STATE OF WISCONSIN CITY OF MADISON DANE COUNTY
ALCOHOL LICENSING REVIEW COMMITTEE

CITY OF MADISON,

Complainant,

Proceeding Seeking Revocation of Class B Alcohol Beverage and 21+ Entertainment Licenses

v.

T.C. VISIONS,
d/b/a VISIONS NIGHTCLUB,

Licensee

MOTION TO EXCLUDE ANY EVIDENCE THAT IS NOT EYE-WITNESS TESTIMONY (and to redact all hearsay allegations from Complaint)

The Licensee, T.C. Visions, by its attorney, The Jeff Scott Olson Law Firm, S.C., by Attorney Jeff Scott Olson hereby moves the ALRC to exclude from consideration any evidence that is not eye-witness testimony and to redact from the Complaint all allegations that are supported only by hearsay. Any other type of testimony deprives T.C. Visions of the opportunity to confront and cross examine witnesses against it, two of the basic requirements of any due process hearing.

In Wisconsin, a liquor license is a constitutionally protected property interest that can only be revoked for cause, after a due process hearing. The decision to revoke a license is a quasi-judicial function and must be undertaken only with the protections of due process:

> Since licensing consists in the determination of factual issues and the application of legal criteria to them -- a judicial act -- fundamental requirements of due process are applicable to it.

Hornsby v. Allen, 326 F.2d 605, 608 (5th Cir. 1964). It is now well accepted in Wisconsin that due process protections are required when a municipality seeks to revoke a liquor license.

The district court in the Eastern District of Wisconsin has held that, due to the realistic expectation of a liquor license holder that he is likely to retain his license, and therefore his livelihood, for more than one year, such a person has a property interest in his license. *Manos v. City of Green Bay*, 372 F.Supp. 40, 48-49 (E.D. Wis. 1974), citing *Board of Regents v. Roth*, 408 U.S. 564, 571-72 (1972). The licensee's substantial property interest "is enough to warrant the guarantee of minimal standards required by procedural due process." *Manos*, 372 F.Supp. at 49.

More recently, the Seventh Circuit Court of Appeals employed the *Manos* analysis to rule that, in Illinois, a liquor license is "property" for purposes of determining whether the state can deprive a licensee of his license without according him due process of law, citing *Perry v. Sindermann*, 408 U.S. at 601. *Club Misty, Inc. v.*

Laski, 208 F.3d 615, 619 (7th Cir. 2000). To arrive at that determination, the court noted that by Illinois statute, a liquor license may be revoked only for cause, and this expectation of renewal creates the property interest. *Id.* at 618.

The Wisconsin statute that governs the revocation of liquor licenses also allows revocation only for cause. § 125.12, Wis. Stats. Thus, there is simply no question that, in Wisconsin, one who holds a liquor license is constitutionally entitled to the protections of due process of law before being deprived of that license.

"Due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481(1972). The specific due process which must be afforded one who holds a liquor license is:

> (1) notice of the charges upon which denial of the liquor license is predicated; (2) an opportunity to respond to and challenge such charges; (3) an opportunity to present witnesses under oath; (4) an opportunity to confront and cross-examine opposing witnesses under oath; and (5) the opportunity to have a verbatim transcript made upon his own initiative and expense. In addition, the conclusions made by the hearing body must be based on the evidence adduced at hearing.

Manos, 372 F.Supp. at 51.

The United States Supreme Court has been clear on this point, saying:

> In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. .... Certain principles have remained relatively immutable in our

> jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment. This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, but also in all types of cases where administrative actions were under scrutiny.

Goldberg v. Kelly, 397 U.S. 254, 269–70 (1970) (internal quotation marks and citations omitted).

Therefore, all evidence to be presented must be only that of witnesses who have first-hand knowledge of the evidence presented. *See, e.g., Consol. Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197, 230, 59 S. Ct. 206, 217, 83 L. Ed. 126 (1938)("Mere uncorroborated hearsay or rumor does not constitute substantial evidence.")

The Licensee also requests that allegations contained in the Complaint that are based solely on hearsay be stricken. This ruling would apply to the following paragraphs of the Complaint which rely exclusively on hearsay:

In Section D:

paragraph 3
paragraph 4
paragraph 8
paragraph 10
paragraph 16
paragraph 17
paragraph 18
paragraph 22
paragraph 24
paragraph 26
paragraph 27
paragraph 29
paragraph 32
paragraph 34
paragraph 38
paragraph 39
paragraph 42
paragraph 43
paragraph 44
paragraph 45
paragraph 54

Dated this 23rd day of September, 2019

Respectfully submitted,

T.C. VISIONS, Licensee,

By

ATTORNEYS FOR LICENSEE

THE JEFF SCOTT OLSON LAW FIRM, S.C.
Attorney Jeff Scott Olson
State Bar No. 1016284
131 W. Wilson St., Suite 1200
Madison, WI 53703
Phone: (608) 283-6001
Facsimile: (608) 283-0945
E-mail: jsolson@scofflaw.com

Jeff Scott Olson