, yes." Tr. 87.24-88.9. Sergeant Torres later testified "[t]here's many incidents—there's over 50 incident reports that we have at your business . . ." Tr. 119.4-119.5.

Respondent argues the Department is covering up evidence that would have exposed their unequal, targeted treatment of Respondent's business. And, similar to its previous argument, Respondent contends South Carolina law clearly holds that a party's failure to introduce evidence creates a presumption that the evidence would be harmful. Respondent cites to *Davis v. Sparks*, in which the South Carolina Supreme Court considered whether to apply the following presumption and ultimately determined not to because there was no evidence to support its application:

In the absence of explanation, the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce, it not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him.

235 S.C. 326, S.E.2d 545, 547 (1959).

Like the South Carolina Supreme Court, I find no reason to apply this presumption here. I do not find the evidence was not equally accessible to Respondent. *See id.* The incident records were available to be subpoenaed, and it appears that they were subpoenaed by Respondent. At the hearing, Respondent indicated they did not receive the reports for Respondent's business testified to by Sergeant Torres but, when Sergeant Torres offered them to Respondent during the hearing, Respondent's counsel stated they "certainly would" want them but then continued to question Sergeant Torres and never followed up on the reports. Tr. 119:1-120:3. Interestingly, Respondent admits in the quoted parenthetical question above that these other reports were present and available in the courtroom, but Respondent did not elicit testimony about these reports although they were available. Moreover, as the South Carolina Supreme Court also noted in *Sparks*, the presumption should not be applied unless there is something in the circumstances of the case as a whole that would suggest the failure to produce evidence was a willful attempt to conceal the truth. *Id.* at 334, 111 S.E.2d at 549. Respondent has presented no credible evidence to make this Court suspicious of the Department's failure to introduce the evidence of the other ninety-five calls for service.

In sum, Respondent's argument, which merely attempts to raise doubt as to the true nature of the other ninety-five calls for service, appears to again challenge whether the Department met its burden of proof. However, Sergeant Torres, who testified that over one-hundred calls for service came in from Respondent's location since January 2021, had personal knowledge of the

number of calls.<sup>4</sup> The Department elicited testimony from three officers about five specific incidents out of those 102 calls for service, including two shootings within a two-week period. This testimony established, by a preponderance of the evidence, that Respondent's location has a pattern of requiring assistance from law enforcement on a frequent basis for increasingly violent incidents. In light of this evidence, it was unnecessary for the Department to elicit specific testimony for each of the 102 calls for service. Once the Department met its burden, Respondent had the burden to show the officers' testimonies were incorrect. Simply casting doubt on the officers' testimonies in this Motion with suppositions and unsupported hypotheticals does not meet this burden.

### **Incidents at Licensed Premises**

Respondent disputes the Court's findings regarding the two shootings at Respondent's business. First, Respondent contests the Court's finding that whether the shooter on May 2, 2021, was a patron of Respondent's business was "unclear," citing to the absence of testimony indicating the shooter ever stepped inside Respondent's place of business. Although the police officers who testified at the hearing stated they were unaware of a rap concert occurring the night of the shooting, Respondent contends a rap concert had ended at the event center next to Respondent's business earlier that night. However, at the time the shooting occurred, the event center was closed and Respondent's business was open. Moreover, the shooting occurred just outside of the entrance to Respondent's business. Based on this testimony, it is reasonable to conclude the shooter was a potential patron of Respondent's business, which was the only business open and which had drawn an large, unruly crowd.<sup>5</sup> However, since it was not clear if this shooter ever entered Respondent's business or not, the Court determined that whether the shooter was a patron of Respondent was unclear. Furthermore, whether the shooter actually entered Respondent's business was not a finding that was significant to the Court's determination. The shooting at the door of Respondent's

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<sup>4</sup> Respondent argues that oral testimony of the number of incident reports without the accompanying admission of the incidents reports constitutes inadmissible hearsay under rule 803(6) of the South Carolina Rules of Evidence. However, Respondent did not contemporaneously object to this testimony at trial and this issue cannot be raised for the first time in a motion for reconsideration. *See Johnson v. Sonoco Prod. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider.").

<sup>5</sup> Notably, Respondent's witness, Mr. Sullivan, who was at Respondent's business the night of the shooting testified that he was not aware if the shooter was a patron. Mr. Oliver, who was not at the location and night of the shooting, testified the shooter was not a patron. I simply did not find Mr. Oliver's testimony convincing.

business was a reflection of the violent activity that surrounded the operation of Respondent's business. The Court thus finds no reason to change this finding.

Respondent further contests this Court's finding that the shooter from the May 2<sup>nd</sup> incident was never identified. Respondent asserts it identified the shooter. Indeed, one of Respondent's employees, Sullivan, testified that after reviewing the video footage with the staff, one of Respondent's other employees identified the shooter from Facebook but Sullivan did not know who it was. Tr. 319-320:5. Whether an employee of Respondent ultimately identified the shooter does not inherently establish his identification was ignored by, or helpful to, the Sheriff's Department. At the time testimony was elicited in this case, the Sheriff's Department's case was ongoing, and no charges had been filed. Therefore, the Court finds no reason to change its finding that the shooter was not identified.

Respondent also contends the Sheriff's Department never interviewed Respondent's employees the night of the shootings on May 2, 2021, or on May 8, 2021. Indeed, Respondent's employee, Sullivan, testified that to his knowledge, the officers did not interview staff or the security guard regarding the shooting on May 2, 2021. Nevertheless, Sullivan also testified that "[t]hey briefly interviewed me the night of the incident. Asked me if I saw anything. At that time I didn't know anything, so." Tr. 322:12-18.

Interestingly, as to shooting incident on May 8, 2021, Respondent contends the Sheriff's Department did not interview staff the night of the shooting incident, while at the same time arguing no shooting occurred in its establishment that night. Nevertheless, Sullivan specifically testified that although "[he] wouldn't call it an interview[,] we were having dialogue when I was downloading the video." Tr. 328:14-16. Moreover, since Investigator Short was not asked about whether he interviewed Respondent's employees about the incident, the Sheriff's Department was never given an opportunity to explain that aspect of its investigation. However, what is clear is that an investigation took place. And that investigation was instigated by the statement of the victim in an emergency room that the shooting occurred inside Respondent's location. In fact, Richland County Sheriff's Department did not receive a call from Respondent's premises on May 8, 2021, which suggests Respondent failed to report the incident to law enforcement. Thus, the Sheriff's Department was not aware of the shooting until the hospital reported it to them the next day. In conclusion, Respondent's contention that the Sheriff's Department's did not conduct interviews with any of the staff regarding the shootings contradicts some of their own witnesses'

testimony and does not change this Court's analysis of the evidence. *See MRI at Belfair*, 392 S.C. at 324, 709 S.E.2d at 631.

Finally, Respondent disputes the Court's finding that a shooting occurred at Respondent's business on May 8, 2021. Respondent complains that only one video from outside the establishment was shown at the hearing, and the Department did not introduce or show the video from inside the establishment at the time of the shooting. Respondent argues the inside footage may have supported its contention that the commotion that night was the result of a large hookah falling over. However, as a witness from the Sheriff's Department testified, the cameras inside the club were focused on the cash registers and the bars, not the common areas of the club where people were using hookahs or the dance floor where most people were congregating. Tr. 37:17-23. Furthermore, the very videos Respondent is questioning are Respondent's own videos and, if Respondent believes these videos show a hookah falling, Respondent presumably could have introduced them.

Respondent similarly complains the Sheriff's Department did not introduce a video from their van parked outside Respondent's business the night of the shooting on May 8, 2021. Respondent claims the Sheriff's Department's testimony is suspect because, despite their contention that Jack Oliver was parked in front of the van obscuring its view, Jack Oliver was not there that night. However, the Sheriff's Department did not testify that Jack Oliver was present with his vehicle. Rather, the Sheriff's Department testified a Jack Oliver Pool & Spa truck was blocking the van's view. Tr. 58:11-22. No evidence was offered to dispute that testimony.

Overall, Respondent's complaints about the Department failure to show other videos from the night of the shooting do not change this Court's analysis of the evidence. *See MRI at Belfair*, 392 S.C. at 324, 709 S.E.2d at 631. The Department and Sheriff's Department acknowledged the other videos and explained why they were not useful to the investigation. The video that was entered into evidence shows the victim running out of the club clutching his stomach and supports the victim's statement that he was shot in the club. Finally, Respondent has failed to show the other video evidence disproves the evidence presented at trial.

#### **Interactions Between Law Enforcement and Respondent's Staff**

Respondent acknowledges the relationship between Respondent and law enforcement was not cordial but argues this fact does not support revocation. At the outset, this Court did not revoke Respondent's permit and license because its relationship with law enforcement was not cordial.

Nevertheless, although Respondent does not openly state it, Respondent suggests law enforcement was targeting Respondent's business by showing up at the premises unnecessarily and interfering with Respondent's business.<sup>6</sup> However, Respondent does not address testimony offered by the Sheriff's Department regarding the interactions between law enforcement and Respondent's staff. As this Court found in its Order, Corporal Hawkes has been denied access to Respondent's business numerous times, including one time when there was an injured patron inside the premises. Sergeant Torres and Corporal Hawkes also explained Respondent's staff and patrons are hostile towards law enforcement. The Court also found, after reviewing and weighing all the evidence produced at trial, that the evidence simply did not support Respondent's theory that it was being targeted by the Sheriff's Department. Employees of the Sheriff's Department also specifically denied that they were targeting Respondent's business, and the Court found their testimony credible. Furthermore, law enforcement's presence at the location was primarily a response to the criminal activity taking place at Respondent's location. Accordingly, none of the factual statements offered by Respondent in its Motion lead this Court to conclude it misunderstood or failed to fully consider the testimony in this matter; rather, the Court simply weighed the testimony differently than Respondent would have. *See Elam*, 361 S.C. at 28, 602 S.E.2d 780.

### **Miscellaneous**

Respondent contends this Court's order incorrectly notes that SLED-certified security no longer worked at the club the night of the disputed shooting. Respondent contends SLED-certified security was still employed but was not on duty that night. Respondent's representation of the Court's Order is erroneous. The Court found SC Security Protection was not present to secure the entrance of the business the date this shooting occurred and noted security was being provided by some other company. This finding is clearly supported by the record. Mr. Higgins of SC Security Protection specifically testified the last night his company worked for Respondent was May 2<sup>nd</sup>, the night of the first shooting. Tr. 343:16-344:7. Furthermore, this factual finding was only made to provide background and was not a determinative factor in the Court's decision.

Respondent also claims that "[c]learly crowds from rap concerts have caused problems for both Respondent and law enforcement." However, the evidence introduced at trial shows, at most,

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<sup>6</sup> As part of this contention, Respondent claims the Sheriff's Department directed Respondent's landlord that Respondent's should be evicted. This is not supported by the testimony, which shows the Sheriff's Department specifically declined to comment on whether Respondent should be evicted. Tr. 211:11-212:24.

that a rap concert took place at the event center next to Respondent's business earlier in the night before the first shooting. There was no testimony from law enforcement that a rap concert was taking place when they responded to any of the calls for service to Respondent's establishment. In fact, Corporal Hawkes is aware of only one concert being held at the event center. More importantly, the law enforcement officers who testified at the hearing explained that rap concerts at the event center next door have not caused problems for them or have been a source of calls for service.

### **Conclusion**

Overall, Respondent succinctly sums up its argument in its Conclusion in which it contends the "evidence that **was not** introduced . . . outweighs the evidence that **was** introduced." (emphasis added). At the outset, evidence that was not introduced obviously carries no probative weight and thus cannot outweigh evidence that was introduced, which may carry probative weight. Furthermore, as addressed above, the Department's choice not to call certain witnesses or enter certain reports or videos into evidence did not create a presumption that this evidence would have been adverse in the absence of any circumstances raising such a suspicion. *See Davis*, 235 S.C. at 334, 111 S.E.2d at 549. Here, after weighing the evidence as a whole and taking into consideration the credibility of the witnesses, the Court concluded the Department met its burden to show by a preponderance of the evidence that Respondent's permit and license should be revoked. Furthermore, simply because the Department had the initial burden of proof does not mean Respondent could sit back and contend that other evidence existed to support its case without any burden to mount its own defense. Respondent had the burden to undermine the Department's evidence or show its falsehood with competent evidence and this requires more than merely casting doubt based upon unsubmitted evidence. *Cf. Browning v. Browning*, 366 S.C. 255, 262, 621 S.E.2d 389, 392 (Ct. App. 2005) ("Once the moving party has made out a prima facie case, the burden then shifts to the respondent to establish his or her defense and inability to comply with the order."); *Daisy Outdoor Advert. Co. v. S.C. Dep't of Transp.*, 352 S.C. 113, 118, 572 S.E.2d 462, 465 (Ct. App. 2002) ("Once a party establishes a prima facie case, the burden of proof shifts to the opposing party."); 35B C.J.S. Federal Civil Procedure § 1417 ("In general, the burden of proof is on the party seeking the sanction. Once a defendant seeking sanctions puts forth a prima facie showing that the facts as known to the plaintiff prior to filing are not consistent with allegations in the complaint, the burden shifts to the plaintiff to explain that either the facts are not as they have

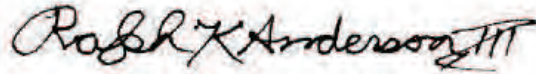
been presented or that, in spite of the facts, the circumstances at the time the pleading was filed justified making the allegations.”). Overall, nothing raised by Respondent in this Motion leads this Court to believe it misunderstood or failed to fully consider the evidence or law before it in this case. *See Elam*, 361 S.C. at 24, 602 S.E.2d at 780. The numerous calls for law enforcement combined with the escalating violence as reflected, in part, by two shootings justify the revocation of Respondent’s permit and license. Accordingly, Respondent’s Motion must be denied.

**ORDER**

Based upon the above,

**IT IS HEREBY ORDERED** that Respondent’s Motion for Reconsideration is **DENIED**.

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

July 22, 2021  
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



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Stephanie Perez  
Judicial Law Clerk

July 22, 2021  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.  
Columbia, SC 29210



PO Box 12265  
Columbia, SC 29211-9979

May 13, 2021

**VIA US MAIL**

Agua Pina, LLC  
d/b/a Hookah on the River  
Attn: Jack Oliver  
4666 Pamlico Circle  
Columbia, SC 29206

**Re: Agua Pina, LLC d/b/a Hookah on the River**  
**Application File Number: 102824393-PBW/PLB**

Dear Mr. Oliver:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$150.00 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

**The Administrative Law Court rules require that you also send me a copy of your request.** My address is as follows: PO Box 12265, Columbia, SC 29211-9979.

With my regards, I am

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick A. McCabe".

Patrick A. McCabe, Esquire  
Associate Counsel

PAM/hch  
Enclosures

R-040

STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.  
Columbia, SC 29210



PO Box 12265  
Columbia, SC 29211-9979

May 13, 2021

Agua Pina, LLC  
d/b/a Hookah on the River  
Attn: Jack Oliver  
4666 Pamlico Circle  
Columbia, SC 29206

Re: **Intent to Revoke- Department's Final Determination**  
**Licensee: Agua Pina, LLC d/b/a Hookah on the River**  
**License Number: 102824393-PBW/PLB**  
**Location 2700 Broad River Road, Suite B, Columbia, SC 29210**

Mr. Oliver:

It has come to the attention of the Department of Revenue (Department or DOR) Agua Pina, LLC d/b/a Hookah on the River (hereinafter "Hookah or "Licensee"), as the above stated Licensee, is permitting a public nuisance on the licensed premises in violation of S.C. Code Ann. §§ 61-4-580(5), 61-6-1820(2) and 61-6-1830. In addition, it appears that the Licensee has permitted the operation of the club so as to constitute an immediate threat to the public's health, safety, and welfare

This letter constitutes the **Final Determination** of the Department concerning these matters. In addition, you will find enclosed a Notice of Motion and Motion for Emergency Suspension, of the above stated licenses, to be filed contemporaneously with the South Carolina Administrative Law Court.

**Issues**

1. Is the location as suitable of proper location as defined in S.C. Code Ann. §§ 61-4-520 and 61-6-910?
2. Has the Licensee knowingly permitted acts that constitute a public nuisance in violation of S.C. Code Ann. § 61-4-580(5)?
3. Has the Licensee knowingly permitted acts that constitute an immediate threat to the public's health, safety, and welfare as prohibited under S.C. Code Ann. §§ 12-60-1340, 1-23-370, 61-6-1820(2) and 61-6-1830?

A handwritten signature in blue ink, appearing to be "M".

3. Has the Licensee knowingly permitted acts that constitute an immediate threat to the public's health, safety, and welfare as prohibited under S.C. Code Ann. §§ 12-60-1340, 1-23-370, 61-6-1820(2) and 61-6-1830?
4. Has the Licensee failed to maintain a reputation for peace and good order in the community under S.C Code Ann. § 61-6-1820(2)?
5. Is revocation the appropriate penalty for violations of §§ 61-4-580 and 61-6-1820?

### **Determinations**

1. The Department finds that the location is no longer suitable as defined in §§ 61-4-520 and 61-6-910.
2. The Department finds that the Licensee is permitting a public nuisance on the licensed premises in violation of §61-4-580(5).
3. The Department further finds that the location, as operated, constitutes an immediate threat to the public's health, safety and welfare. See §§ 1-23-370(C), 12-60-1340, 61-6-1820(2) and 61-6-1830.
4. The Department further finds that Licensee has not maintained a reputation for peace and good order in its community in violation of § 61-6-1820.
5. Revocation is the appropriate penalty for violations of §§ 61-4-580 and 61-6-1820.

### **Relevant Facts**

The Licensee possesses an on-premises beer and wine permit and restaurant liquor by the drink license under DOR Permit Number 102824393–PBW and License Number 102824393–PLB. (respectively).

1. Since October 23, 2020, deputies of the Richland County Sheriff's Office (RCSO) has had to respond to the location over fourteen (14) times for increasingly violent crimes at Hookah – either inside the location or outside in the parking lot of Hookah. During this time frame, there have been three incidents involving the use or discharge of a firearm; and two of these incidents resulted in members of the public being shot.
2. On November 18, 2020, deputies of the RCSO, who were conducting business license compliance checks, were initially denied entry by Hookah's staff. After gaining access, Hookah staff prevented RCSO from take photographs of the licenses.
3. On February 7<sup>th</sup> 2021, at approximately 03:00, RCSO responded to Hookah in reference to a disturbance at the front door. Upon arrival, deputies were informed that the crowd had grown



unruly and security believed that a fight would occur. Deputies contacted the crowd and advised everyone to leave because the club was closing. After the crowd began to disperse, security began to allow patrons to reenter the business. All responding units departed. At approximately 04:00 RCSO responded to Hookah for a disturbance inside the location. Upon arrival RCSO was informed that security had discharged “pepper spray” inside the location to disperse a violent crowd.

4. On February 11, 2021, at approximately 02:22, RCSO investigated the location due to the fact music was audible at more than 50 feet from the business. Upon arrival, the deputy spoke to security and asked to speak with the manager. Hookah’s “Public Relations Manager”, who refused to identify himself informed the deputy that the manager, Kierra Nelson, was not on the premises. The “Public Relations Manager” contacted the owner of the business Mr. Jack Oliver. The deputy explained to Mr. Oliver that the businesses music was audible more than 50 feet from the business. The deputy requested access to ensure that all COVID-19 guidelines were being followed. Mr. Oliver denied the deputy access to the business.
5. On May 2, 2021, law enforcement has responded to 2700 Broad River Road for the report of shots fired. Upon arrival, law enforcement witnessed numerous patrons of Hookah on the River’s patrons running away. Law enforcement canvassed the parking lot and discovered eleven (11) 9 millimeter shell casings. While law enforcement was investigating the first shooting, several more gunshots were heard from the parking lot. Law enforcement witnessed dozens of patrons running from the parking lot. As law enforcement secured the scene they discovered that a security guard of Hookah on the River had been shot in the head. Additional law enforcement was requested due to the large number of patrons crowding the scene.
6. During the week of May 3, 2021, Sheriff Lott and Major Harry Polis met with Hookah’s management. Management expressed a desire to work with the Department to curtail violent criminal activity on the premises.
7. However, on May 8, 2021, law enforcement responded to Prisma Richland Hospital in reference to a shooting victim. Upon arrival law enforcement made contact with the victim. The victim stated that he was at Hookah on the River with a couple friends when there was some type of commotion inside the club and then he was hit in the stomach with a bullet. Hospital staff confirmed the victim’s wound was the result of a gunshot (the bullet remained inside the victim).
8. No calls for service were made from Hookah on the River on the evening of May 8, 2021. The victim stated that someone from Hookah on the River drove him to the hospital after he was shot.

## **Discussion**

### **I. The Location Is No Longer A Suitable Or Proper Location**



The Department reiterates the foregoing (in the discussion of Items 1, 2, 3, 4 and 5) to the same extent as if repeated herein verbatim. The fact that the operation of Licensee constitutes a public nuisance, and affects the public's health, safety, and welfare clearly demonstrates that the location of Licensee is unsuitable and is not a proper one. See §§ 61-4-520(5) and 61-6-910(2). Therefore, in accordance with § 61-6-920, the Department intends to revoke Licensee's permit and license.

**II. The Licensee Has Knowingly Permitted Acts That Constitute A Public Nuisance In Violation of § 61-4-580(5).**

A "public nuisance" is defined in Black's Law Dictionary as "an unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property . . . ." (emphasis added).

Section 61-4-580 provides, in pertinent part:

No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

(5) permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State . . . . A violation of any provision of this section is a ground for the revocation or suspension of the holder's permit.

The Department finds the existence of a public nuisance based on the information supplied by the Richland County Sheriff's Department. This information shows that law enforcement officers have had to respond to numerous complaints of crimes and violent incidents. Several of the incidents have been life-threatening. These incidents are criminal and have plainly created a public nuisance. These incidents obviously affect the public's health, safety, and welfare – and as such constitute a public nuisance.

Moreover, the circumstances of this case show that the Licensee has acted knowingly in permitting the nuisance. "The term Knowingly is defined as including, not only actual knowledge of the contents of the subject matter of the material, but also knowledge of its contents which could have been gained by reasonable inspection, when the circumstances are such as would have put a reasonable man on inquiry." State v. Thompkins, 263 S.C. 472, 211 S.E.2d 549, 554 (1975) (citing



Feldman v. South Carolina Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943)). One who “shuts his eyes to avoid knowing what would otherwise be obvious” may be deemed to knowingly violate the statute. Id. In short, the statutory definition of “knowingly” includes both (1) actual knowledge of the subject matter, and (2) “situations where a person has such information, or the circumstances are such, as would lead a prudent man to form a belief as to the subject matter of the material, and if followed by inquiry would have disclosed its character.” Id. Here, a man was shot inside the licensed premises. The Licensee’s failure to report a shooting inside its location to law enforcement indicates the Licensee’s knowledge and acquiescence of crimes occurring on the licensed premises. Furthermore, the victim’s statement that someone from the Licensee’s establishment transported him to the hospital instead of contacting emergency services indicates the Licensee will risk the wellbeing of a patron rather than report a shooting to the police.

Accordingly, the Department intends to revoke the permit and licenses of Agua Pina, LLC d/b/a Hookah on the River, in accordance with the provisions of S.C Code Ann. § 61-4-580.

### **III. The Operation Of The Licensee’s Business Constitutes An Immediate Threat To The Public’s Health, Safety And Welfare.**

The Department reiterates the foregoing (in the discussion of Item 1) to the same extent as if repeated herein verbatim. As demonstrated by the repeated acts of unlawfulness committed upon the licensed premises, and more specifically, the Licensee’s continued unwillingness or inability to provide adequate security, or otherwise control its patrons –two people have been shot. There have been three incidents involving the use or discharge of a firearm; and two of these incidents resulted in members of the public being shot. Clearly this constitutes a threat to the public health, safety and welfare.

### **IV. The Licensee No Longer Has A Reputation For Peace And Good Order In The Community As Required By § 61-6-1820(2).**

The Department reiterates the foregoing (in the discussion of Item 1) to the same extent as if repeated herein verbatim. With respect to the Licensee’s liquor by the drink license, Section 61-6-1820(2) requires that an entity holding a liquor by the drink license have “a reputation for peace and good order in its community, and [that] its principals [be] of good moral character.” Failure to meet this requirement constitutes grounds for revocation of the license. S.C. Code Ann. § 61-6-1830.

The Department finds, based on the foregoing incidents, that not only are these incidents criminal and have plainly created a public nuisance, but furthermore that these incidents clearly affect the public’s health, safety, and welfare. In permitting a public nuisance, the Licensee has sacrificed its reputation for peace and good order in the community. To do so constitutes a violation against its liquor by the drink license. A reputation for peace and good order is required to maintain liquor by the drink license, as is the good moral character of a corporation’s principals. S.C. Code Ann. § 61-6-1820(2); see S.C. Code Ann. § 61-6-1830(1).

### **V. License Revocation Is The Appropriate Penalty In This Case.**



The Department is charged with the responsibility of administering the statutes and regulations governing alcoholic beverages. S.C. Code Ann. § 61-2-20. There is ample evidence that the licensed location is frequently the site of criminal activity that constitutes a public nuisance and puts the public's safety, health, and welfare at risk. The continued sale of liquor, beer and wine at this location will only increase the danger to the public and the community. Accordingly the Department intends to revoke the license and permit of Agua Pina, LLC d/b/a Hookah on the River and demand is made for the immediate surrender of same to the Department.

Specifically, the Department is authorized to revoke a license to sell beer and wine where the Licensee knowingly permits criminal acts, or acts that constitute a public nuisance. S.C. Code Ann. § 61-4-580. Moreover, the Department is authorized to revoke a liquor by the drink license if the Licensee no longer meets the requirements of S.C. Code Ann. § 61-6-1820 (discussed above) including the requirement that the Licensee's corporation maintain a reputation for peace and good order in the community. See S.C. Code Ann. § 61-6-1830(1). Likewise, where the location is no longer suitable or proper for the Licensee's business, the license and permit may be revoked in accordance with S.C. Code Ann. § 61-6-920. Where the licensee violates the restrictions or stipulations that are placed upon the license or permit, they may be revoked under the authority provided under S.C. Code Reg. 7-200.1(I). As the facts also support in the present case, the Department may also seek revocation "...upon the verified complaint by a local police official . . . ." S.C. Code Ann. § 61-4-590. Finally, the Department may further revoke or suspend all other licenses held by the license holder upon the finding that any license or permit held is the subject of a revocation or suspension matter - the significance of which is that upon a finding of any statutory or regulatory violation alleged above, any remaining license or permit may also be suspended or revoked. S.C. Code Ann. § 61-2-140(E).

In view of the extreme seriousness of the violations, and with ample statutory authority to revoke the licenses and permit for any one of the violations, the Department finds that the on-premises beer and wine permit, restaurant liquor by the drink license should be revoked. In addition, the Department will move the South Carolina Administrative Law Court for an Order of Emergency Suspension pending any requested hearing on the merits of this action.

If you wish to contest the Department's Determination, you must request a hearing before the Administrative Law Court. Your Request for a Contested Case Hearing must be filed and served within thirty days of the date of this letter. Your request must also be in accordance with the rules of the Administrative Law Court.

Your request for a hearing must be sent to the Administrative Law Court at the following address, and must be accompanied by your \$150.00 filing fee:

Administrative Law Court  
Attention: Clerk of Court  
Edgar Brown Bldg., Room 224  
1205 Pendleton Street  
Columbia, SC 29201

You must also send a copy of your request to:

S.C. Department of Revenue  
Attn: Patrick A. McCabe, Esq.  
P.O. Box 12265  
Columbia, SC 29211-9979

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick A. McCabe".

Patrick A. McCabe, Esq.  
South Carolina Department of Revenue  
Office of General Counsel  
Contact Number: (803) 898-5056  
Email Address: [Patrick.McCabe@dor.sc.gov](mailto:Patrick.McCabe@dor.sc.gov)

### Filing and Assignment of a Contested Case with the Administrative Law Court

Complete the Request for Contested Case Hearing and Certificate of Service form in its entirety. File the original by mailing it or hand-delivering it to the Administrative Law Court, along with a copy of the decision from the agency and the appropriate filing fee. Be sure to serve a copy of the Request on the agency which you are appealing as well as any other known parties or protestants. Your case will be deemed filed with Administrative Law Court upon receipt of your request and filing fee, and will normally be assigned to an administrative law judge within a week of filing. You should receive a Notice of Assignment within a few days of your case being assigned. The Notice of Assignment will have the case caption, docket number, date of filing and the name of the administrative law judge assigned to your case. Once your case has been assigned, all filings and questions regarding your case should be directed to the assigned judge.

Clerk's Office  
*South Carolina Administrative Law Court*  
1205 Pendelton St., Ste. 224  
Columbia, SC 29201

South Carolina Department of Revenue  
*Office of General Counsel, Tax, and  
Regulatory Services*  
PO Box 12265  
Columbia, SC 29211

**South Carolina Administrative Law Court (SC ALC)**  
**Request for Contested Case Hearing FORM**  
**Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201**

Last Name:	First:	Middle:	<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs.	<input type="checkbox"/> Miss <input type="checkbox"/> Ms.	Docket No. (To Be Completed by ALC)
Mailing Address:			City:	State and Zip:	
Home Number:	Work Number:	Cell Number:	*E-Mail Address:		

\*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

**REPRESENTATION**

Are you representing yourself? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you represented by an Attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No	Name of Attorney:
Attorney Mailing Address:	City, State and Zip:
Attorney Work Number and Cell Number:	Attorney E-Mail Address:

**CASE INFORMATION**

**Name of Agency that Issued the Decision:**  
 (Example – Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, **you must attach the agency decision.** Is it attached?:  
 Yes  No If no, please explain:

Date the decision was issued: \_\_\_\_\_ Date the decision was received: \_\_\_\_\_

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

**Payment via**  Check  Money Order  Cash for \$ \_\_\_\_\_ (applicable **filing fee pursuant to** ALC Rule 71) is being  
 submitted today to the Administrative Law Court via  U.S. Postal Service  Hand-delivery

**X** \_\_\_\_\_  
*Your Signature or Signature of Attorney*

\_\_\_\_\_  
*Date*

**PROOF OF SERVICE (MUST BE COMPLETED)**

Your Name:	Date:	City:	State:
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing <b>on all other parties</b> to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):			
_____ Name and/or Agency Name	_____ Address	_____ City, State and Zip	
_____ Name and/or Agency Name	_____ Address	_____ City, State and Zip	
_____ <b>X</b> <i>Your Signature or Signature of Attorney</i>		_____ <i>Date</i>	

**Attention:** All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website [www.scalc.net](http://www.scalc.net) or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

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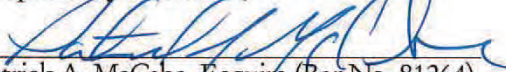
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2700 Broad River Road, Suite B, Columbia, South Carolina – either inside the location or outside in the parking lot of Agua Pina, LLC d/b/a Hookah on the River. During this timeframe there have been multiple incidents involving the use of discharge of a firearm. Two of these incidents resulted in members of the public being shot. The continued operation of this location, pending a hearing on the merits of this case, would be a threat to public safety. Where public safety, or welfare is imminently at risk, emergency suspension of the Respondent's on premises beer and wine permit, restaurant liquor by the drink license, and retail license is authorized by S.C. Code Ann. §§ 1-23-370(c) and 12-60-1340.

Therefore, the Department asks the Administrative Law Court to issue a finding that the public's health, safety, or welfare imperatively requires emergency action in this case, and accordingly order a summary suspension of the Respondent's on-premises beer and wine permit, restaurant liquor by the drink license at 2700 Broad River Road, Suite B, Columbia, SC 29210 until and in the event of a hearing on the merits of the Department's claims.

Respectfully submitted,

  
Patrick A. McCabe, Esquire (Bar No. 81264)  
Associate Counsel  
Jason P. Luther, Esquire (Bar No. 78021)  
Chief Legal Officer  
P.O. Box 12265  
Columbia, SC 29211-9979  
803-898-5056 (Telephone)  
803-896-0171 (Fax)  
[Patrick.McCabe@dor.sc.gov](mailto:Patrick.McCabe@dor.sc.gov)  
Attorneys for S.C. Department of Revenue

Columbia, South Carolina  
May 13, 2021

“EXHIBIT A”

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,	)	DOCKET NO. 21-ALJ-17-____-IJ
	)	
	)	
Petitioner,	)	
	)	
vs.	)	<b>AFFIDAVIT OF CAPTAIN STEVEN TAPLER</b>
	)	
Agua Pina LLC,	)	
d/b/a Hookah on the River,	)	
2700 Broad River Road	)	
Suite B, Columbia, SC 29210	)	
	)	
Respondent.	)	
_____	)	

PERSONALLY appeared before me Captain Steven Tapler, who being duly sworn, deposes and states that makes the following statement freely and voluntarily without threats or promises of reward:

1. I am a Captain for the Richland County Sheriff's Office. I have served Richland County for approximately fifteen years. I currently serve as the Captain of Region 4 which encompasses 2700 Broad River Road, Suite B.
2. As a result of the duties of my position, I have become very familiar with a business that operates within Richland County, South Carolina, known locally as Agua Pina, LLC d/b/a Hookah on the River and Lounge, located at 2700 Broad River Road, Suite B, Columbia, SC. I have personally spoken with the operators and patrons of the business, and have personally been to the location. Additionally, as a result of the duties of my position I am aware that Richland County Sheriff's deputies have responded to the location over fourteen (14) times in since October 23, 2020, for increasingly violent crime to include assaults, weapons law violations, or shooting incidents. Despite efforts by the Sheriff and/or his

deputies in conversations with the club ownership/management to take steps to curtail the criminal activity on the premises, the frequency and severity of situations requiring response by law enforcement persists. Due to the nature of the calls and the reputation of the Club, each law enforcement response tends to require multiple officers at the scene, thereby providing an ongoing, unreasonable strain upon the resources of Richland County Sheriff's Department.


3. On May 2, 2021, law enforcement has responded to 2700 Broad River Road for the report of shots fired. Upon arrival, law enforcement witnessed numerous patrons of Hookah on the River's patrons running away. Law enforcement canvassed the parking lot and discovered eleven (11) 9 millimeter shell casings. While law enforcement was investigating the first shooting, several more gunshots were heard from the parking lot. Law enforcement witnessed dozens of patrons running from the parking lot. As law enforcement secured the scene they discovered that a security guard of Hookah on the River had been shot in the head. Additional law enforcement was requested due to the large number of patrons crowding the scene.
4. During the week of May 3, 2021, Sheriff Lott and Major Harry Polis met with club ownership/management. Club ownership/management expressed a desire to work with the Department to curtail violent criminal activity on the premises.
5. However, on May 8, 2021, law enforcement responded to Prisma Richland Hospital in reference to a shooting victim. Upon arrival law enforcement made contact with the victim. The victim stated that he was at Hookah on the River with a couple friends when there was some type of commotion inside the club and then he was hit in the stomach with a bullet. The victim stated that someone from Hookah on the River bar drove him to the hospital.

Hospital staff confirmed the victim's wound was the result of a gunshot (the bullet remained inside the victim).

6. No calls for service were made from Hookah on the River on the evening of May 8, 2021.
7. Based upon my personal familiarity with the club's history and reputation, as well as a review of the law enforcement incident reports generated as a result of the criminal activity at the club, along with other information developed during the course of the investigation, it is my belief that the owner(s), proprietor(s), manager(s), licensee(s) and/or agent(s) and employees of the business known as Agua Pina, LLC d/b/a Hookah on the River (all collectively referred to hereinafter as "the Club") located at 2700 Broad River Road, Suite B, Columbia, South Carolina, by their ongoing failure and inability to control the behavior of its patrons and other who gather upon the licensed premises, the Club is permitting acts that tend to create a public nuisance, constitute crimes under the laws of South Carolina, and/or endanger the public safety and welfare. It is also my belief that the Club provides an atmosphere that is perceived as tolerant, thereby perpetuating the opportunity for criminal activities, including violence, to escalate.
8. Due to the repeated acts of violence and criminal activity at the Club's premises, it is my belief that the public's health and safety is in imminent danger and that emergency action is imperative in order to protect the safety and welfare of the citizens of Richland County, South Carolina.
9. Due to the incidents, criminal acts and public nuisance as set forth hereinabove, I believe that Agua Pina, LLC d/b/a Hookah on the River's on-premises beer and wine permit, restaurant liquor by the drink license and retail license at 2700 Broad River Road, Suite B


Columbia, South Carolina, must be immediately suspended in order to protect the public's health, safety and welfare.

Whereas the Deponent further sayeth not.

  
\_\_\_\_\_  
Captain Steven Tapler  
Richland County Sheriff's Office

SWORN to before me this

12 day of May, 2021

  
\_\_\_\_\_  
Notary Public for South Carolina

My commission expires: May 11th, 2026

“EXHIBIT B”

# RICHLAND COUNTY SHERIFFS DEPT

5623 TWO NOTCH RD COLUMBIA, SC 29223  
803-576-3000



Case #:2105007102

Incident #: 2105007102

## Event

### 2700 BROAD RIVER RD SC SOUTH CAROLINA 29210

Incident Description: AGGRAVATED ASSAULT  
Incident Start Date: 05/02/2021 03:19:00  
Incident End Date: 05/02/2021 03:25:00  
Reported Date: 05/02/2021 03:20:00  
Region: REGION 4  
Weapon Code:  
Case Status: ACTIVE  
Exceptional Clearance: NOT APPLICABLE  
How Reported:  
NCIC Entered: No  
Region: REGION 4, 15  
City: COLUMBIA  
NCIC Inquiry: No

## Suspects (1)

### UNKNOWN, UNKNOWN

Person Number: 00  
Apt/Rm/Bldg:  
County:  
Primary Phone:  
Email:  
Facial Hair:  
Misc ID Type:  
Suspected Of Using: Not Applicable  
Occupation Code/Description:  
Ste/Bldg:  
Email/Website:

# RICHLAND COUNTY SHERIFFS DEPT

5623 TWO NOTCH RD COLUMBIA, SC 29223

803-576-3000



Case #: 2105007102

Incident #: 2105007102

## Victim (1)

### WALKER, TIMOTHY

Victim Type: PERSON / INDIVIDUAL (NOT A LAW ENFORCEMENT OFFICER)  
Person Number: 01  
DOB: 08/07/1987  
Age: 33  
Race: BLACK OR AFRICAN AMERICAN  
Sex: MALE  
Ethnicity: NOT HISPANIC OR LATINO  
Agg Assault Circumstances: UNKNOWN CIRCUMSTANCES  
Injuries: Other Major Injury  
Address: UNKNOWN  
Primary Phone: (000)-000-0000  
Email:  
SID Number:  
Suspected Of Using: Not Applicable  
Email:  
Email/Website:

## Witness Of Incident Data (1)

### HOOKAH LOUNGE

Business Number: 01  
Address: 2700 BROAD RIVER RD  
Ste/Bldg:  
State: SC SOUTH CAROLINA  
Zip Code: 29210  
County: 40 RICHLAND  
City: COLUMBIA

**RICHLAND COUNTY SHERIFFS DEPT**

5623 TWO NOTCH RD COLUMBIA, SC 29223

803-576-3000



Case #:2105007102

Incident #: 2105007102

**Offenses (1)**

<b>Counts:</b>	1
<b>Attempted/Completed:</b>	Completed
<b>Units Entered:</b>	
<b>Bias Motivation:</b>	NOT A BIAS MOTIVATED INCIDENT
<b>Premise Type:</b>	BAR/NIGHTCLUB/LOUNGE
<b>Premise Type 2:</b>	PARKING LOT/GARAGE
<b>Offender Suspected of Using:</b>	Not Applicable
<b>Types of Criminal Activities/Gang Info:</b>	NO GANG INVOLVEMENT
<b>Weapon/Force Involved and Automatic:</b>	FIREARM
<b>Completed:</b>	Yes
<b>UCR/NIBRS Code:</b>	13A AGGRAVATED ASSAULT
<b>Felony/Misdemeanor:</b>	F FELONY

**Vehicle (0)**

**Style:**  
**Type Of Loss:**

**Property (0)**

**Drug (0)**

**Property Class:**

**Narrative (1)**

Bonds, Alston 1752

05/02/2021

Deputies were at 2640 Broad River Rd (Rush's) for a shooting incident that took place in the parking lot. While deputies were completing the call, deputies heard several gunshots coming from the parking lot of the Hookah Lounge, located directly across the street. Deputies ran to location as the shooting was happening. Deputies observed dozens of patrons running through the parking lot away from where the shots were being fired. Deputies were in the parking lot attempting to locate the shooter while shots were continuing to be fired. Deputies determined the suspect was running towards Broad River Rd while still actively firing, based on the sound of the gunshots. As deputies were closing in on where the shots were coming from, the shooting stopped and deputies were unable to determine who the suspect was due patrons fleeing the scene. While deputies were securing the scene we were informed that a security guard had been shot in the head. Cpl. Bonds and Dep. Wolfe located the security guard (Timothy Walker) laying on the ground in front of the front door of the Hookah Lounge. RCEMS was advised and responded to the scene. The victim was then transported to Prisma Richland Hospital. Dep. Wooten also responded

# RICHLAND COUNTY SHERIFFS DEPT

5623 TWO NOTCH RD COLUMBIA, SC 29223  
803-576-3000



Case #:2105007102

Incident #: 2105007102

to the hospital with the victim. The scene was then secured and a crime scene log was initiated. Due to the numerous patrons crowding the scene additional units were requested by Cpl. Bonds for crowd control. Region 3 deputies responded as well as several CPD units (case#210010896). CID Inv. Hinson responded to the scene and Inv. Raymond responded to the hospital. CSI Prichard responded to process the scene. No deputies were injured during the incident. No other victims were identified from the incident.

Author Name: Dep. A. Bonds  
Body Worn Camera: ON

### Officer (2)

Approving Officer:	Rosenberger, John (1626)	05/03/2021 02:47:55
Reporting Officer:	Bonds, Alston (1752)	05/02/2021 04:55:00

**RICHLAND COUNTY SHERIFFS DEPT**

5623 TWO NOTCH RD COLUMBIA, SC 29223

803-576-3000



Case #:2105005502

Incident #: 2105005502

**Event****2640 BROAD RIVER RD SC SOUTH CAROLINA 29210**

**Incident Description:** WEAPONS LAW VIOLATION  
**Incident Start Date:** 05/02/2021 02:35:00  
**Incident End Date:** 05/02/2021 02:37:00  
**Reported Date:** 05/02/2021 02:37:00  
**Region:** REGION 4  
**Weapon Code:**  
**Case Status:** ACTIVE  
**Change Date:** 05/03/2021  
**Exceptional Clearance:** NOT APPLICABLE  
**How Reported:**  
**NCIC Entered:** No  
**Region:** REGION 4, 15  
**City:** COLUMBIA  
**NCIC Inquiry:** No

**Suspects (1)****UNKNOWN,**

**Person Number:** 00  
**Apt/Rm/Bldg:**  
**County:**  
**Primary Phone:**  
**Email:**  
**Facial Hair:**  
**Misc ID Type:**  
**Occupation Code/Description:**  
**Ste/Bldg:**  
**Email/Website:**

**Victim (1)****STATE OF SC**

**Business Number:** 01  
**Victim Type:** SOCIETY / PUBLIC  
**Address:** 2640 BROAD RIVER RD  
**Ste/Bldg:**  
**State:** SC SOUTH CAROLINA  
**Zip Code:** 29210  
**County:** 40 RICHLAND  
**Phone 1:** (803)-576-3000  
**City:** COLUMBIA

**Offenses (1)**

**Counts:** 1  
**Attempted/Completed:** Completed  
**Units Entered:**  
**Bias Motivation:** NOT A BIAS MOTIVATED INCIDENT  
**Premise Type:** PARKING LOT/GARAGE  
**Premise Type 2:** RESTAURANT  
**Offender Suspected of Using:** Not Applicable  
**Types of Criminal Activities/Gang Info:** OPERATING/PROMOTING/ASSISTING  
**Weapon/Force Involved and Automatic:** FIREARM  
**Completed:** Yes  
**UCR/NIBRS Code:** 520 WEAPON LAW VIOLATIONS

**Vehicle (0)**

**Style:**  
**Type Of Loss:**

# RICHLAND COUNTY SHERIFFS DEPT

5623 TWO NOTCH RD COLUMBIA, SC 29223

803-576-3000



Case #:2105005502

Incident #: 2105005502

## Property (1)

### 11- 9MM SPENT SHELL CASINGS

Related To: UNKNOWN UNKNOWN  
 Quantity: 11.0000  
 Property Class: FIREARM ACCESSORIES  
 Latents Processing: No  
 DNA Processing: No  
 Drug Analysis: No

## Drug (0)

Property Class:

## Narrative (1)

Bonds, Alston 1752

05/02/2021

Deputies responded to the 2700 Block of Broad River Rd due to hearing shots fired coming from/near the location of Hookah Lounge and Rush's. When deputies arrived on scene there were numerous patrons of the Hookah Lounge running away. Once the scene was secured, deputies canvassed the area of the Hookah Lounge and Rush's. Deputies located eleven (11) 9mm spent shell casings in the back of the Rush's Parking lot. It did not appear that anything was struck by the gunfire. Deputies observed a surveillance camera at Rush's that points directly at the location of the gunfire. A manager with Rush's was contacted but did not know how to work the video. He stated he would speak to another manager on Sunday to try and pull the footage for investigation purposes. The shell casings were photographed and collected. The casings were submitted into the evidence drop box at Region 4 HQ.

Author Name:

Body Worn Camera: ON

## Officer (2)

Approving Officer:	Rosenberger, John (1626)	05/02/2021 05:28:12
Reporting Officer:	Bonds, Alston (1752)	05/02/2021 03:14:00

## Photo Data (1)

5/3/2021

<https://server24.rcsd.net/InformRMS/redactreport/1/1bb648ee-a6c4-c754-7d0c-08d90d4c9c89/1/1/Incident Default Summary Report//Infor...>



Description:

**Printed On 05/03/2021**

**Page 2 of 2**

**Printed By Stacey, Kathryn**

**RICHLAND COUNTY SHERIFFS DEPT**

5623 TWO NOTCH RD COLUMBIA, SC 29223  
803-576-3000



Case #: 2102002111

Incident #: 2102002111

**Event**

**2700 Broad River Rd SC SOUTH CAROLINA 29210**

Incident Description:	OTHER
Incident Start Date:	02/11/2021 02:21:37
Incident End Date:	02/11/2021 03:00:00
Reported Date:	02/11/2021 03:30:00
City:	COLUMBIA
Region Grid:	REGION 4, 15
Region:	REGION 4
Date Dispatch:	02/11/2021 02:21:00
Weapon Code:	
Case Status:	ACTIVE
Exceptional Clearance:	NOT APPLICABLE
How Reported:	
NCIC Entered:	No

**Misc. Associated Names Data (2)**

**Oliver, Jack**

Person Number:	1
Phone 1:	(803)-271-0080
Email:	

**Higgins, Ray**

Person Number:	2
Phone 1:	(843)-847-9605
Email:	

**Offenses (1)**

**000084 OTHER RESPONSES**

UCR/NIBRS Code:	990 OTHER
Attempted/Completed:	Completed
Completed:	Yes
Units Entered:	
Bias Motivation:	NOT A BIAS MOTIVATED INCIDENT
Offender Suspected of Using:	Not Applicable
Cargo Theft:	

**Vehicle (0)**

Style:  
Type Of Loss:

**RICHLAND COUNTY SHERIFFS DEPT**

5623 TWO NOTCH RD COLUMBIA, SC 29223  
803-576-3000



Case #:2102002111

Incident #: 2102002111

**Property (0)**

Property Class:

**Drug (0)**

Property Class:

**Narrative (1)**

Hawkes, John S1636

02/11/2021

On February 11th, 2021 at 02:22hrs I observed the business of *Hooka Lounge* to still be in operation. My attention was called to the business because of the loud noise emanating from the business; noise audible at more than 50 feet from the business on Rushmore Road. Upon arrival I made contact with two armed w/m's who were wearing security uniforms and explained they were the "outside security". I inquired as to the point of contact for their security company and was informed it was Ray Higgins. Mr. Higgins was not working, but could be reached at (843)847-9605. Higgins was the w/m individual that I encountered on February 7th who identified himself as working for SLED while wearing an assault rifle.

I requested the manager of the club come outside to speak with me and I was met by the business's "Public Relations Liaison" who did not give his name but did identify himself as a lobbyist. I was told that the manager's name is Kierra Nelson. I was then told she was not on the premises, but she would be back in 15 minutes. While waiting for Nelson i spoke to the Liaison and inquired if he knew what time the business was supposed to be closed. The liaison was not aware. I informed him that the business was supposed to be closed by midnight. When the liaison asked me to show him the Statute I explained that Governor McMaster's executive order, which was issued in 2020, was still in effect.

I briefly explained the guidelines which pertained to the serving of alcoholic beverages after 11pm, capacity guidelines. The liaison stated that they had not served any alcohol after 11pm. While we were speaking a scantily clad b/f walked by us and I inquired if that was Ms. Nelson. I was informed that she was the bartender and the other girls were referred to as "Hooka Angels". When i asked if the "angels" were simply cocktail waitresses, the Liaison confirmed it. The liaison denied the business was a bar and stated it was only a restaurant.

After nearly 30 minutes Nelson had still not returned and the liaison decided to contact the owner, whom he identified as Jack Oliver (803-271-0080). Mr. Oliver was explained the issues of the noise as well as the business hours per the state of emergency mandate. Oliver assured me the business had a valid liquor license and restaurant license. I requested to be allowed to view the license as it is supposed to be posted in the establishment in full view and available for inspection . I also requested to be allowed to enter the business to ensure all social distancing, 50% capacity guidelines, and Covid-19 guidelines were being adhered to. I was emphatically denied access to the business by the owner.

**RICHLAND COUNTY SHERIFFS DEPT**

5623 TWO NOTCH RD COLUMBIA, SC 29223  
803-576-3000



Case #:2102002111

Incident #: 2102002111

I made mention of the 50% capacity guideline under Executive Order 2021-07 which upheld previous orders from 2020. and I was assured that the business was adhering to all Covid-19 guidelines, especially only having 34 patrons inside since the maximum capacity was 68. The business was in serious violation over the weekend of February 7th, 2021 when there were hundreds of people in attendance inside the business.

At 0300 hrs I departed the location when the music was finally turned down.

Body Worn Camera: ON  
Author Name: Cpl. J. Hawkes

**Officer (1)**

Reporting Officer: Hawkes, John (S1636) 02/11/2021 02:21:37

**RICHLAND COUNTY SHERIFFS DEPT**

5623 TWO NOTCH RD COLUMBIA, SC 29223  
803-576-3000



Case #: 2102004407

Incident #: 2102004407

**Event**

**2700 Broad River Rd SC SOUTH CAROLINA 29210**

Incident Description: OTHER  
Incident Start Date: 02/07/2021 02:55:00  
Incident End Date: 02/07/2021 04:33:00  
Reported Date: 02/07/2021 04:45:00  
City: COLUMBIA  
Region Grid: REGION 4, 15  
Region: REGION 4  
Day of Incident: SATURDAY  
Date Dispatch: 02/07/2021 03:54:00  
Weapon Code:  
Case Status: ACTIVE  
Exceptional Clearance: NOT APPLICABLE  
How Reported:  
NCIC Entered: No

**Suspects (1)**

**Hooka Lounge**

Business Number: 1  
Address: 2700 Broad River Rd  
Ste/Bldg:  
State: SC SOUTH CAROLINA  
Zip Code: 29210

**Misc. Associated Names Data (1)**

**"Ray"**

Person Number: 1  
Age: 40  
To Age: 50  
Race: WHITE  
Sex: MALE  
Ethnicity: NOT HISPANIC OR LATINO  
Height: 507  
Weight: 175  
Hair Color: BALD  
Phone 1:  
Email:

# RICHLAND COUNTY SHERIFFS DEPT

5623 TWO NOTCH RD COLUMBIA, SC 29223

803-576-3000



Case #:2105013108

Incident #: 2105013108

## Event

### 2700 Broad River Rd SC SOUTH CAROLINA 29203

Incident Description: AGGRAVATED ASSAULT  
Incident Start Date: 05/08/2021 03:00:00  
Incident End Date: 05/08/2021 05:00:00  
Reported Date: 05/08/2021 10:47:57  
City: COLUMBIA  
Region Grid: REGION 4, 15  
Region: REGION 4  
Day of Incident: SATURDAY  
Date Dispatch: 05/08/2021 10:47:00  
Date Arrive: 05/08/2021 11:00:00  
Date Depart: 05/08/2021 12:00:00  
Weapon Code:  
Case Status: ACTIVE  
Exceptional Clearance: NOT APPLICABLE  
How Reported:  
NCIC Entered: No

## Suspects (1)

### Unknown,

Person Number: 00  
DOB:  
Apt/Rm/Bldg:  
Primary Phone:  
Email:

# RICHLAND COUNTY SHERIFFS DEPT

5623 TWO NOTCH RD COLUMBIA, SC 29223

803-576-3000



Case #:2105013108

Incident #: 2105013108

## Victim (1)

### GRANT, BRADLEY

Relationship To Offender: Unknown , RELATIONSHIP UNKNOWN  
Victim Type: PERSON / INDIVIDUAL (NOT A LAW ENFORCEMENT OFFICER)  
Person Number: 1  
DOB: 01/30/1990  
Age: 31  
Race: BLACK OR AFRICAN AMERICAN  
Sex: MALE  
Ethnicity: NOT HISPANIC OR LATINO  
Agg Assault Circumstances: UNKNOWN CIRCUMSTANCES  
Injuries: Other Major Injury  
Address: 40 Peachtree Valley Rd  
Apartment: 1609  
City: Atlanta  
State: GA GEORGIA  
Zip Code: 30309  
Primary Phone: (803)-414-6815  
Email:  
Resident Status: JURISDICTION  
Eye Color: BROWN  
Hair Color: BLACK  
Height: 602  
Weight: 145  
Suspected Of Using: Not Applicable

## Offenses (1)

### 000050 AGGRAVATED ASSAULT (LYNCHING,AFFRAY)

UCR/NIBRS Code: 13A AGGRAVATED ASSAULT  
Counts: 1  
Attempted/Completed: Completed  
Completed: Yes  
Units Entered:  
Bias Motivation: NOT A BIAS MOTIVATED INCIDENT  
Premise Type: BAR/NIGHTCLUB/LOUNGE  
Offender Suspected of Using: Not Applicable  
Cargo Theft:  
Types of Criminal Activities/Gang Info: NO GANG INVOLVEMENT  
Weapon/Force Involved and Automatic: FIREARM

**RICHLAND COUNTY SHERIFFS DEPT**

5623 TWO NOTCH RD COLUMBIA, SC 29223

803-576-3000



Case #:2105013108

Incident #: 2105013108

**Vehicle (0)**

Style:

Type Of Loss:

**Property (0)**

Property Class:

**Drug (0)**

Property Class:

**Narrative (1)**

Hampton, Emily 1868

05/08/2021

On the date and time above, R/O responded to Prisma Richland Hospital in reference to a shooting victim. R/O was informed by CPD that they had received a call of a shooting victim early this morning, but had been unable to ascertain where the incident occurred until much later. Upon arrival, R/O made contact with the victim, Mr. Grant. Vic was in ICU room 618 and stable, but groggy. The victim stated he had gone to the Hookah Bar with a couple friends, "Q" and Ricky Taylor. The victim stated he did not know what happened but he was inside the club, there was commotion and he felt that he had been shot in the stomach. The victim stated someone from the Hookah bar drove him to the hospital. The victim stated neither himself nor his friends were having any arguments with anyone and he did not know who could have shot him.

RCSD received no calls of shots fired or any shooting incident from the Hookah overnight.

R/O spoke with the nurse who stated the bullet was still inside the victim.

R/O advised Desk SGT Culp of the incident. R/O made contact with CID SGT Galinski and Inv. Guyon responded to the hospital.

The number listed for the victim is for his mother, Debra Grant, because CPD had already placed his phone and property into evidence and no one knew the number for his new phone.

Body Worn Camera: ON

Author Name:

**Officer (2)**

Reporting Officer: Hampton, Emily (1868) 05/08/2021 13:29:00

Approving Officer: Stoker, Robert (1497) 05/08/2021 18:52:56

# RICHLAND COUNTY SHERIFFS DEPT

5623 TWO NOTCH RD COLUMBIA, SC 29223

803-576-3000



Case #:2105013108

Incident #: 2105013108

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**RICHLAND COUNTY SHERIFFS DEPT**

5623 TWO NOTCH RD COLUMBIA, SC 29223  
803-576-3000



Case #: 2102004407

Incident #: 2102004407

**Offenses (1)**

**000084 OTHER RESPONSES**

UCR/NIBRS Code: 990 OTHER  
Attempted/Completed: Completed  
Completed: Yes  
Units Entered:  
Bias Motivation: NOT A BIAS MOTIVATED INCIDENT  
Offender Suspected of Using: Not Applicable  
Cargo Theft:

**Vehicle (0)**

Style:  
Type Of Loss:

**Property (0)**

Property Class:

**Drug (0)**

Property Class:

**Narrative (1)**

Hawkes, John S1636

02/10/2021

On February 7th, 2021 C-Squad Units responded to 2700 Broad River Road (Hooka Lounge) in reference to a disturbance at the front door. The initial response was requested at @ 0300 hrs. Upon arrival I was contacted by a member of security advising that the crowd had grown unruly at the door and thought they were going to have a fight. Units stayed by vehicles and monitored the situation since we were not engaged in providing security.

I was called away several minutes later to a Priority-1 call involving a weapon, but before i could leave I observed a w/m with a bald head (Later identified as RAY) emerge from the club carrying an AR-15 rifle across his chest. I asked "Ray" why on earth he was carrying a rifle inside of a crowded club. The w/m stated "I'm SLED, I work at SLED ... i'm doing security". I assumed by his statements that he was a SLED Agent and not a regular security guard employed by the business.

I had to leave the scene for another Priority-1 call, but returned quickly. Upon my return i was approached by a tall, slim, b/m wearing a bright yellow sweatshirt. I had seen him several times entering/exiting the club as maintenance or some kind of clean-up man. He advised me that people were causing a disturbance near the door. As I walked off to investigate the disturbance, I heard the b/m

**RICHLAND COUNTY SHERIFFS DEPT**

5623 TWO NOTCH RD COLUMBIA, SC 29223  
803-576-3000



Case #:2102004407

Incident #: 2102004407

tell me that the club was trying to close. We made contacted with the crowd and advised everyone to leave because the club was closing. After the crowd began to disperse, security began allowing patron to resume forming a line and allowing entry into the club. I explained that we were NOT on scene to provide security or "work the door" and RCSD Deputies were leaving. All units departed.

At approximately 0400 hrs RCSD Deputies were requested to return to the location for a disturbance inside the club. Upon arrival I was informed by the door man that security had discharged pepper spray inside the club. EMS arrived at almost the same time and was treating a patient in the parking lot, and later treated a young b/f for consuming too much alcohol and having an asthma attack; possibly induced by the pepper spray.

I notified security at the door that due to the public health hazard (inhalation hazard) caused by the pepper spray, the club was to close. I further explained that i would gladly have the fire department respond to close the business and ventilate the club as well. No manager or owner was on scene at the time of either response.

*I have responded to the location on previous occurrences to investigate noise complaints and requested to speak to the security director, the manager, or even the owner. Both times i was directed to the clubs "Public Relations Liaison" who made several attempts to contact the manager. I was told by whomever answered the phone that I could speak with the Public Relations Liaison.*

On both occasions we were called to the scene for assistance I observed customers carrying red plastic solo cups from inside the business, and scantily clad young b/f's entering and exiting the club . I did not see anyone bringing any alcohol or any beverages whatsoever into the club. I did not observed the club acting in compliance with Sexually Oriented Business (SOB) Laws and or Regulations. To my knowledge the business does not possess an On-premise Alcohol Sale, or On-Premise Consumption License. I was later informed that the business allows customers to bring their own alcoholic beverages into the club as no alcoholic beverages can be sold. I was also later updated that current Covid-19 Regulations require any public gathering type club/establishment not to be in operation after 12 o'clock pm/midnight.

Region 4 command staff was notified of this situation on February 8th, 2021

Body Worn Camera: ON  
Author Name: Cpl. J. Hawkes

**Officer (1)**

Reporting Officer: Hawkes, John (S1636) 02/07/2021 04:19:26

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,

Petitioner,

vs.

Agua Pina, LLC d/b/a Hookah on the  
River,


Respondent.

Docket Number: 21-ALJ-17-\_\_\_-IJ

**PROOF OF SERVICE**

I, the undersigned employee of the South Carolina Department of Revenue, do hereby certify that I have served a copy of the foregoing, **South Carolina Department of Revenue's Notice of Motion and Motion for Emergency Suspension and Expedited Hearing**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Agua Pina, LLC  
d/b/a Hookah on the River  
Attn: Jack Oliver  
4666 Pamlico Circle  
Columbia, SC 29206

  
\_\_\_\_\_  
Herman C. Harrington, Paralegal  
South Carolina Department of Revenue

Columbia, South Carolina  
May 13, 2021

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,

Petitioner,

vs.

Agua Pina, LLC d/b/a Hookah on the River  
2700 Broad River Road, Suite B  
Columbia, SC 29210,

Respondent.

Docket No.: 21-ALJ-17-0143-IJ

**RESPONDENT'S  
MEMORANDUM IN OPPOSITION  
TO PETITIONERS MOTION FOR  
EMERGENCY SUSPENSION**

**TO: THE HONORABLE JUDGE RALPH KING ANDERSON, III**

Agua Pina, LLC operates a restaurant located at 2700 Broad River Road, Suite B, Columbia, SC 29210, doing business as Hookah on the River (the "Respondent"). This matter results from the South Carolina Department of Revenue's (the "Petitioner") Motion for Emergency Suspension and Expedited Hearing (the "Motion") to suspend, and ultimately revoke Respondent's on-premises beer and wine permit and restaurant liquor by the drink license. Petitioner's basis for the suspension and revocation is that the public's health, safety and welfare imperatively require emergency action. The Petitioner alleges that the evidence it submitted with its Motion demonstrates that "Respondent permits acts which tend to create a public nuisance and/or constitutes a crime. Fights, and 'shoot-outs' *on the premises* are common occurrences." (Emphasis added.) However, as we explain below, Petitioner has not provided conclusive evidence of any shooting having occurred on Respondent's premises, and revoking a business's license on the basis of conflicting, and arguably misleading affidavits raises serious due process concerns.

The overwhelming majority of incidents cited by Petitioner occurred not on Respondent's premises, but rather in the common area of the shopping center in which Respondent is a tenant. Other tenants of the shopping center in which Respondent is a tenant, and which share the parking lot in which these incidents occurred include (1) a hip-hop concert and event center (the operation and ownership of which is unrelated to Respondent) that displays no signage, and attendees of which often confuse and conflate that business with Respondent's business; (2) a

Beer and Tobacco Outlet; (3) formerly, a video game lounge called “Gamerz”, where various crimes are alleged to have been committed; and (4) a “massage parlor” called Royal Massage Therapy, which is alleged to conduct a sexually oriented business.

Furthermore, the Parking lot in which these incidents occurred is directly across the street from Rush’s located at 2640 Broad River Road – this is important because the Richland County Sheriff’s Department, while investigating an alleged shooting in the parking lot at issue, found numerous spent shell casings evidencing that shootings actually occurred in the Rush’s parking lot, not the parking lot attached to Respondent’s Business. Although Captain Steven Tapler affies in his affidavit submitted with Petitioner’s Motion that shell casings were found in Respondent’s parking lot,<sup>1</sup> those shell casings were actually found in the Rush’s parking lot. See Incident Report # 2105005502 submitted with Petitioner’s Motion (“Deputies located eleven (11) 9mm shell casings in the back of the Rush’s Parking lot.”). At the very least, Captain Tapler’s affidavit is misleading, and contradicts the facts contained in the police reports also submitted with Petitioner’s Motion. Nevertheless, there is no indication that this event was a result of activities occurring in Respondent’s premises, and although partially occurring in the area adjacent to Respondent’s premises, this area is shared by numerous businesses, one of which is the hip-hop concert and event center that had just released its patrons from an event.

Another incident referenced in Petitioner’s Motion was the alleged shooting on May 8, 2021, for which the facts are a little unclear. The only evidence indicating a shooting occurred at all are the statements of Bradley Grant taken by the Richland County Sheriff’s Department at Prisma Richland Hospital. Petitioner most recently submitted an affidavit of Investigator Clay Short who claims to have been the responding officer to Prisma Richland Hospital who made contact with and took Mr. Grant’s statement. Investigator Short affies that

On May 8, 2021, I responded to Prisma Richland Hospital in reference to a shooting victim. Upon arrival, I made contact with the victim. The victim stated that he was on Hookah on the River with a couple of friends when there was some type of commotion inside the club and then he was shot in the stomach with a bullet. The victim stated that someone from Hookah on the River bar drove him to the hospital.

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<sup>1</sup> “On May 2, 2021, law enforcement has [sic] responded to 2700 Broad River Road for the report of shots fired. Upon arrival, law enforcement witnessed numerous patrons of Hookah on the River’s patrons [sic] running away. *Law enforcement canvassed the parking lot and discovered eleven (11) 9 millimeter shell casings.*” (Emphasis added.)

Based on the statement of Mr. Grant, *Investigator W. Guyon* from the Richland County Sheriff's Department obtained a Search Warrant for Respondent's premises. The Search Warrant is attached hereto as Exhibit A. The probable cause for the Search Warrant, which was affied to by Investigator Guyon, provides that

On 5/8/21, Deputy Hampton responded to Prisma Richland Hospital in reference to a victim suffering from a gunshot wound. Deputy Hampton arrived and made contact with the victim, Bradley Grant, who stated he had been shot once in the stomach while inside the business of *The After Hookah & Lounge* at 2700 Broad River Rd Columbia, SC 29201.

Richland County Sheriff's Department officers served Respondent with the Search Warrant and proceeded to Search the premises for "[a]nything of evidentiary value, known or unknown related to the assault on Bradley Brant, as reported under RCSD case #2105013108, to include but not limited to fired and unfired cartridge casings, blood, and video surveillance." Despite their best efforts, the search uncovered no conclusive evidence a shooting occurred, and Investigator Short does not claim in his affidavit that the Sheriff's Department has any evidence a shooting occurred; rather, he affies to what he believes happened even though he states the video evidence does not capture a shooting. Finally, the officers conducting the search and Respondent's employees watched the video surveillance footage together, and saw no evidence a shooting occurred, although it did show that there was commotion resulting from a physical confrontation that occurred. However, Respondent maintains that this was due to a pushing and shoving match in the club which resulted in bottles breaking, and which caused a commotion, but that after the event subsided patrons continued going about their business.

Furthermore, the Police Report for RCSD case #2105013108 (the "Report") provides that

On the date and time above, R/O [Emily Hampton] responded to Prisma Richland Hospital in reference to a shooting victim. R/O was informed by CPD that they had received a call of a shooting victim early this morning, but had been unable to ascertain where the incident occurred until much later. Upon arrival, R/O [Emily Hampton] made contact with the victim, Mr. Grant. Vic was in ICU room 618 and stable, but groggy. The victim stated he had gone to the *Hookah Bar* with a couple friends, "Q" and Ricky Taylor. The victim stated he did not know what happened but he was inside the club, there was commotion and he felt that he had been shot in the stomach. The victim stated someone from the

*Hookah bar* drove him to the hospital. The victim stated neither himself nor his friends were having any arguments with anyone and he did not know who could have shot him. . . . R/O [Emily Hampton] advised Desk SGT Culp of the incident. R/O [Emily Hampton] made contact with CID SGT Galinski and Inv. Guyon responded to the hospital.

The Report for RCSD case #2105013108 goes on to provide that the approving officer was Officer Robert Stoker, and that R/O Emily Hampton's body camera was on during the incident.

All this evidence taken together does not amount to conclusive evidence of a shooting inside Respondent's premises on May 8, 2021. Two documents, the Report and the Search Warrant, suggest that Officer Hampton and Investigator Guyon responded to the hospital to take Mr. Grant's statement; however, Investigator Clay Short affies, in the affidavit submitted by Petitioner to the Court on May 19, 2021, that he was the investigator who responded to the hospital to take Mr. Grant's statement. It certainly is plausible that both investigators responded to the hospital separately, and separately took Mr. Grant's statement, but it is questionable, especially since there is no mention of Investigator Short in any of the documents produced in the regular course of RCSD's operations.


Furthermore, in each of the three documents discussing the events of May 8, 2021, Respondent's premises is referred to by three different names (i.e., "Hookah on the River and Lounge" in Investigator Short's Affidavit, "The After Hookah & Lounge" in the Search Warrant, and the "Hookah Bar" in the Police Report). At the very least, it is questionable that these documents are even referring to the same location based on the statements taken, other than the fact each one refers to 2700 Broad River Rd., SC 29203, which is the address for a number of businesses in the shopping center where Respondent's premises is located.

Respondent is not unsympathetic to the concerns Petitioner and the Richland County Sheriff's Department have with protecting the community. In fact, Respondent's owner has attempted to work with the Richland County Sheriff's Department to provide security detail for its location after the Sheriff's Department expressed concerns about crime, has hired armed security for \$2,000 per night to pat down and wand (for detecting metal/weapons) each patron before they enter Respondent's premises (which has resulted in Respondent confiscating and turning over two firearms to the Sheriff's Department), and has taken every opportunity to cooperate with the Sheriff's Department. The fact that Respondent's security pats down and

wands each patron before they enter also makes it unlikely that a patron was able to enter with a firearm on May 8, 2021 and perform the shooting that was alleged to have taken place in Respondent's premises.

Respondent is not asking for the Court to dismiss this case, or to ignore the allegations made by Petitioner. However, Respondent does hope that this Court will allow it to continue operating until the Parties both have the opportunity to present evidence at a hearing on the merits scheduled for June 9<sup>th</sup>, 2021.

Respectfully Submitted,



---

Burnet R. Maybank, III  
Andrew W. Saleeby  
NEXSEN PRUET LLC  
1230 Main Street, Suite 700 (29201)  
Post Office Drawer 2426  
Columbia, SC 29202  
803.771.8900

Attorneys for Respondent  
Agua Pina, LLC d/b/a Hookah on the River

May 19, 2021  
Columbia, South Carolina

# EXHIBIT A

2021 MAY -8 PM 3:39

STATE OF SOUTH CAROLINA

County of Richland

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SEARCH WARRANT

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Date: 5 8 21.

Officer: Inv Guyon

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STATE OF SOUTH CAROLINA }

SEARCH WARRANT

COUNTY OF RICHLAND }

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF \_\_\_\_\_ :

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

2700 Broad River Rd, Columbia, SC 29210, Richland County (The After Hookah & Lounge)

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Anything of evidentiary value, known or unknown, related to the assault on Bradley Grant, as reported under RCSD case #2105013108, to include but not limited to fired and unfired cartridge casings, blood, and video surveillance.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable. In the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.  
May 8<sup>th</sup> 2021

Signature of Judge *Thier* 123  
7427

STATE OF SOUTH CAROLINA}

COUNTY OF RICHLAND }

AFFIDAVIT

Personally appeared before me, one Inv W Guyon who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County: Richland

DESCRIPTION OF PROPERTY SOUGHT

Anything of evidentiary value, known or unknown, related to the assault on Bradley Grant, as reported under RCSD case #2105013108, to include but not limited to fired and unfired cartridge casings, blood, and video surveillance.


DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

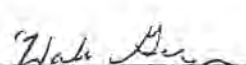
2700 Broad River Rd, Columbia, SC 29210, Richland County (The After Hookah & Lounge)

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On 5/8/21, Deputy Hampton responded to Prisma Richland Hospital in reference to a victim suffering from a gunshot wound. Deputy Hampton arrived and made contact with the victim, Bradley Grant, who stated he had been shot once in the stomach while inside the business of The After Hookah & Lounge at 2700 Broad River Rd Columbia, SC 29210. I/O responded to the hospital and spoke with Bradley, who was in the ICU at the time. Bradley stated he arrived at the lounge with two friends at approx. 0400 and that he was shot approx. 30 minutes later. Bradley's friend then drove him to Prisma Richland Hospital. The hospital has Bradley on record as being checked in there at 0455. The caliber of the firearm is unknown at this time and video surveillance for the lounge is believed to exist and will further the investigation. A search warrant is necessary in order to locate, protect, and obtain any evidence that will further this investigation.

Sworn to and Subscribed before me }  
this 8<sup>th</sup> day of May, 2021 }

 (L.S.)  
Signature of Judge T Ward 7427

  
Affiant


Address Richland County Sheriff's Department:  
5623 Two Notch Road, Columbia, S.C. 29223  
Phone (803) 576-3000

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,	)	
	)	Docket No. 21-ALJ-17- <u>0143</u> -IJ
Petitioner,	)	
	)	
vs.	)	
	)	<b>PROOF OF SERVICE</b>
Agua Pina, LLC d/b/a Hookah on the River	)	
2700 Broad River Road, Suite B	)	
Columbia, SC 29210,	)	
	)	
Respondent.	)	
<hr/>		

This is to certify that the foregoing **Respondent’s Memorandum in Opposition to Petitioner’s Motion for Emergency Suspension**, has been served upon Petitioner, South Carolina Department of Revenue via electronic and U.S. Mail, addressed as shown below, this 19<sup>th</sup> day of May, 2021:

Patrick A. McCabe, Esquire  
Associate Counsel  
Jason P. Luther, Esquire  
Chief Legal Officer  
South Carolina Department of Revenue  
PO Box 12265  
Columbia, South Carolina 29211-9979  
Patrick.McCabe@dor.sc.gov

  
\_\_\_\_\_  
Trudy Shealy  
Legal Assistant to Andrew W. Saleeby

Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,	)	Docket No. 21-ALJ-17-0315-IJ
	)	
Petitioner,	)	
	)	
v.	)	<b>RESPONDENT’S MOTION FOR</b>
	)	<b>RECONSIDERATION UNDER THE</b>
Agua Pina, LLC, d/b/a/ Hookah on the	)	<b>ALC RULE 29(D) TO ALTER OR</b>
River,	)	<b>AMEND UNDER SCRPC RULE 59(E)</b>
	)	
Respondent,	)	
	)	
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Pursuant to South Carolina Rule of Civil Procedure 59(e) and Rule 29(D) of the Rules of Procedure for the Administrative Law Court, Respondent, Agua Pina, LLC, requests that this Court reconsider and alter or amend a portion of its Order dated June 28, 2021 (“Order”), a copy of which is attached hereto as Exhibit A, which granted Petitioner’s Motion for Injunctive Relief. Respondent respectfully requests that this Court withdraw its Order to correct which Respondent submits is errors of fact and law as stated below.

A. Failure of Proof

The Order should be reconsidered because simply put, the Department failed to prove its case. Page one of the Order notes:

The matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a request for injunctive relief filed by the South Carolina Department of Revenue (Department) in relation to their determination issued on May 13, 2021. In their determination, the Department found Agua Pina LLC, d/b/a/ Hookah on the River (Respondent or Hookah on the River), who holds an on-premises beer and wine permit and a business liquor-by-the-drink license, knowingly permits acts that constitute a public nuisance, poses an imminent threat to public health, safety, or welfare, and lacks a reputation for peace and good order.

The Order similarly notes on page 10:

### **General Conclusions**

The Department issued a Final Determination finding Respondent is in violation of section 61-4-580(A)(5) of the south Carolina Code (Supp. 2020) because Respondent's business knowingly permits a public nuisance on the licensed premises. Furthermore, the Department found that Respondent's business constitutes an "immediate threat to the public's health, safety, and welfare" pursuant to § 1-23-370(C), § 12-60-1340, § 61-6-1820(2), and § 61-6-1830. The Department also found Respondent no longer has a reputation for peace and good order in the community in violation of § 61-6-1820. Finally, the Department also determined that revocation was the appropriate penalty for the violations of § 61-6-1820. Respondent challenges those determinations.

Paragraph 10 states that the Department is the moving party and bears the burden of proof.

The Order should be reconsidered for the simple reason the Department failed to put up a single witness from the Department to prove its case.

The Department's motion states conclusions of facts and law. Obviously the elements of the Motion must be proved at the substantive hearing and the Department was the moving party. The DOR's attorney (Tr. page 35, lines 7 – 9) plainly stated "the Sheriff's Office does not revoke licenses, that is the action of the Department of Revenue." The Motion states that the respondent's business constitutes an immediate threat to the public safety. Not a single witness from the Department so testified. The Motion states that the respondent no longer has a reputation for peace and good order. Not a single witness from the Department so testified. None of these conclusory allegations were supported by a single witness from the ABL section of the Department. When the

moving party fails to support its own case through testimony from its own witnesses the case should be dismissed.

The Sheriff's Office produced three witnesses who testified at length, principally on the burden of their office. All of their witnesses studiously testified, however, that they had not requested the Department to bring the revocation action. (One so testified after off-the-record counseling by the Sheriff's attorney.)

None of these witnesses testified that respondent's business (1) was a threat to public safety (although they testified as to the shootings); (2) did not have a reputation for peace and good order; or (3) that revocation was an appropriate penalty. To repeat, they all said they had not requested the Department bring the action.

When presented with the number of incidents at neighboring locations, they affirmatively stated that they would push for revocation only after a thorough analysis of the incidents. They never testified that the incidents at respondent's location justified revocation – to the contrary, they refused to do so. (Presumably they refused to do so as Respondent had subpoenaed the incident reports from three other establishments which were much more serious than Respondent's location and they had never requested the Department to revoke these licenses.)

The ALC has never granted a DHEC petition which alleged environmental violations and imposed penalties without a witness from DHEC testifying in support of the allegations.

The ALC has never ruled in favor of the DOR on a proposed assessment of taxes, interest and penalties without an auditor from the DOR testifying on why taxes and penalties are due. (There is the occasional case where all sides stipulate to the facts.)

The ALC has never ruled in favor of a County in a property tax matter where the assessor or auditor did not testify regarding valuation of the premises.

The ALC has never denied an insurance company a rate hike where no one from the Department of Insurance testified in opposition to it.

To repeat (for the third time) the Sheriff's Office testified regarding the shootings and burden on law enforcement but all their witnesses said they did not request the DOR file its motion.

And why did no one from the ABL section of the Department of Revenue testify in support of the injunction? Perhaps because they did not request the Petition? They did not support the Petition? They had not sought revocation against establishments with much worse records (e.g. USC football games with hundreds of incidents after each game?) The Department has no standards to file revocation actions? South Carolina law has long held that a party's failure to call a witness within his control creates a presumption that the testimony would be harmful. *See Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc.*, 648 S.E.2d 585, 374 S.C. 171 (2007) (The failure of a defendant to testify raises an inference that his testimony, if it has been submitted, would have been unfavorable to his position); *McCowan v. Southerland*, 168 S.E.2d 573, 253, S.C. 9 (1962) (Defendant's unexplained failure to testify, although facts were peculiarly within his knowledge, raised inference that his testimony would have been unfavorable to his position); *Crocker v. Weathers*, 126 S.E.2d 335, 240 S.C. 412 (1962) (Failure of defendants who were only parties present at time of automobile accident killing plaintiff's decedent to testify with respect to who had been driving raised inference that their testimony would have been unfavorable to their position); *Nelson v. Coleman Co.*, 155 S.E. 2d 917, 249 S.C. 652 (1967) (If party fails to produce testimony of available witness on material issue, it may be inferred that such testimony,

if presented, would have been adverse to him); *Hodges v. Hodges*, 133 S.E.2d 816, 243 S.C. 299 (1963) (Failure of wife suing for divorce to call as corroborating witnesses persons present when she alleged husband became drunk created strong presumption that, had they been called, they would not have corroborated her version); *Keller v. Provident Life & Acc. Ins. Co.*, 49 S.E.2d 577, 213 S.C. 339 (1948) (In suit against insurer to recover premiums on theory that no insurance contract was ever consummated, failure of insurer to produce as a witness the insurance agent who allegedly counter-signed policy warranted inference that his testimony if presented would have been unfavorable to insurer's contention); and *Mickle v. Dixie Sec. Life Ins. Co.*, 216 S.C. 168 (1948) (If a party fails to produce testimony of an available witness on a material issues it may be inferred that his testimony if presented would be adverse to the party who fails to call the witness.)

The failure of the DOR to produce a single witness from its ABL section to testify in support of the Department's Motion should result in dismissal of the litigation.

B. What is the Standard for Revocation?

McCary's Bar has had nine simple assaults, two disorderly conducts, five drug violations, two missing persons, six aggravated assaults (including four shootings), forcible rape, and numerous other violations. A summary of the Richland County Incident Reports is attached as Exhibit B. Since 2019, there has been a simple assault (1/6/19), simple assault (2/20/19), simple assault (2/23/19), aggravated assault (3/23/19), larceny (6/19/19), theft from motor vehicle (stolen gun) (6/22/19), aggravated assault (8/19/19), aggravated assault (murder) (8/22/19), narcotics (11/17/19), theft from motor vehicle (stolen gun) (12/21/19), simple assault (2/16/20); swindle, stolen car (5/1/21). The Sheriff's Department and the ALC order minimize the murder by noting it was self-defense, but this just means two people were trying to murder each other. This is hardly a defense. No one testified from the Department of Revenue why Respondent's license should be

revoked. What is the standard for Revocation?

C. Burden on Law Enforcement

The ALC Order was largely based upon the Respondent's burden on law enforcement. The ALC Order repeatedly noted that the respondent's burden on law enforcement was demonstrated in part because "Since January, 2021, Richland County Sheriff's Department has responded to over 100 calls at Respondent's location." (Order page 13. See also pages 3, 8 and 17.)

The Respondent's testified they called 5 times. The Order notes that "the Sheriff's Department does not receive calls for service from the event center, and the event center (Rap Venue) is typically not open when they respond to calls at Respondent's location."

When the Sheriff's Department receives calls they fill out an incident report. The Department entered some 5 incident reports into evidence – just five.

The Department failed to introduce into evidence the other 95 incident reports. Sgt. Torres testified she had the incident reports at the Courthouse. Yet neither she nor the other witnesses produced the incident reports nor testified from them. The witnesses were well prepared and obviously another over 95 incident reports would have been helpful to their case. Yet they were not introduced into the record. Why?

The ALC Order notes that the calls all originated regarding Respondent's location – and none in regards to the literally next door location. Significantly, the Sheriff's witnesses were not even aware of the rap venue.

Could the other 95 incident reports – which were in the Courtroom – have reflected calls

regarding the rap concerts? Could the incident reports have indicated trouble in the joint parking lot or at Rush's, which has nothing to do with Respondent's business? Could they have reflected calls regarding other neighboring businesses which had shootings? Could they have corroborated fake 911 calls? Respondent testified the Sheriff's Department frequently visited the location – including destroying his business on New Year's Eve without writing a single ticket or finding any violations.

Could the incident reports – or lack of any incident report – for these visits shed light on their frequent visits?

Respondent's New Year's Eve business was destroyed when several fire trucks arrived – even though the testimony was that no fire alarm was activated. Could the incident reports have validated this?

On November 18, 2020, 4 to 6 officers from the Tactical Action Squad came to check Respondent's business license (which was in order). On November 19, 2020 the Sheriff's Office parked in the parking lot. The Fire Department came in November or December of 2020. On December 2<sup>nd</sup> and 6<sup>th</sup> the Sheriff's Department set up a speed trap directly in front of Respondent's premises. On December 8, 2020, SLED sent undercover agents into the restaurant. On New Year's Eve December 31, 2020, both the Sheriff's Office and the Fire Department arrived and basically shut the business down. On January 17, 2021, the Fire Department conducted an inspection. On January 23, 2021, the Sheriff's Office parked in the Rush's parking lot. On February 11, 2021, the Sheriff's Department parked in the parking lot and incorrectly told Respondent he had to close. On February 6, 2021, the Sheriff's Office came and complained about noise from the DJ playing music. Respondent viewed these visits as harassment and not a single

ticket was issued or violation found. Were these included in the 102 incident reports?

The law in South Carolina is clear that the failure of a party to introduce evidence creates a presumption that the evidence would be harmful. As the Supreme Court stated in *A.F. Davis v. Sparks*, 235 S.C. 326, III S.E.2d 545, 547 (1959):

In the absence of explanation, the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce, it not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him. The most recent example of application of the rule by this court is *Amer. Mut. Fire Ins. Co. v Green*, 233 S.C. 588, 106 S.E.2d 265. Another recent case is *Matthews v. Nat. Fid. Ins. Co.*, 228 S.C. 124, 89 S.E.2d 95, citing *Robinson v. Duke Power Co.*, 213 S.C. 185, 48 S.E.2d 808.

*See Cato v. Atlanta & C.A.L. Ry. Co.*, 164 S.C. 23 (1931) (Railroad's failure to adduce data showing where car came from, and between what points it was used, gives rise to inference that car was employed in intrastate commerce.); *Wilcox, Ives & Co. v. Jeffcoat*, 135 S.C. 149 (1938) (Modification of requested charge that failure or refusal to produce evidence peculiarly within knowledge or control warrants inference that it would be unfavorable to such party's contention held erroneous.) and *Smith v. Southern Ry. Co.*, 121 S.C. 94 (1922) (Information as to the weight and market value of cattle which died in transit was necessary in the power of plaintiff shipper to furnish, and where it was withheld it will be presumed to have been detrimental.) *See Also Gathers v. SC Elec. and Gas Co.*, 427 S.E.2d 687 (1993) and *Kershaw County Bd. of Ed. v. US Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990) ("When a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party.)

#### D. Incidents at Licensed Premises

The ALC Order noted that two shootings "exemplify the escalating violence."

The first shooting – which all sides agree to – occurred on May 2, 2021. The unrefuted testimony was that the shooting occurred when the next door rap concert ended and the crowd flooded over to the parking lot at Respondent’s location. Respondent attempted to prevent the crowd from coming in, and perhaps as a response, a gang member was handed a pistol and shot the security guard. The Order (page 4) states that “it is unclear whether the shooter was a patron of Respondent.” There was *no* testimony the shooter ever set foot in Respondent’s location. This does not make the record “unclear.”

The Order states “the shooter was never identified.” The Respondent in fact identified the shooter, gave his name to the Sheriff’s Office, and further advised that he was singing at a rap concert two weeks later. Sullivan testified he called the Sheriff’s Office for updates and his calls were not returned. The shooter has apparently not been arrested and the Sheriff’s Office never interviewed any of Respondent’s witnesses.

The second incident occurred on May 8, 2021. The incident report stated that he said he was shot at Respondent’s location. The shooting allegedly occurred at 3:00AM and the victim did not arrive at the hospital until 4:55AM. The Sheriff’s Office took the inside video and looked for blood, shell casings and bullet holes. None were found. Deputy Short was asked (Tr. page 29, lines 15 – 19: “Was there any other evidence that was recovered from the Restaurant? A. No.” He was asked (Tr. page 37, lines 17 – 18) if the videos inside the club showed a shooting and he said “No.” Incidentally none of the inside videos which the Sheriff’s Office took through a subpoena were shown at trial. While no camera may have caught the actual alleged shooting they certainly would have recorded an altercation if there was a shooting – and may have supported Respondent’s contention that the altercation simply resulted from a heavy hookah falling to the floor. But none of these videos were shown at trial.

The Department relies on outside video footage showing a man clutching his stomach after leaving. The video apparently showed him running into a large rubber cone while leaving the establishment. The Sheriff's Office never interviewed any of the employees who were working that night.

The Sheriff's Office had a video camera truck parked in front but the Department never showed a single video. The Sheriff's office testified Mr. Oliver would park in front of it but he was not there at the time.

E. Interactions between Respondent's Staff and Law Enforcement have not been Cordial or Cooperative.

The Sheriff's Office has repeatedly visited Respondent's location in full uniform without any probable cause and no tickets or violations were issued. Such visits occurred as stated above.

The Sheriffs parked a clearly marked surveillance van for 3 – 4 months in Respondent's parking lot.

The Sheriff's Office on several occasions set up a speed trap on the road directly in front of Respondent's location.

The Sheriff's Office never interviewed any of the Respondent's employees regarding the shooting of the security guard. Respondent gave the name of the shooter to the Sheriff's Office and alerted them that the shooter was singing at a rap concert two weeks later. The Sheriff's Office never responded to the Security Manager's calls for updates. The shooter has still not been arrested.

The Sheriff's Office and the Fire Department destroyed Respondent's New Year's Eve business by bringing two fire trucks and Sheriff Department officers (who arrived first) into Respondent's parking lot on New Year's Eve notwithstanding that no fire alarm had been set off.

The Sheriff's Office incorrectly told Respondent that they had to close at midnight – even though multiple locations were open all around Respondent's establishment.

The Sheriff's Office directed Respondent's landlord that she should evict Respondent.

The Sheriff's Office – with one exception (rap concert with national gang member singing rap) turned a complete blind eye to the rap concerts next door – who may have been serving alcohol with no ABL permit.

Yes, the relationship was not cordial but this does not support a revocation action.

## CONCLUSION

Regrettably, there has been one undisputed shooting, and one disputed shooting in 2021. Clearly crowds from rap concerts have caused problems for both Respondent and law enforcement.

The ALC Order revoking Respondent's license is based upon the shooting and the burden on law enforcement. The ALC Order reportedly notes 102 calls/visits to the establishment. But the incident reports were not introduced into the record and there was no testimony regarding what happened or caused the other 98 or so incident reports. Not a single witness testified to the other 98. Oral testimony when the incident reports were not entered into the record are inadmissible. *See Deep Keel, LLC v. Atlantic Private Equity Group, LLC* 413 S.C. 58, 773 S.E. 2d 607 (2015) “We hold Rule 803(6) does not apply to admit live testimony offered to prove the contents of a

record containing hearsay when that record is not offered in evidence... '[I]t is only the business record itself which is admissible, and not the testimony of a witness who makes reference to the record.' ”

Respondent testified to numerous visits by the Sheriff’s Department but no tickets were written or violations found.

Revocation of licenses is the most serious ABL penalty. None of the Sheriff’s witnesses had ever testified at a revocation hearing. The ALC Order sets a precedent whereby a bar with SLED certified security guards policing the exterior, frisking and using metal detector wands, bouncers on the inside, and numerous surveillance cameras is subject to revocation – for the simple reason it was situated next to a rap club. Very few bars and restaurants employ that level of security.

There was *no* testimony that the first shooter ever set foot in the Respondent’s establishment.

The Order incorrectly notes that the SLED certified security team no longer worked at the club. They were just not on duty the night of the disputed shooting.

Lastly, revocation when no witness from the Department of Revenue requested revocation or testified in support of it and the Sheriff’s Office did not request it appears unprecedented.

The evidence that was not introduced – 102 incident reports, the Respondent’s videos and the Sheriff’s Office videos outweigh the evidence that was introduced, and the Sheriff’s deputy that signed the original affidavit in support of the motion never testified.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Burnet R. Maybank, III". The signature is written in a cursive style with a horizontal line under the name.

---

Burnet R. Maybank, III  
Andrew W. Saleeby  
NEXSEN PRUET LLC  
1230 Main Street, Suite 700 (29201)  
Post Office Box 2426  
Columbia, SC 29202  
803-771-8900

Attorneys for Respondent  
Aqua Pine, LLC d/b/a Hookah on the River

July 7, 2021  
Columbia, South Carolina

**EXHIBIT A**

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 Agua Pina, LLC, d/b/a Hookah on the River, )  
 )  
 Respondent. )

Docket No. 21-ALJ-17-0315-IJ

**FINAL ORDER**

**APPEARANCES:** For the Petitioner: Patrick McCabe, Esq.  
For the Respondent: Burnet Maybank, III, Esq. & Andrew Saleeby, Esq.

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a request for injunctive relief filed by the South Carolina Department of Revenue (Department) in relation to their determination issued on May 13, 2021. In their determination, the Department found Agua Pina, LLC, d/b/a Hookah on the River (Respondent or Hookah on the River), who holds an on-premises beer and wine permit and a business liquor-by-the-drink license, knowingly permits acts that constitute a public nuisance, poses an imminent threat to public health, safety, or welfare, and lacks a reputation for peace and good order. As a result, the Department now seeks to permanently revoke Respondent's permit and license pursuant to section 61-4-270 of the South Carolina Code (2009), section 61-4-580 of the South Carolina Code (Supp. 2020), section 61-6-1820 of the South Carolina Code (2009), section 61-6-1830(1) of the South Carolina Code (2009), and sections 1-23-310 *et seq.* of the South Carolina Code (2005 & Supp. 2020).<sup>1</sup> The Court held a hearing on June 9, 2021, at the Court's offices in Columbia, South Carolina.

<sup>1</sup> This matter originally came before the Court pursuant to a Motion For Emergency Suspension and Expedited Hearing (Motion) filed by the Department on May 13, 2021. In its Motion, the Department moved to suspend Respondent's permit and license until a hearing on the merits could be held in this matter. The Department supported its Motion with the affidavit of Captain Steven Tapler of the Richland County Sheriff's Department and several incident reports from the Richland County Sheriff's Department. Captain Tapler attested Respondent's business was an imminent danger to the public safety and welfare and emergency action was imperative to protect the safety and welfare of the citizens of Richland County. Captain Tapler further attested that, in his opinion, Respondent's business "provides an atmosphere that is perceived as tolerant, thereby perpetuating the opportunity for criminal activities, including violence, to escalate." Also on May 13, 2021, the Department filed its Final Determination, in which it notified Hookah on the River of its intent to revoke their on-premises beer and wine permit and restaurant liquor-by-the-drink license. Following a conference call on the Motion, the Court granted the Department's request to suspend Respondent's permit and license until the merits hearing.

FILED

06/28/2021

SC Admin. Law Court

## **FINDINGS OF FACT**<sup>2</sup>

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

### **General Findings**

Hookah on the River is located at 2700 Broad River Road, Suite B, Columbia, South Carolina. Respondent's business is permitted/licensed to sell beer, wine, and liquor. Jack Oliver (Oliver), the owner of the business since April 2020,<sup>3</sup> described Hookah on the River as primarily a restaurant/lounge, yet it has a DJ and rents hookahs to its patrons. Hookah on the River is located in a strip mall next door to an event center, Exquisite Event Center, and across the street from Rush's, a fast-food restaurant, neither of which have a beer and wine permit or a liquor license.

Oliver asserted he is present at the business two to three times a week and the manager has control of the business when he is not there. If the manager is not on duty, the assistant manager is in control of the premises. Kiera Nelson is the current manager. Chris Sullivan (Sullivan) used to be a manager. He currently holds the position of Respondent's public relations liaison as well as a promotional manager and consultant. Sullivan's job mainly consists of handling interactions with the government, media, and staff on behalf of Hookah on the River. Oliver testified Sullivan does not have day-to-day control of his business when he is not present. Although Sullivan is purportedly no longer a manager, he is the business's representative who has consistently interacted with law enforcement upon their arrival at the business.

### **Security at the Licensed Premises**

In terms of security at the premises, Respondent has a total of eight cameras and hires SLED-certified armed security through SC Security Protection to protect the outside of the

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<sup>2</sup> Pursuant to Rule 201 of the South Carolina Rules of Evidence (SCRE), the Court takes judicial notice of its own order in a prior case involving Respondent's business, in which the Court lifted the Department's summary suspension of Respondent's permit and license. See *S.C. Dep't of Revenue v. Agua Pina, LLC, d/b/a Agua Pina Lounge*, Docket No. 20-ALJ-17-0315-IJ (January 13, 2021). The Department had issued the summary suspension because Respondent violated the Governor's Executive Order by permitting the sale and consumption of beer, wine, and alcoholic liquor after 11:00 p.m. *Id.*

<sup>3</sup> In the prior case (Docket No. 20-ALJ-17-0315-IJ), Oliver testified he opened the business in April 2020 as Agua Pina but rebranded and reopened it in October 2020 as Hookah on the River. Although in this matter Oliver testified the business has been open since October 2020, Oliver has owned the business as an LLC since April 2020.

premises and control the entry of patrons into the business. Richard Higgins (Higgins), owner of SC Security Protection, explained he typically has two to six guys working at Respondent's location depending on the event.<sup>4</sup> According to Oliver, all patrons are checked at the door for weapons using a wand and/or a pat down and then patrons are patted down again once inside the premises. Sullivan also testified security pats down every patron at least twice. Additionally, Respondent employs security to maintain order inside the premises who they refer to as "bouncers." These individuals are not employees of SC Security Protection.

Although Respondent employs security, Corporal Hawkes and Sergeant Torres, both with the Richland County Sheriff's Department, observed that Respondent's security fails to correctly frisk or pat down patrons, which can result in patrons walking into the business with weapons. Sergeant Torres also opined that Respondent's security cannot handle the magnitude of patrons and chaos that occurs at the location. In fact, Respondent's security has lost their weapons when fighting patrons and, recently, two guns were found in the floorboards of Respondent's business. Still, Oliver claims Respondent has reported to law enforcement every weapon that has been discovered at the premises.

#### **Incidents at the Licensed Premises**

Since October 23, 2020, Richland County Sheriff's Department has responded to calls at Respondent's location over 100 times<sup>5</sup> for increasingly violent incidents including assaults, weapon law violations, and shootings. In fact, as Sergeant Torres specifically explained, there have been 102 calls for service since January 2021 at Respondent's location. Recently, two shootings occurred within two weeks in which someone was shot. These two incidents exemplify the escalating violence.<sup>6</sup>

The first shooting incident occurred on May 2, 2021. On that date, shots were fired and law enforcement discovered eleven (11) 9mm shell casings in the parking lot at 2640 Bush River Road (Rush's restaurant) across from Respondent's business where Respondent's patrons sometimes park. While the officers were investigating the incident in the Rush's parking lot, they

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<sup>4</sup> Higgins hires former law enforcement and military as security guards. All of Higgins' employees are trained on how to correctly pat down a patron.

<sup>5</sup> The exact number of service calls is disputed by the parties but the overall testimony from the Sheriff's Department indicates there have been at least 100 calls for service to Respondent's location.

<sup>6</sup> Oliver was not present at the business during these incidents and did not know which manager or assistant manager was on duty on those days.

heard additional shots from the parking lot in front of Respondent's business. Law enforcement then discovered a security guard from Respondent's business had been shot in the head. Because of the large number of individuals in the parking lot, additional units from other regions and officers from the City of Columbia were dispatched to get the crowd under control and the shooter was never identified. Sullivan was present that night and he admitted the crowd was out of control and that there were "multiple fights and shootings" but asserted a rap concert had just ended next door and it is unclear whether the shooter was a patron of Respondent.<sup>7</sup> Sullivan testified that after he heard shots, he went to the front door where he saw the security officer lying down bleeding. Higgins was also present on May 2, 2021, and witnessed his employee get shot. Higgins stated that was the last day his company worked for Respondent.

Investigator Short described the second incident that occurred on May 8, 2021,<sup>8</sup> in which law enforcement responded to Prisma Richland Hospital in reference to a shooting victim. Investigator Short interviewed the victim who alleged he was at Respondent's premises when his friend was involved in an altercation and, as a result, the victim was shot in the stomach. Investigator Short testified the evidence establishes that the victim was shot inside Respondent's business.

Video footage from May 8, 2021, is consistent with a shooting taking place inside Respondent's business. The video footage shows patrons running from the entrance of Hookah on the River and the victim exiting the premises clutching his stomach. Additionally, one of Respondent's security guards is seen facing the entrance of the business and brandishing his weapon in response to the commotion.<sup>9</sup> Approximately eighteen minutes after the shooting occurred, security is still seen holding its weapon in a defensive posture.<sup>10</sup> Additionally, some

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<sup>7</sup> At the hearing, Respondent claimed its employees provided the name of the shooter to law enforcement, yet no one has been arrested. Sullivan admitted that none of Respondent's employees witnessed the shooting, but they reviewed the video footage afterwards and found the shooter on Facebook. The Sheriff's Department's investigation is still on-going.

<sup>8</sup> Notably, SC Security Protection was not present to secure the entrance of the business the date this shooting occurred. Rather, security was being provided by some other company.

<sup>9</sup> Respondent argues the video footage does not reflect a shooting since the footage shows some patrons walking in and out of the premises freely shortly after the incident occurred. However, the actions of some patrons shortly after the incident do not reflect the immediate chaotic scene that occurred right after the incident took place or the reactions of the security guards and other patrons, which are consistent with a shooting.

<sup>10</sup> Although Higgins asserted his employees were not there on May 8, 2021, and that he did not know who the guards were in the video, he testified guards are trained to pull a weapon when they are threatened or if they hear gun shots.

patrons appear to hide behind a parked car until a security officer escorts them away. It also appears that a club employee returns a bullet proof vest or safety vest to a car after the incident is over.

Respondent disputes that a shooting occurred. Sullivan testified he was in the kitchen that day when he heard a commotion, but he claims the commotion occurred because a hookah fell and broke and not because of a shooting.<sup>11</sup> Respondent also argues the Sheriff's Department is withholding footage from its surveillance van that should have captured the shooting if it occurred. However, Investigator Short explained that the distance between the Sheriff Department's van and the front door of Hookah on the River was at least 200 feet, and a Jack Oliver Pool & Spa van was parked in front of their van, which blocked their view. Moreover, the shooting also took place inside the premises, which would have prevented the van from capturing any footage of the shooting itself. Nevertheless, the video footage from Respondent's own security camera is consistent with a shooting occurring on May 8, 2021, in its premises.

Thus, the evidence indicates a shooting occurred inside Respondent's premises on May 8, 2021. Accordingly, despite Respondent's adamant contentions to the contrary, I find the shooting occurred within its business. However, Richland County Sheriff's Department did not receive a call from Respondent's premises on May 8, 2021, which suggests Respondent failed to report the incident to law enforcement. In fact, the Sheriff's Department was not aware of the shooting until the hospital reported it to them the next day.

The video footage not only indicates that a shooting occurred, but it also supports the conclusion that Respondent's security was failing to properly frisk its patrons. The footage shows security failing to fully frisk each individual, thus creating an opportunity for weapons to enter its business. Additionally, after the incident occurred, the entry line in front of security dissolves—with the ropes and standards creating the line-up area having been knocked over—and patrons appear to be coming in and out of the business without having to go through security. Corporal Hawkes also stated he has personally been present at Respondent's business around thirty times and each time witnessed Respondent's security frisk patrons poorly.

In addition to the two shooting incidents described above, other incidents have occurred at Respondent's location. On November 18, 2020, law enforcement attempted to conduct a

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<sup>11</sup> Interestingly, in its Response to the Department's Motion for Emergency Suspension, Respondent indicated the commotion was due to a pushing and shoving match in the club that resulted in bottles breaking.

compliance check related to Respondent's license and permit, but Sullivan denied them access. On February 7, 2021, Corporal Hawkes responded to a call from Respondent's business about an unruly crowd at approximately 3:00 a.m. Corporal Hawkes observed a man emerge from the club carrying an AF-15 assault rifle who claimed to work at SLED and provide security. Corporal Hawkes was then called away to respond to another, higher priority incident. When he returned to the location, he was informed that patrons were causing a disturbance at the door to the premises and the business was trying to close. Corporal Hawkes then began asking the crowd to leave because the business was closing; however, after the crowd began to disperse, Respondent's security began to allow patrons to reform a line to enter the business again. Later that same night, at approximately 4:00 a.m., Corporal Hawkes responded to another disturbance at the premises. Upon arrival, he discovered security had discharged pepper spray inside the premises. Consequently, the fire department had to shut down Respondent's business due to a lack of oxygen inside the premises. Corporal Hawkes did not find a manager or owner at the premises at the time of the incident and was again referred to Sullivan.

Then, on February 11, 2021, Corporal Hawkes responded to a call at Respondent's business and observed Respondent's business was still open after 2:00 a.m. and loud noise was emanating from the premises. Corporal Hawkes asked to speak with the manager, who again was not present. He was directed to speak to Sullivan instead.<sup>12</sup> Eventually, Corporal Hawkes spoke by phone with Oliver and explained the noise issue and the business hours permitted pursuant to the Governor's state of emergency mandate. Corporal Hawkes also requested access to the premises to ensure all Covid-19 guidelines were being met but was "emphatically denied access" by the owner. Therefore, law enforcement was again denied entry into the business, this time directly by the owner, Oliver.

Overall, interactions between Respondent's staff and law enforcement have not been cordial or cooperative. For instance, Corporal Hawkes has been denied access numerous times, including one time when there was an injured patron inside the premises. Sergeant Torres and

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<sup>12</sup> Respondent presented an offer of proof that Corporal Hawkes had a conversation with Sullivan and told him to shut down Hookah on the River that night pursuant to the Governor's state of emergency mandate. However, that testimony does not change this Court's determination, and, in fact, Corporal Hawkes acknowledged he was incorrect about Respondent violating the Governor's state of emergency mandate as it had already been lifted, unbeknownst to him.

Corporal Hawkes also explained Respondent's staff and patrons are hostile towards law enforcement.

### **Respondent's Defense**

Respondent presented several arguments suggesting that it was not responsible for the criminal activity occurring at the location but is merely a victim of its location and a victim of targeted attempts to harm the business. Respondent argues the patrons of the other businesses surrounding Respondent's premises are the cause of the incidents that have occurred. Specifically, Oliver testified the Exquisite Event Center hosts rap concerts and, when those concerts end, the patrons spill into the parking lot in front of Respondent's business and become unruly.

However, the incidents to which law enforcement has responded have been calls for assistance at Respondent's location, suite B, and not the event center location, suite A. Furthermore, the evidence establishes the rap concerts that Respondent asserts are the egis of the criminal activity at the location occurred infrequently. In fact, Corporal Hawkes is aware of only one concert being held at the event center. Similarly, Sergeant Torres and Corporal Hawkes testified they do not get calls for service from the event center, and the event center typically is not open when they respond to calls at Respondent's location. Finally, although Respondent attributes many of the law enforcement issues to Exquisite Event Center, since May 22, 2021, when the Court granted the Department's Motion to suspend Respondent's permit and license pending a hearing, there has only been only one call for service at Respondent's business. If rap concerts are held frequently and are the primary source of calls to law enforcement as Respondent suggests, then the Court would have expected more than one call to have come in since the suspension considering the frequency of the calls prior to the suspension.

Respondent also argues some incident reports are the result of fake 911 calls. It contends these calls were made to make its business look bad. Yet, Sullivan only enumerated three fake calls—two fake police calls, along with a fake fire alarm being pulled.<sup>13</sup> Moreover, Respondent did not present evidence showing which incident reports were the result of fake 911 calls or when these calls even occurred. On the other hand, Corporal Hawkes explained that sometimes the Sheriff's Department receives a 911 call and, when they show up, the issue is resolved and they

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<sup>13</sup> Oliver, who was never at the location when law enforcement arrived, claimed 20-30 fake calls have occurred. However, even if Sullivan's testimony were credible, Oliver's claim was plainly not persuasive. In fact, Respondent's attorney only claimed that there were ten fake 911 calls.

are not needed. Nonetheless, he was not aware of any fake 911 calls occurring at Respondent's location. Thus, it is questionable whether the Sheriff's Department responded to any fake calls at Respondent's location. But, even if the calls Sullivan referenced that the Sheriff's Department responded to at Respondent's location were fake, those calls were a small portion of the over 100 calls received since January 2021, and do not diminish this Court's concerns regarding the overall frequency and severity of the calls for assistance at Respondent's location.

Respondent further argues the Sheriff's Department is targeting its business because the Sheriff's Department has had a surveillance van near their business for three months. However, the evidence simply did not support this theory. Employees of the Sheriff's Department specifically denied that they were targeting Respondent's business, and I found their testimony credible. Furthermore, law enforcement's presence at the location was primarily a response to the criminal activity taking place at Respondent's location.

Respondent also argues the Sheriff's Department is unfairly targeting it because other businesses that have had more violent incidents have not had their licenses revoked. In support of this theory, Respondent submitted incident reports for McCary's Sports Bar & Grill (McCary's), which retains its permit and license. The Court finds the incident reports for McCary's location are not comparable to the incident reports for Respondent's location. There are only 60 incident reports in a period of ten years for McCary's, whereas law enforcement has been called to Respondent's location 102 times since January 2021, a span of five months, to include three incidents involving the discharge of a weapon.<sup>14</sup> Additionally, the Sheriff's Department avowed that if McCary's had the same number of violent incidents and calls for service in the same time span and pulled the same number of resources from the Sheriff's Department like Respondent, then it would support the revocation of McCary's license. Also, Joanna McDuffie (McDuffie), the Sheriff's Department Deputy Chief of Legal Affairs, stated she is aware of McCary's incidents and does not believe McCary's business is worse than Respondent's business.<sup>15</sup> Thus, the frequency and severity of the activity at the two businesses is not comparable.

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<sup>14</sup> Moreover, some of the incident reports for McCary's resulted from traffic stops and, thus, were not attributable to the business's actions.

<sup>15</sup> Notably, Respondent emphasized that a murder had occurred at McCary's in the last ten years. Ms. McDuffie acknowledged that in the last ten years an individual had been charged for murder that had occurred outside of McCary's, but the Sheriff's Department later determined the individual acted in self-defense.

Respondent also cited to Wal-Mart and a nearby convenience store to support its argument that there are other businesses that have more incidents or calls for service that are allowed to continue operating. However, a Wal-Mart does not exist in the same location as Respondent and, moreover, because Wal-Mart is a large retail establishment and not a bar, I do not find it to be comparable to Respondent's business. As for the convenience store, it also has a completely different alcohol permit/license, and it operates twenty-four hours a day, seven days a week, which would increase the opportunity for crimes to occur compared to Respondent's more limited business hours. Therefore, these businesses are not comparable and do not support Respondent's argument that it is being unfairly targeted.

#### **Burden on Law Enforcement**

Sergeant Torres and Corporal Hawkes classified Respondent as a "problem" location due to the large number of calls and crowds at its business. More specifically, Sergeant Torres asserts the business is an unreasonable strain and burden on law enforcement. She explained that she often must get units from another region to assist on calls to Respondent's business, and sometimes she must ask the City of Columbia for help too. Consequently, responding to calls from Respondent's business takes away resources from other areas, which puts officer safety and community safety in jeopardy in reduced-staffed areas.

Notably, Corporal Hawkes asserted he did not think Respondent's business is a burden on law enforcement because the Sheriff's Department has the ability to adequately respond to all incidents at Respondent's location. However, simply because the Sheriff's Department is capable of responding to the incidents that occur at the location does not mean that the business is not creating a burden upon law-enforcement. Indeed, Corporal Hawkes's testimony repeatedly undermined his assertion that the location is not a burden. Corporal Hawkes explained that violent crimes were escalating at Respondent's location and, as a result, the Sheriff's Department has had to expend a significant amount of manpower to respond to respond to calls at the location. He further testified the incidents at Respondent's location were redirecting resources away from the rest of the County on a regular basis. This testimony indicates Respondent's business is creating a burden on law enforcement and frequently leaving other parts of the community with fewer officers and, thus, leaving those parts of the community more vulnerable. Therefore, the Court finds Corporal Hawkes's testimony supports finding Respondent's business is a burden on law enforcement despite his assertion to the contrary. Furthermore, even if the Court were to rely

solely on Corporal Hawkes's statement that the location is not a burden and ignore his other testimony, the testimony of his superior officer, Sergeant Torres, clearly explained why Respondent's business is a burden upon law-enforcement.

In lieu of the foregoing findings, and the evidence showing Respondent's business, and not the other businesses surrounding it, is the cause of the incidents at the location, I find the business is an unreasonable strain and burden on law enforcement.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, I conclude the following as a matter of law:

#### **General Conclusions**

The Department issued a Final Determination finding Respondent is in violation of section 61-4-580(A)(5) of the South Carolina Code (Supp. 2020) because Respondent's business knowingly permits a public nuisance on the licensed premises. Furthermore, the Department found that Respondent's business constitutes an "immediate threat to the public's health, safety, and welfare" pursuant to § 1-23-370(C), § 12-60-1340, § 61-6-1820(2), and § 61-6-1830. The Department also found Respondent no longer has a reputation for peace and good order in the community in violation of § 61-6-1820. Finally, the Department also determined that revocation was the appropriate penalty for the violations of § 61-4-580 and § 61-6-1820. Respondent challenges those determinations.

Section 1-23-600 of the South Carolina Code (Supp. 2020) grants the ALC jurisdiction to hear contested cases under the Administrative Procedures Act.<sup>16</sup> Furthermore, section 61-2-260 of the South Carolina Code (2009) grants the Court the responsibility to determine contested matters governing alcoholic beverages, beer, and wine. *See also Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984) ("[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed. . .").

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<sup>16</sup> This case comes before the Court in an unusual procedural posture. Ordinarily, the party whose permit or license is suspended or revoked would request relief from this Court, but in this case, the Department brought this matter before the Court requesting an emergency suspension of Respondent's license and an expedited hearing pursuant to SCALC Rule 68; Rule 65, SCRCP; § 1-23-370(c); and § 12-60-1340. The Court granted the emergency suspension pursuant to § 1-23-370(c) and § 12-60-1340 until this Court could hear the case on the merits based upon the Department's determination to revoke Respondent's permit and license. Accordingly, although this case began as a request for injunctive relief, this Court held a hearing on the merits without objection.

The standard of review in this case is a preponderance of the evidence. *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998) (“Absent an allegation of fraud or a statu[t]e or a court rule requiring a higher standard, the standard of proof in administrative hearings is generally a preponderance of the evidence.”). Because the Department is seeking to permanently revoke Respondent’s license and permit, the Department has the burden of proof to show by a preponderance of the evidence that Respondent’s permit and license should be revoked. SCALC Rule 29(B) (“In matters involving the assessment of civil penalties, the imposition of sanctions, or the enforcement of administrative orders, the agency shall have the burden of proof.”).

Section 61-2-20 of the South Carolina Code (2009) authorizes the Department to administer and enforce the laws and regulations involving alcoholic beverages, including beer and wine. Generally, neither a license for the sale and consumption of alcoholic beverages nor a beer and wine permit is a contract or a property right. It is, rather, a privilege granted in the exercise of the State’s police power “to do what otherwise would be unlawful to do. . . .” *Feldman v. S.C. Tax Comm’n*, 203 S.C. 49, 26 S.E.2d 22, 25 (1943). These privileges may be used and enjoyed only so long as the holder complies with the restrictions and conditions governing them. *See id.*

### **Violations**

The Department contends the on-premises beer and wine permit and liquor-by-the-drink license for Hookah on the River’s should be revoked because: (1) Respondent’s business is permitting a public nuisance in violation of § 61-4-580(5); (2) the location is no longer suitable as defined § 61-4-520 and § 61-6-910; (3) Respondent’s business constitutes and immediate threat to the public’s health, safety, and welfare pursuant to § 1-23-370(C), § 12-60-1340, § 61-6-1820(2), and § 61-6-1830; and (4) Respondent’s business has failed to maintain a reputation for peace and good order in its community in violation of § 61-6-1820.

Respondent contends its permit and license should not be revoked. Respondent argues the other businesses surrounding Respondent’s premises are the cause of the incidents that have occurred. Specifically, it argues the concert venue next door to the premises, Exquisite Event Center, hosts rap concerts and, when those concerts end, the patrons spill into the parking lot and become unruly. It contends that problems arise when Respondent denies entry to those unruly patrons. Respondent further asserts no shooting occurred in its premises on the night of May 8, 2021. Instead, it asserts the incident was a hookah breaking on the floor. In addition, Respondent

argues that the Sherriff's Department is targeting their business because other businesses in the area have violent incidents that occur on their premises, but their licenses are not being revoked.

#### Beer and Wine Permit

Section 61-4-580(A)(5) prohibits the holder of a beer or wine permit from "knowingly" permitting "any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State." S.C. Code Ann. § 61-4-580(A)(5) (Supp. 2020). A violation of section 61-4-580 "is a ground for the revocation or suspension of the holder's permit." § 61-4-580(B). The Department argues Respondent has knowingly permitted acts that tend to create a public nuisance in violation of section 61-4-580(A)(5).

To constitute a public nuisance, the nuisance must be located in a public place where the public frequently congregates or where members of the public are likely to come within the range of its influence. *Neal v. Darby*, 282 S.C. 277, 318 S.E.2d 18 (Ct. App. 1984). "The difference between a public nuisance and a private nuisance does not consist in any difference in the nature or character of the thing or activity itself." *Home Sales, Inc. v. City of North Myrtle Beach*, 299 S.C. 70, 81, 382 S.E.2d 463, 469 (Ct. App. 1989). In other words, "[a] nuisance is public because of the danger to the public which might have been created." *Id.* Further, a public nuisance it is not based on "the number of persons annoyed, but the possibility of annoyance to the public by invasion of its rights, the fact that it is in a public place and annoying to all who come within its sphere." *Belton v. Wateree Power Co.*, 123 S.C. 291, 115 S.E. 587 (1922). Finally, whether an act(s) constitutes a nuisance depends upon the facts of the case and "no definite rule can be laid down for the determination of the question." *Winget v. Winn-Dixie Stores, Inc.*, 242 S.C. 152, 160, 130 S.E.2d 363, 367 (1963).

Section 61-4-580(A)(5) also requires the act creating the public nuisance to be knowingly permitted. The term "knowingly" includes not only actual knowledge but also knowledge that could be gained by reasonable inquiry when the circumstances are such as would cause a prudent man to inquire. *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 26 S.E.2d 22, 25 (1943). A person may also be found to act "knowingly" where it appears that the person "[shut] his eyes to avoid knowing what would otherwise be obvious." *State v. Thompkins*, 263 S.C. 472, 484, 211 S.E.2d 549, 554 (1975). Furthermore, the permittee is responsible for the acts of his servants, agents, or employees and cannot seek to avoid the consequences of a violation for lack of personal knowledge. *See, e.g., Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306,

309, 257 S.E.2d 496, 497 (1979) (“It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority.”). Our Supreme Court has also approved the following language describing the knowing permittance of a public nuisance:

Although the defendants may have a license for the sale of wine and beer, and the drinking of it on the premises violates no statutory law, they have no right to habitually allow the assembling in and around the Circle Bar of noisy, drunken, boisterous crowds, whose noise and profanity disturb the peace and quiet of the public coming within the range of its influence. One who knowingly suffers or permits such conduct commits a public nuisance.

*State v. Turner*, 198 S.C. 487, 18 S.E.2d 372, 375 (1942). The Supreme Court likewise approved the following language: “If one maintains a place where people are allowed to frequent for immoral purposes, such a place would be a common or public nuisance, because it is a criminal offense and affects the happiness, the tranquility and the morals of the community. And it is not necessary that such a place for such purposes be conducted openly or notoriously to constitute a nuisance.” *Id.* at 487, 18 S.E.2d at 376.

I conclude the evidence shows Respondent’s business knowingly permitted acts that tend to create a public nuisance in violation of § 61-4-580(A)(5). Since January 2021, Richland County Sheriff’s Department has responded to over 100 calls at Respondent’s location for increasingly violent incidents to include assaults, weapon law violations, and shootings. Two of these incidents resulted in persons being shot: on May 2, 2021, law enforcement discovered a security guard from Respondent’s business had been shot in the head, and on May 8, 2021, a patron was shot in the stomach inside Respondent’s establishment. The incidents taking place at Respondent’s business are violent, frequent, and incontrovertibly dangerous to the public because, although Respondent’s business is privately owned, it is located in a shopping center, which is a place where the public is likely to gather and does gather. *See Home Sales, Inc.*, 299 S.C. at 81, 382 S.E.2d at 469 (holding “[a] nuisance is public because of the danger to the public which might have been created”).

Indeed, the evidence shows the business draws public crowds that are often large and unruly. Sergeant Torres and Corporal Hawkes classified Respondent as a “problem” location due to the large number of calls and crowds at its business. Similarly, Corporal Hawkes responded to a call from Respondent’s business about an unruly crowd at approximately 3:00 a.m. on February 7, 2021. And, on May 2, 2021, the crowd was so large and out of control that law enforcement had to call in extra units and could not track down the shooter. Therefore, the evidence shows that

members of the public frequently congregate at Respondent's location and are "likely to come within the range of its influence." *See Neal*, 282 at 277, 318 at 18.

Moreover, that Respondent suffers the presence of large, unruly crowds on a regular basis is indicative of its knowing permission of the crowds and their activities. *See Turner*, 198 S.C. at 487, 18 S.E.2d at 375. The crowds inside and outside the establishment have engaged in numerous criminal acts, like assaults and weapons violations, as documented by the Sheriff's Department's numerous incident reports. Respondent is clearly aware, or "knows" of the criminal activity occurring at its premises because it has discussed the issue with law enforcement and even admitted the crowd was chaotic during certain incidents. However, despite Respondent's discussions with law enforcement about how to curtail the criminal activity, those efforts have not reduced the frequency and severity of the activity. Thus, the issue is not whether Respondent is necessarily responsible for the criminal activity because Respondent knowingly approves or openly encourages it, but rather Respondent knowingly suffers its continued occurrence at the location. *See Turner*, 198 S.C. at 487, 18 S.E.2d at 376 ("And it is not necessary that such a place for such purposes be conducted openly or notoriously to constitute a nuisance.").

Respondent's indifference to, if not acquiescence to, the criminal activity at its location is demonstrated by its failure to report the shooting that occurred on May 8, 2021.<sup>17</sup> It is also demonstrated by Respondent's inability to adequately prevent the presence of weapons on the premises. Oliver's testimony indicates he is aware that guns occasionally slip by security and are carried inside the premises by patrons, yet guns continue to be an issue at the location. For example, Respondent's security has lost their weapons when fighting patrons at the location and, recently, two guns were found in the floorboards inside Respondent's business. Additionally, the video footage from the incident on May 8, 2021, supports the Sheriff's Department's testimony that Respondent's security does a poor job patting down patrons and a patron could have slipped inside with a gun that evening.<sup>18</sup> Further, if Respondent was truly concerned about abiding by the law, and reducing criminal activity in concert with law enforcement, it would not regularly deny

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<sup>17</sup> Although Respondent may not have been aware of the specific individual who was shot at its location on May 8, 2021, it certainly should have been aware of shots being fired at its location based upon the reaction of its patrons and staff.

<sup>18</sup> It is also noteworthy that Higgins asserted his trained employees were not present on May 8, 2021. In fact, Respondent never confirmed who exactly was working as security that night but only that they had guards there.

law enforcement access to its business on numerous occasions, including when a patron was injured.

Respondent contends the surrounding businesses, and not Respondent's business, are responsible for the incidents creating the nuisance. However, Respondent only provided testimonial evidence about one business causing problems—Exquisite Event Center. Sullivan testified that on the night of May 2, 2021, a rap concert ended at the event center before the shooting occurred in the parking lot outside Respondent's business and suggested that a patron of the rap center likely caused the incident. Even if a rap concert occurred that night, the event center was not open and a concert was not on-going when the incident occurred and police arrived. Rather, Respondent's business was open and operating. Therefore, even if the shooter had originally come from the rap concert, Respondent's open business and its attendant unruly crowd provided the opportunity for the shooter to engage in a criminal act that put the public in danger.

Furthermore, Respondent did not present evidence, beyond conclusory arguments and speculation, that the event center was active when law enforcement responded to other incidents at Respondent's location. In contrast, multiple officers with the Sheriff's Department testified the event center is typically not open when they respond to calls at Respondent's business. Indeed, Corporal Hawkes was aware of only one concert being held at the event center. Further, since the Court issued the order granting the suspension of Respondent's permit/license pending the merits hearing, there has only been one call for service at the location, which is indicative of the Respondent's business being the cause of the criminal activities occurring in and around the location. Thus, I find the preponderance of the evidence indicates Respondent's business, and not the surrounding businesses, is the nuisance.

A further consideration when determining whether a business is a nuisance is whether it is a burden on law enforcement. See *Winget*, 242 S.C. at 160, 130 S.E.2d at 367 (holding that whether an act constitutes a nuisance depends upon the facts of the case and "no definite rule can be laid down for the determination of the question"). Normally, whether a location is a burden on law enforcement is discussed in the context of whether a location is "proper" or suitable for the *issuance* of a beer and wine permit. § 61-4-520(5) ("A retail permit authorizing the sale of beer or wine must not be issued unless: (5) The location of the proposed place of business of the applicant is in the opinion of the department a proper one."); *Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 250, 317 S.E.2d 476, 478 (Ct. App. 1984) (upholding the denial

of a beer and wine permit because the location was “unsuitable” because it was in a “rural residential area, in close proximity to other residences, and . . . there have been law enforcement problems in the area”). Here, the Court is considering whether Respondent is in violation of its beer and wine permit, not whether Respondent should be issued a beer and wine permit. Accordingly, I do not find that whether the location is “proper” or suitable is necessarily the correct inquiry or ground upon which to determine this case.

Nevertheless, I find whether the location is a burden on law enforcement to be an inextricable factor in determining whether Respondent’s business is a public nuisance. It is inextricable because, when law enforcement is burdened by a location, its presence is removed from other locations, which leaves the public in those other locations more vulnerable. *See Home Sales, Inc.*, 299 S.C. at 81, 382 S.E.2d at 467 (explaining a “[a] nuisance is public because of the danger to the public which might have been created”). The testimony of the officers shows the nature of the calls coming from Respondent’s business and its reputation requires a heightened law enforcement response that removes officers from other areas of the community. In particular, Sergeant Torres testified the business is an unreasonable strain and burden on law enforcement, and she further explained that she typically requests units from another region to assist on calls to Respondent’s business and sometimes she asks the City of Columbia for help too. For example, during the incident on May 2, 2021, when Respondent’s security officer was shot in the head, officers from other regions and deputies from the City of Columbia were dispatched.

Based on all the above, I find Respondent has knowingly permitted acts that constitute a public nuisance to take place at its establishment in violation of § 61-4-580(A)(5).<sup>19</sup>

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<sup>19</sup> The Department also argues that by Respondent knowingly permitting acts that constitute a public nuisance, it has become an “immediate threat to the public’s health, safety, and welfare” pursuant to § 12-60-1340 and § 1-23-370(c). The Court agrees that the nature and frequency of the incidents at Respondent’s location are an “immediate threat to the public’s health, safety, and welfare”; however, this is not a ground for revocation on its own. Rather, it is a ground for summary suspension of a permit or license pending revocation. *See* § 12-60-1340 (providing “[a]nything else in this chapter notwithstanding, if the department determines that public health, safety, or welfare requires emergency action, it shall seek an emergency revocation order from the Administrative Law Court, pursuant to Section 1-23-370(c)”; § 1-23-370(c) (“If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered *pending proceedings for revocation* or other action.” (emphasis added)). In this case, the fact that Respondent’s business poses an immediate threat to the public’s health, safety, and welfare supports the Court’s conclusion that Respondent’s business is a public nuisance and supports revocation pursuant to § 61-4-580(B).

### Liquor-By-The-Drink License

Section 61-6-1820(2) provides an individual holding a liquor license must be of good moral character or, if a corporation or association, it must have “a reputation for peace and good order in its community, and its principals [must be] of good moral character.” S.C. Code Ann. § 61-6-1820(2). The Department contends that in knowingly permitting a public nuisance and creating an immediate threat to the public’s health, safety, and welfare, Respondent has sacrificed its reputation for peace and good order in the community in violation of § 61-6-1820(2).

The evidence established that Respondent does not have a reputation for peace and good order in the community.<sup>20</sup> Sergeant Torres’s and Corporal Hawkes’s testimony revealed that Respondent’s business is a “problem” location due to the large number of calls and crowds at its business. Again, the frequency and escalating severity of the incidents—over 100 calls for service since January—shows a pattern of criminal activity that frequently occurs at the location. Moreover, despite Oliver’s efforts to control the behavior of his patrons with armed security, security cameras, and pat downs, these security measures have been ineffective and, in the case of pat downs, appear to have been poorly executed. Weapons have been found in the floorboards of Respondent’s establishment, and Respondent also failed to report to law enforcement that a shooting occurred inside its premises on May 8, 2021. Although Respondent may not have been aware of the specific individual who was shot at its location on that date, it certainly should have been aware of shots being fired at its location based upon the reaction of its patrons and staff. Furthermore, Respondent’s contentions that the event center is the cause of the unruly crowds and incidents at its location are unpersuasive. The evidence reflects the Sherriff’s Department does not receive calls for service from the event center, and the event center is typically not open when they respond to calls at Respondent’s location.

Proper management also appears to be absent at Respondent’s business, creating more opportunity for incidents to escalate rather than being dealt with appropriately. Often, the manager was not present during the incidents reported by law enforcement. This kind of management is particularly concerning considering the frequency and type of criminal incidents that have taken place at the location. And, when law enforcement interacts with Respondent’s staff, not only is management usually absent, but both Corporal Hawkes and Sergeant Torres testified Respondent’s

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<sup>20</sup> Importantly, this finding reflects the reputation of the business and its location rather than Oliver’s personal reputation.

staff and patrons are hostile towards law enforcement. A hostile attitude does not reflect a willingness to work with law enforcement to promote peace and good order in the community.

Based upon the above reasons, and because I find Respondent's business is knowingly permitting a public nuisance (and a nuisance, by its very definition, is not compatible with peace and good order), I conclude Respondent does not have "a reputation for peace and good order in its community" in violation of § 61-6-1820(2).

#### **Penalty**

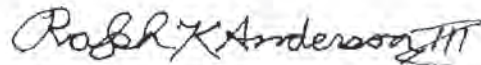
The Department, and therefore this Court, has the authority to revoke Respondent's beer and wine permit and liquor-by-the-drink license upon finding Respondent has failed to comply with the requirements for the permit and license. S.C. Code Ann. § 61-4-580(B) (2009) (providing "a violation of any provision of [§ 61-4-580] is a ground for the revocation or suspension of the holder's permit"); S.C. Code Ann. § 61-6-1830(1) (2009) ("The department may suspend, revoke, or refuse to renew a license issued pursuant to subarticle 1 of this article upon finding that: (1) the applicant no longer meets the requirements of Section 61-6-1820."). Furthermore, where the General Assembly authorizes a range of alternatives for an administratively imposed penalty, the administrative fact-finder may set the amount of the penalty after a hearing on the dispute. *Walker v. S.C. ABC Comm'n*, 305 S.C. 209, 407 S.E.2d 633 (1991). In this case, I conclude Respondent has violated its beer and wine permit pursuant to § 61-4-580(A), and it has violated its liquor-by-the-drink license pursuant to § 61-6-1820(2). I further find that based on the severity of the violations, revocation is the correct penalty. § 61-4-580(B); § 61-6-1830(1).

#### **ORDER**

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

**IT IS HEREBY ORDERED** that the on-premises beer and wine permit and business liquor-by-the-drink license for Agua Pina, LLC, d/b/a Hookah on the River are **REVOKED**.

**AND IT IS SO ORDERED.**



---

Ralph King Anderson, III  
Chief Administrative Law Judge

June 28, 2021  
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



---

Stephanie Perez  
Judicial Law Clerk

June 28, 2021  
Columbia, South Carolina

**EXHIBIT B**

**9x Simple Assault**  
**2x Disorderly Conduct**  
**5x Theft from Motor Vehicle**  
**5x Drug/Narcotic Violation**  
**10x All Other Larceny**  
**6x Aggravated Assault (4x Shootings)**  
**5x Trespass Notice**  
**2x Missing Persons**  
**5x Destructive/Damage/Vandalism of Property**  
**3x Forgery/Counterfeiting**  
**3x False Pretense/Swindle/Confidence Game**  
**2x Theft from Building**  
**1x Harassment/Intimidation**  
**1x Credit Card Fraud**  
**1x Forcible Rape**  
**1x Trespass of Real Property**  
**1x Purse Snatching**  
**1x Possession of a Loaded Gun**  
**1x Theft from Building**

- Simple Assault
  - 01/12/2011
  - Inappropriate touching
- Disorderly Conduct
  - 02/06/2011
  - Visibly intoxicated
- Theft from Motor Vehicle
  - 09/09/2011
- Drug/Narcotic Violation
  - 11/10/2011
  - Found crack cocaine in car parked in parking lot
- All Other Larceny/Theft from Building
  - 04/20/2012

- Bag stolen inside the location
- Shooting/Aggravated Assault; Weapon Law Violations
  - 06/27/2012
  - Victim hit by bullet fragment
- Possession of Cocaine; Drug/Narcotic Violations
  - 07/06/2012
  - Found cocaine on person parked in parking lot
- TPN
  - 03/14/2013
  - Violent patron refused to leave premises
- Missing Persons
  - 05/14/2013
  - Woman last seen at the location. Later made contact, having left because of a cocaine addiction.
- Simple Assault
  - 06/28/2013
  - Altercation that started in the bar. Fight escalated in the parking lot.
- Aggravated Assault
  - 07/14/2013
  - Victim was beaten up by two people.
- Drug/Narcotics Violation
  - 08/25/2013

- Property checks were conducted in parking lot. Noticed the smell of marijuana from a vehicle and found cocaine in the same vehicle.
- Destructive/Damage/Vandalism of Property
  - 09/21/2013
  - Damaged tire of a vehicle in the parking lot
- Harassment/Intimidation
  - 11/29/2013
  - Suspect called the business to threaten an employee, asking for the work schedule.
- Credit Card Fraud
  - 12/30/2013
  - Debit card taken while at the bar. Multiple unauthorized transactions made before the card was returned.
- Simple Assault
  - 02/02/2014
  - Hit multiple times, inside the bar, with a closed fist
- Civil Disturbance; Forgery/Counterfeiting
  - 05/03/2014
- Civil Disturbance/Trespass Notice
  - 05/03/2014
- All Other Larceny
  - 05/15/2014
  - Motorcycle keys stolen
- Simple Assault

- 08/19/2014
  - Victim sprayed with pepper spray
- TPN
  - 11/09/2014
  - Punched hole through the bar's window.
- All Other Larceny; Vandalism
  - 1/23/2015
  - Left bar without paying. Hit a vehicle with their own vehicle.
- Defrauding An Innkeeper; False Pretense/Swindle/Confidence Game
  - 01/26/2015
- Destructive/Damage/Vandalism of Property
  - 04/19/2015
  - Keyed a vehicle and wrote obscenities on the same vehicle.
- Disorderly Conduct
  - 08/09/2015
  - Suspect was belligerent/drunk & unable to pay bar tab.
- Shooting Incident/Aggravated Assault
  - 08/29/2015
  - Subject had a sledgehammer & knife attached to his belt. Walked outside and shot a couple of rounds into the ground.
- Forcible Rape
  - 10/16/2015

- Victim felt her drink was likely spiked. Was sexually assaulted in a vehicle in front of the bar.
- Drug/Narcotic Violations; Unlawful Possession of a Weapon
  - 11/11/2015
  - Vehicle parked in parking lot. Odor of marijuana. Found cocaine & pills in vehicle, as well as a loaded handgun & ammunition.
- All Other Larceny
  - 11/25/2015
  - Item stolen sometime after going to the bar.
- Trespass of Real Property
  - 12/24/2015
  - Harassment/stalking at the bar.
- Forgery/Counterfeiting
  - 01/09/16
  - Use of counterfeit bills.
- All Other Larceny
  - 03/09/2016
  - Money stolen out of tip jars.
- All Other Larceny
  - 03/19/2016
  - Money & medication stolen from purse.
- Forgery/Counterfeiting
  - 04/08/2016

- Use of counterfeit bills.
- Other
  - Loaded gun found on person in parking lot
  - 06/22/2016
- Theft from Motor Vehicle; Destructive/Damage/Vandalism of Property
  - 07/23/2016
- TPN
  - 08/25/2016
  - Subject instigated arguments with customers & a bartender. Was very disruptive and drunk.
- Purse Snatching
  - 09/03/2016
- False Pretense/Swindle/Confidence Game
  - 11/09/2016
  - Left without paying tab.
- All Other Larceny
  - 12/11/2016
  - Stolen cell phone.
- Destructive/Damage/Vandalism of Property
  - 12/23/2016
  - Attempted break-in of a vehicle.
- Destructive/Damage/Vandalism of Property
  - 03/06/2017

- Customer refused to leave and broke the door.
- Simple Assault
  - 02/02/2018
  - Someone hit the victim, who fell and hit his head.
- Theft from Building
  - 02/17/2018
  - Stolen purse.
- All Other Larceny
  - 03/15/2018
  - Theft of items from a wallet. Unauthorized use of debit card.
- Missing Persons
  - 04/16/2018
  - Driver of vehicle last seen dropping off passenger at the location.
- TPN
  - 10/13/2018
  - Patron was removed from premises after request from worker at the bar.
- All Other Larceny
  - 10/23/2018
  - Stolen keys
- Theft From Motor Vehicle
  - 12/14/2018
- Simple Assault
  - 01/06/2019

- Physical altercation, with subject grabbing victim's arm.
- Simple Assault
  - 02/20/2019
  - Subject kicked victim in face & pulled out her hair.
- Simple Assault
  - 02/23/2019
  - Grabbed by the arm & escorted out of the bar.
- Aggravated Assault
  - 03/23/2019
  - Shooting; shot in abdomen after verbal altercation.
- All Other Larceny
  - 06/19/2019
  - Stolen wallet
- Theft From Motor Vehicle
  - 06/22/2019 (Reported 11/08/2019)
  - Stolen Gun
- Aggravated Assault
  - 08/19/2019
  - Victim was punched/kicked numerous times inside the bar.
- Aggravated Assault; Murder
  - 08/22/2019
  - Shot into the bar, striking multiple people.
- Drug/Narcotic Violations

- 11/17/2019
  - Subject had possession of pills.
- Theft from Motor Vehicle
  - 12/21/2019
  - Stolen gun.
- Simple Assault
  - 02/16/2020
  - Victim was beaten up at the location.
- False Pretenses/Swindle/Confidence Game
  - 5/01/2021
  - Borrowed vehicle not returned.

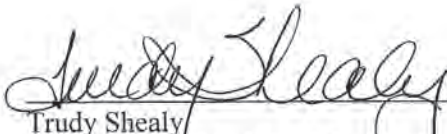
**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,	)	
	)	Docket No, 21-ALJ-17-0315-IJ
Petitioner,	)	
	)	
vs.	)	
	)	<b>PROOF OF SERVICE</b>
Agua Pina, LLC d/b/a Hookah on the River,	)	
	)	
Respondent.	)	
<hr/>		

This is to certify that the foregoing **Motion to Reconsider** has been served upon the Patrick A. McCabe, Esquire and Jason P. Luther, Esquire via US Mail, addressed as shown below, this 7th day of July, 2021:

South Carolina Department of Revenue  
P. O. Box 12265  
Columbia, South Carolina 29211-9979

Columbia, South Carolina

  
Trudy Shealy  
Legal Assistant to Burnet R. Maybank, III

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,	)	DOCKET NO. 21-ALJ-30-0143-IJ
	)	
Petitioner,	)	
	)	
vs.	)	PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION
	)	
Agua Pina, LLC, d/b/a Hookah on the River,	)	
	)	
	)	
Respondent.	)	
_____	)	

Pursuant to Rule 59(e), SCRCP and ALC Rule 29(d), the South Carolina Department of Revenue (the "Department"), submits this Response to Agua Pina, LLC, d/b/a Hookah on the River's (the "Respondent"), Motion for Reconsideration.

**I. The Respondent's Motion to Reconsider is Inappropriate Under Rule 59(e)**

The purpose of a Rule 59(e) motion relating to altering or amending a judgment is to request the judge to "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157,172-173 (1992). A party may file a motion to reconsider when they believe the court "has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24 (2003). The notes to Rule 59(e) state that Rule 59 is "substantially the Federal Rule" SCRCP 59, Notes. Rule 59(e) of the Federal Rules of Civil Procedure provides a mechanism for a party to petition the court to alter or amend a judgment under certain limited circumstances. However, Rule 59(e) motions "are not at the disposal of an unsuccessful party to 'rehash' the same arguments and facts previously presented...." *Rouse v. Nielson*, 851 F.Supp. 717, 734 (D.S.C. 1994). "The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Pacific Ins. Co. v. American Nat'l Fire Assoc.*, 148 F.3d 396, 403 (4th Cir. 1998) (citing *Frietsch v. Refco, Inc.*, 56 F.3d 825, 828 (7th Cir. 1995)).

The Respondent's Motion fails to mention any facts the Court misunderstood, failed to consider, or failed to rule upon. Instead, the Respondent's Motion merely rehashes the testimony and evidence that was already presented to this Court. All the points made in the Respondent's Motion were addressed at the June 9, 2021, hearing. The Department contends that the Court as the trier of fact, fully understood the facts and issues; fully considered all arguments; correctly assigned the evidence its appropriate weight; evaluated the creditability of the testimony presented; and ruled on all issues presented by the parties.

## II. **Argument**

The Department will address each issue in accordance with each title in the Respondent's Motion to Reconsider:

### a) **Failure of Proof**

The Department is puzzled as to why the Respondent argues the merits of the Department's Emergency Motion when that issue is moot. An issue is moot when a "judgment, if rendered, will have no practical legal effect upon existing controversy." Mathis v. South Carolina State Highway Dept., 260 S.C. 344, 346, 195S.E.2<sup>nd</sup> 713,715 (1973). The Department's Motion for Emergency Suspension was filed on May 18, 2021. Based upon affidavits provided by Richland County Sheriff's Department and the Respondent's security video, the Court ordered the suspension of the Respondent's permit and license on May 20, 2021. Arguing the merits of the Department's Emergency Motion at this point is akin to shutting the barn doors after the animals have escaped the barn.

Assuming a scrivener's error is responsible for the confusion, and the Respondent intended to argue the Department did not meet its burden of proof at the Administrative Hearing, the Department's response is that the testimony of its four witnesses met the required burden of proof. The Respondent is correct that the Department has the burden of proof in a violation case. "In enforcement actions . . . the burden of proof lies with the agency." South Carolina Dept. of Motor Vehicles v Daniel C. Jessie, Docket No. 06-ALJ-21-0188-AP, Admin Law Court (June 20, 2006). "Absent an allegation of fraud or a statute or a court rule requiring a higher standard, the standard of proof in administrative hearings is generally a preponderance of the evidence. . . ." Anonymous (M-156-90) v. State Bd. of Med. Exam'rs, S.C. 371, 496 S.E.2<sup>nd</sup> 17 (1988). Preponderance of the evidence

is defined as “evidence which is of the greater weight or more convincing than the evidence which is offered in opposition to it . . . .” Black’s Law Dictionary, 1182 (6<sup>th</sup> ed. 1990).

The cases cited in the Respondent’s Motion, indicating the failure to testify creates a presumption that harmful testimony exists, are not applicable to the present case. The Department called four witnesses to testify, not only to the shootings, but also to the continued problems occurring at the location. The Respondent’s Motion bemoans the fact the Department did not call an ABL specialist to testify while ignoring the Respondent’s ability to subpoena an ABL witness if deemed necessary to its case.

Simply put, the Court found the testimony and evidence provided by the Department’s witnesses to be more convincing than the self-serving testimony of the businesses’ owner and promotional manager. As a result, the burden of proof was met necessary for this case.

**b) What is the Standard for Revocation**

A review of Title 61 provides the standard for the revocation of alcohol permits and licenses. South Carolina Code Ann. § 61-6-920 (2009) authorizes the Department to suspend or revoke a liquor license when the licensee or location are no longer suitable. S.C. Code Ann. Regs. 7-200.1(I) (Supp. 2020) provides that a violation of a stipulation is sufficient grounds to revoke the license. S.C. Code Ann § 61-4-270 (2009) provides that the Department may revoke the permit of a person failing to comply with any of the requirements of Chapter 4 of Title 61. Likewise, S.C. Code Ann. § 61-6-100 (2009) permits the revocation of any licenses issued by the Department. The revocation of the Respondent’s permit and license were permitted under S.C. Code Ann. § 61-4-580(B) (2009) (providing that a violation of § 61-4-580 is grounds for the suspension or revocation of the holder’s permit) and S.C. Code Ann. § 61-6-1830(1) (2009) (the Department may suspend or revoke a license upon finding the applicant no longer meets the requirements of S.C. Code Ann. § 61-6-1820 (Supp.2018)). The Court correctly found that the Respondent violated its beer and wine permit pursuant to S.C. Code Ann. § 61-4-580(A)(Supp.2018) and its alcohol license pursuant to S.C. Code Ann. § 61-6-1820(2) (Supp. 2018).

The Respondent’s Motion relies on a list of crimes that occurred at McCary’s Sports Bar & Grill (McCary’s) as evidence of unequal treatment and proof it is being targeted. The weight of this evidence was addressed in the Final Order. The Court correctly found that the 60 incident reports within ten years at McCary’s, some of which were traffic stops, was not comparable to the 102 service

calls within a 5 month period at the Respondent's location.<sup>1</sup> Also, the evidence presented did not support the Respondent's claims relating of being unfairly targeted. Furthermore, the Court correctly found that the severity of the violations warranted the revocation of the permit and license.

c) Burden on Law Enforcement

In determining whether a location has the reputation for peace and good order, the Court correctly examined whether the Respondent's business was creating a burden to law enforcement. The South Carolina Supreme Court held that a court "may consider any evidence adverse to the location" Kearney v. Allen, 287 S.C. 324,326, 338 S.E.2d, 335, 337 (1985). "The findings . . . that there have been law enforcement problems in the area, support the conclusion that the location is unsuitable for the sale of cold beer." Palmer v. South Carolina Alcoholic Beverage Control Com'n., 282 S.C. 246, 250, 317 S.E.2d 476, 478 (1984). The Respondent's Motion argues that the Court incorrectly determined that the Respondent's business constitutes a burden to law enforcement.

In making the determination, the Court relied upon the testimony of the Sheriff's Department alleging there had been over 100 service calls to the Respondent's business. Both Sergeant Torres and Corporal Hawkes testified that the Respondent's business was a problem location. Sergeant Torres testified that the business is a problem location. She explained that the business is an unreasonable strain and burden on law enforcement, as she often must obtain units from other regions in the city to assist at the Respondent's business. During cross examination, Sergeant Torres indicated that the Sheriff's Department had not received any call for service for the event center located next door. Corporal Hawkes testified that he did not think the business was a burden, because the Sheriff's Department has the resources to respond to the location. However, he further testified that the increasing violence at the Respondent's business has forced the Sheriff's Department to expend a significant amount of manpower for a single location. Additionally, Corporal Hawke testified that the Sheriff's Department had not received any service calls from the event hall located next door to the Respondent's business. Based upon this evidence, the Court correctly found that the Respondent's business is an unreasonable strain and burden on law enforcement.

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<sup>1</sup> Three incident reports involved the discharge of firearms.

d) Conclusion

The Respondent's reliance upon Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58,773 S.E. 2d 607 (2015) is misplaced as Respondent's Counsel failed to raise any hearsay objections during the hearing.

The Department's first witness, Investigator Short, testified to his investigation of May 8, 2021. During his testimony, Investigator Short did testify to the statements that were made by the shooting victim. The Court, *Sua Sponte*, raised questions about whether the investigator could testify as to what the shooting victim stated. However, after discussing the South Carolina Supreme Court's holding in State v. Ladner, the Court permitted the statement as an exception under SCRPC 803 (2). Exhibit 7 and Exhibit 8 were entered into evidence with no objection.

The Department's second witness, Sargent Torres, the supervisor of Region 4 Area, testified about four different incident reports issued by her officers. Exhibit 1, Exhibit 4, Exhibit 5 and Exhibit 6 were entered into evidence with no objection. Any other testimony offered by Sargent Torres was based upon her personal knowledge as the supervisor for Region 4.

The Department's third witness, Corporal Hawke testified as to his personal interactions with the business. The incident reports of those interactions were entered as Exhibit 2 and Exhibit 3 under SCRPC Rule 803(6). He did testify as to statements made by the Respondent's employees during these interactions. However; (1) the Respondent's Counsel made no objections; and (2) any statements made by the Respondent's employees during those interactions would not be hearsay under SCRPC Rule 801(d) 2, admission by party-opponent. Any other testimony given by Corporal Hawke was based upon personal knowledge as a Sheriff's Deputy.

In conclusion, the purpose of a Rule 59 Motion is to advise the Court of a particular fact or piece of evidence that it may not have considered or ruled upon in its Order. The Respondent's Motion fails to put forward any evidence that was not considered by the Court and ultimately is nothing more than an attempt to relitigate matters already decided by the Court. Therefore, the Court should deny the Respondent's Motion to Reconsider.

*{Signature on following page}*

Respectfully submitted,

  
Patrick A. McCabe, Esquire (Bar No. 81264)

Associate Counsel

Adam J. Neil, Esquire (Bar No. 69594)

Associate General Counsel

Jason P. Luther, Esquire (Bar No. 78021)

Chief Legal Officer

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Attorneys for Department of Revenue

Patrick.McCabe@dor.sc.gov

Columbia, South Carolina

July 13, 2021

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,  
  
Petitioner,  
  
vs.

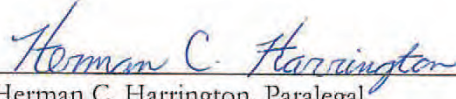
Docket Number: 21-ALJ-30-0143-IJ

**PROOF OF SERVICE**

Agua Pina, LLC, d/b/a Hookah on the  
River,  
  
Respondent.

I, the undersigned employee of the South Carolina Department of Revenue, do hereby certify that I have served a copy of the foregoing, **Petitioner's Response to Respondent's Motion for Reconsideration**, in connection with the above-captioned case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Burnet R. Maybank, III, Esquire  
Andrew W. Saleeby, Esquire  
PO Box 2426  
Columbia, SC 29202  
*Attorneys for Respondent*

  
\_\_\_\_\_  
Herman C. Harrington, Paralegal  
South Carolina Department of Revenue

Columbia, South Carolina  
July 13, 2021