

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
	)	
THE BIG HOUSE CEMETERY	)	CASE NO. 2025-CP-07--07-01126
COMMITTEE, SHANOMA	)	
WATSON, JULIA B. SCOTT,	)	
JIMMY POPE, TAMIKA	)	
MIDDLETON, SHEILA	)	
MIDDLETON, MARY MACK,	)	
LEROY HAYNES, SHERIKA	)	
CHISOLM, SHERIKE BENNETT,	)	PLAINTIFFS' MOTION FOR
and ARLENE COVINGTON,	)	TEMPORARY RESTRAINING ORDER
Plaintiffs,	)	
	)	
vs.	)	
	)	
THERESA AIGNER, ROBERT	)	
CODY HARPER, and WALTER	)	
ROBERT HARPER, JR.,	)	
Defendants.	)	
	)	

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

COME NOW Plaintiffs Big House Cemetery Committee, Shanoma Watson, Julia B. Scott, Jimmy Pope, Tamika Middleton, Sheila Middleton, Mary Mack, Leroy Haynes, Sherika Chisolm, Sherike Bennett, and Arlene Covington, by and through undersigned counsel, file this Motion for Temporary Restraining Order against Defendants Theresa Aigner, Robert Cody Harper, and Walter Robert Harper, Jr., pursuant to Rule 65(b) of South Carolina Rules of Civil Procedure.

Relying on their Verified Amended Complaint and additional evidence filed herewith, Plaintiffs show the following in support of this Motion, as further detailed in their Memorandum of Law:

**A. Factual Background and Procedural History**

1. Individual Plaintiffs Shanoma Watson, Julia B. Scott, Jimmy Pope, Tamika Middleton, Sheila Middleton, Mary Mack, Leroy Haynes, Sherika Chisolm, Sherike Bennett, and Arlene Covington (“Individual Plaintiffs”) and members of Plaintiff the Big House Cemetery Committee (the “Committee”) are descendants of those buried in the Big House Cemetery (the “Cemetery”). They and their forebearers have used the Cemetery as a community cemetery for over a century, accessing the Cemetery for funerals, visitation, care, and community clean-ups via Everest Lane and Everest Road (collectively “Everest”) on St. Helena Island, South Carolina. Verified Am. Compl. ¶¶ 1-2, 4-5, 12-25, 73-82.
2. Upon moving to the neighborhood through which Everest runs, Defendants Aigner, Harper, and Harper Jr. initially respected these longstanding community practices related to the Cemetery, including access to the Cemetery via Everest. *Id.* ¶¶ 89-91.
3. In May 2024, approximately four years after purchasing and moving from out-of-state to her property on Everest Lane on St. Helena Island, Defendant Aigner suddenly put a halt to Individual Plaintiffs’ and Committee members’ decades-long, multi-generational burial and cemetery practices at the Cemetery, erecting a locked gate on Everest Lane that required a code not shared with community members, including Individual Plaintiffs. *Id.* ¶¶ 92-95.
4. When a three-car crash on May 29, 2024, claimed the lives of five people, including relatives of several Individual Plaintiffs, their family could not bury them alongside other

family members buried in the Cemetery, because they could not pass through Defendant Aigner's locked gate. *Id.* ¶¶ 7, 113.

5. Shortly after Defendant Aigner blocked access to the Cemetery, Defendants Harper and Harper, Jr. erected a gate at the entrance to the Cemetery off of Everest Road, further blocking access at the entrance to the Cemetery that community members, including Individual Plaintiffs, and their forebearers traversed for decades. *Id.* ¶¶ 9, 96.
6. As a result, Individual Plaintiffs and other community members have not been able to visit or care for the Cemetery since May of 2024. Graves are now covered in debris, fallen tree branches, leaves, and overgrown grass and weeds, making it an inhospitable burial and memorial site. *Id.* ¶¶ 97-99, 102-207.
7. On April 30, 2025, Plaintiffs filed their Complaint for Injunctive, Declaratory, and Monetary Relief ("Complaint") to challenge Defendants' obstructions of their access to the Cemetery in violation of South Carolina cemetery dedication and easement law. Compl., *BHCC v. Aigner*, Case No. 2025CP0701126 (filed Apr. 30 2025).
8. On July 9, 2025, Plaintiffs filed their Amended Verified Complaint for Injunctive, Declaratory, and Monetary Relief ("Verified Amended Complaint") to allege additional facts related to Plaintiffs' immediate need to remove Defendants' obstructions for purposes of access to the Cemetery via Everest for a planned clean-up day on July 12, 2025, and to verify all of the factual allegations of their pleading. Verified Am. Compl., *BHCC v. Aigner*, Case No. 2025CP0701126 (filed July 9 2025).
9. Because the Cemetery sits waterside, bordering vulnerable marshland, Plaintiffs are increasingly concerned about further damage to the Cemetery should they be unable to restore its condition in the early days of the current hurricane season, which began on June

1, 2025. *See id.* ¶¶ 99-101, 132, 205; Shannon Beard, *Hurricane season has started. Here's what to know*, NPR (June 1, 2025), <https://www.npr.org/2025/06/01/nx-s1-5419515/hurricane-season-starts-atlantic-storms-what-to-know>.

10. Plaintiffs are also increasingly concerned about their inability to connect with and celebrate their deceased loved ones buried in the Cemetery as anniversaries, birthdays, and holidays continue to pass while Defendants' obstructions remain. Verified Am. Compl. ¶¶ 202-207.
11. Thus, Plaintiffs have suffered and will continue to suffer immediate, irreparable injury, loss, and damage as a result of Defendants' wrongful conduct, and Defendants' unlawful conduct will continue, unless immediately restrained or otherwise enjoined by this Court. *Id.* ¶¶ 101-207 216, 232.
12. Plaintiffs now move for a temporary restraining order to redress Defendants' ongoing violations of their rights under South Carolina law, which prevent Plaintiffs from holding their planned cemetery clean-up day on Saturday, July 12, 2025. *Id.* ¶¶ 206, 216, 232. Plaintiffs did not file this Motion at an earlier date because they were not able to confirm service of process on all Defendants until July 7, 2025. *See* Affidavit of Tyler Bailey ("Bailey Aff."), attached here as Exhibit A.

***Plaintiffs' Delayed Awareness of Service of Process on Defendant Theresa Aigner***

13. In early May 2025, Plaintiffs hired a professional process server to serve Defendant Aigner at her home. *Id.* ¶3. The gate erected by Defendant Aigner with a "NO TRESPASSING" sign prevents visitors from accessing her front door. Verified Am. Compl. ¶ 94. Thus, when the process server attempted personal service on Defendant Aigner in mid-May, he left a business card at Defendant Aigner's gate. When he returned on a later date a few days later to attempt service, he found that the business card had been removed and left another

business card at Defendant Aigner's gate. The service processor never heard from Defendant Aigner. Bailey Aff., Ex. A, ¶¶ 4-8.

14. Plaintiffs next arranged for the local Beaufort County Sheriff's Office to serve the summons and complaint on Defendant Aigner, as well as Defendants Harper and Harper, Jr. *Id.* ¶ 9. Around June 16, 2025, Plaintiffs received an affidavit of service from the Sheriff's Office that Defendant Robert Cody Harper had been served on June 10, 2025. *Id.* ¶ 10.
15. The Sheriff's Office was unable to confirm service on the other Defendants when Plaintiffs inquired over the phone about the status of service. *Id.* ¶ 11.
16. On June 18, 2025, Plaintiffs then attempted service on Defendant Aigner through a certified mail package that included the summons and Complaint, but the attempt by USPS to deliver the package was unsuccessful. *Id.* ¶¶ 12-14.
17. Finally, using an email address that Defendant Aigner had previously used to correspond with the several of the Plaintiffs and other local community members, Plaintiffs sent a courtesy email to Defendant Aigner to inform her of the filed Complaint, to provide a courtesy copy of said Complaint and the Summons, and to inform her of the multiple attempts to serve her. Defendant Aigner did not respond. *Id.* ¶¶ 15-16.
18. On July 5, 2025, Plaintiffs received notice from an attorney that Defendant Aigner had retained him to represent her in this case. On July 7, 2025, Plaintiffs received from the Beaufort County's Sheriff's Office, via USPS mail, an affidavit of service for Defendant Aigner and Defendant Walter Harper, Jr., which had been placed in the mail by the Sheriff's Office just a few days prior on July 2, 2025. *See id.* ¶ 17.

**B. A Temporary Restraining Order is Warranted to Ensure Plaintiffs' Access to the Cemetery for the July 12, 2025 Clean-Up Day.**

19. A temporary restraining order is necessary here to prevent ongoing and further immediate, irreparable harm, injury, and damage to Plaintiffs, which occurs each day they are unable to access the Cemetery via Everest to visit and care for the Cemetery where their deceased loved ones are buried, including on their planned clean-up day on Saturday, July 12, 2025, as is their right under South Carolina cemetery law.
20. To obtain a temporary restraining order, a party must meet the requirements for temporary injunctive relief. To obtain such relief, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. *County of Richland v. Simpkins*, 348 S.C. 664, 669 (Ct. App. 2002); *Grosshuesch v. Cramer*, 367 S.C. 1, 4 (2005). Plaintiffs meet each requirement.

**Immediate, Irreparable Injury**

21. Here, the injury is immediate and irreparable in that members of **Plaintiff Big House Cemetery Committee** are unable to visit, care for, or maintain the Cemetery, as has been its members' – including some Individual Plaintiffs' – Gullah Geechee and family tradition for generations. Verified Am. Compl. ¶¶ 1, 102-07, 117, 157, 216, 232.
22. The injury is immediate and irreparable in that **Individual Plaintiffs** and **Plaintiff Big House Cemetery Committee** have a community clean-up day planned for July 12, 2025, that cannot take place without access to the Cemetery via Everest. Plaintiff Big House Cemetery Committee has been unable to host the community's regular clean up days since Defendants' obstructions. *Id.* ¶¶ 82, 206.
23. The injury is immediate and irreparable in that **Plaintiff Shanoma Watson**, who was unable to bury her relative who died in a car crash in early 2024 alongside other deceased

relatives buried in the Cemetery, remains unable to reinter him in the Cemetery. She is also unable to visit or care for the gravesites of numerous loved ones buried in the Cemetery, including on the planned clean-up day on July 12, 2025. *Id.* ¶¶ 108-16, 206, 216, 232.

24. The injury is irreparable in that 81-year-old **Plaintiff Julia B. Scott** is unable to visit or care for the burial sites of her mother, husband, and son, including on the planned clean-up day on July 12, 2025, and she cannot make end-of-life arrangements on her own behalf to be buried alongside them in the Cemetery. *Id.* ¶¶ 119-26, 206, 216, 232.
25. The injury is immediate and irreparable in that **Plaintiff Jimmy Pope** is unable to visit or care for the burial sites of many family members, including his grandparents, aunts, uncles, and cousins, in the Cemetery, including on the planned clean-up day on July 12, 2025. *Id.* ¶¶ 127-35, 206, 216, 232.
26. The injury is immediate and irreparable in that **Plaintiff Tamika Middleton** is unable to visit or care for the burial sites of many family members, including her grandparents, aunts, uncles, and cousins, in the Cemetery, including on the planned clean-up day on July 12, 2025. *Id.* ¶¶ 149-61, 206, 216, 232.
27. The injury is immediate and irreparable in that **Plaintiff Sheila Middleton**, who owns the land on which the Cemetery sits, is unable to care for the burial sites of deceased relatives buried in the Cemetery, as she has done for decades, in the Cemetery, including on the planned clean-up day on July 12, 2025. *Id.* ¶¶ 136-48, 206, 216, 232.
28. The injury is immediate and irreparable in that **Plaintiff Mary Mack** is unable to care for the burial site of deceased relatives, as has been her family practice for decades, in the Cemetery, including on the planned clean-up day on July 12, 2025. *Id.* ¶¶ 162-73, 206, 216, 232.

29. The injury is immediate and irreparable in that **Plaintiff Leroy Haynes** is unable to visit or care for the gravesite of his mother, father, oldest brother, two sisters, two brothers-in-law, an aunt, cousins, and his nephew in the Cemetery, including on the planned clean-up day on July 12, 2025. *Id.* ¶¶ 174-80, 206, 216, 232.
30. The injury is immediate and irreparable in that **Plaintiff Sherika Chisholm** is unable to visit or care for the burial site of multiple family members in the Cemetery, including on the planned clean-up day on July 12, 2025. *Id.* ¶¶ 190-94, 206, 216, 232.
31. The injury is immediate and irreparable in that **Plaintiff Sherike Bennett** is unable to visit or care for the burial sites of multiple generations of grandparents, uncles, aunts, and cousins in the Cemetery, including on the planned clean-up day on July 12, 2025. *Id.* ¶¶ 181-89, 206, 216, 232.
32. The injury is immediate and irreparable in that **Plaintiff Arlene Covington** is unable to visit or care for the burial sites of many family members, including uncles, aunts, sisters, cousins, her brother-in-law, and her nephew, in the Cemetery, including on the planned clean-up day on July 12, 2025. *Id.* ¶¶ 195-201, 206, 216, 232.
33. The injury is immediate and irreparable in that **Individual Plaintiffs** have been and remain unable to visit and care for the gravesites of their deceased relatives on days of national and familial significance, including past Mother's Days and Father's Days, Juneteenth, and Fourth of July holidays. *Id.* ¶¶ 202-07.

#### **Likelihood of Success on the Merits**

34. Plaintiffs' Verified Amended Complaint shows that Plaintiffs have a strong likelihood of success on the merits under South Carolina cemetery law, which has long recognized and protected the rights of descendants of the deceased and the broader local community, which



includes Plaintiffs, to visit, care for, bury in, and maintain cemeteries, graves, and other burial grounds for cemetery purposes. *See Huxfield Cemetery Ass'n v. Elliott*, 388 S.C. 565, 570 (2010); *Kelly v. Tiner*, 91 S.C. 41 (1912); *cf. Frost v. Columbia Clay Co.*, 130 S.C. 72 (1924) (recognizing rights of plaintiffs to access cemetery, to possess land where deceased are buried, and to care for graves on cemetery for as long as cemetery continues to be used).

35. Plaintiffs' Verified Amended Complaint also shows that Plaintiffs have a strong likelihood of success on the merits under South Carolina easement law, given the documented and known prescriptive easement (among other easements) along Everest for access to the Cemetery, which has continued with each conveyance of the properties along Everest in an open, notorious, and uninterrupted way. *See Huxfield*, 388 S.C. at 594-95; *see also Poole v. Edwards*, 197 S.C. 280 (1941); *Haselden v. Schein*, 167 S.C. 534 (1932); *Judy v. Kennedy*, 398 S.C. 471, 477-8 (Ct. App. 2012); *Davis v. Epting*, 317 S.C. 315, 318-19 (Ct. App. 1994).

***Absence of an adequate remedy at law***

36. Plaintiffs lack an adequate remedy at law and will continue to suffer as a result of Defendants' actions, given Defendants' current violation of the rights of Plaintiffs under South Carolina law that cannot be fully redressed through any other remedy.

**WHEREFORE**, pursuant to South Carolina Rules of Civil Procedure 65(b), Plaintiffs respectfully request that the Court: (A) issue a Temporary Restraining Order for 10 days—unless the Court finds good cause to extend that 10-day period—so Plaintiffs may access Everest to conduct their planned clean-up day on July 12, 2025; (B) during those 10 days, hold a hearing on a temporary injunction to present evidence in support of said requested injunction; and © following the hearing, convert

the Temporary Restraining Order into an Order for Temporary Injunction, enjoining Defendants from blocking access to the Big House Cemetery during the pendency of this litigation.

Respectfully submitted this the 9th day of July 2025.

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# EXHIBIT A

Affidavit of Tyler Bailey

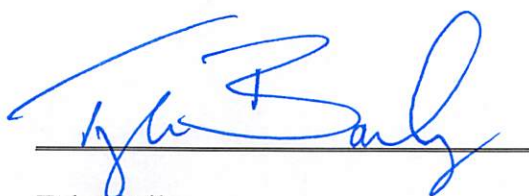
**AFFIDAVIT OF TYLER BAILEY**

[illegible]

1. I, Tyler Bailey, being duly sworn, have read the below facts and attest that they are true and accurate and based on my own personal knowledge.
2. Along with attorneys at the Center for Constitutional Rights, I am legal counsel for Plaintiffs in the above-captioned action.
3. On or around May 12, 2025, I arranged for personal service of the pleadings in this case on Defendants Robert Cody Harper and Walter Robert Harper, Jr. and Defendant Theresa Aigner on Everest Road and Everest Lane, respectively, through a private process service company..

4. After several attempts to serve Defendant Aigner, the process server was unable to perfect service on Defendant Theresa Aigner.
5. The process server reported to me that he made an attempt to serve Defendant Aigner on May 13, 2025, at 2:30pm, but discovered Aigner's address was behind a locked and gated fence, so he was unable to serve Aigner. The server left his contact card on the gate.
6. A few days later the process server reported to me that he made another attempt to serve Defendant Aigner on May 16 at 9:30am at her address on Everest Lane and discovered that the contact card that he had previously left on the gate had been removed.
7. The process server reported on May 30, 2025, that he had made a third attempt to serve Aigner on May 22 at 5:06pm at her address on Everest, honking his vehicle's horn several times at the gate in front of her entrance, but received no response, despite there being several cars parked in front of Defendant Aigner's residence.
8. He said he again left his contact card on the gate, but he was never able to make contact with Defendant Aigner.
9. I then arranged for the local Beaufort County Sheriff's Department to serve the summons and complaint on Defendant Aigner, Defendant Robert Cody Harper, Defendant Walter Harper, Jr.
10. Around June 16, 2025, I received an affidavit of service from the Sheriff's Department that Defendant Robert Cody Harper had been served around June 10, 2025.
11. The Sheriff's Department was unable to confirm service on any of the other Defendants when my staff at my legal practice inquired over the phone about the status of service.
12. On June 18, 2025, I arranged service of the Complaint and Summons in this case on Defendant Aigner at her residence at 42 Everest Lane, St. Helena Island, South Carolina, 29920, via the United States Postal Service certified mail, return receipt requested, with an estimate delivery date on June 21. The tracking number for the certified mail to Defendant Aigner's address is 9589 0710 5270 1675 9474 75.

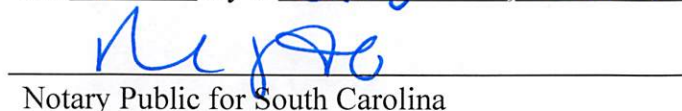
13. According to the USPS tracking system, the U.S. Postal Service attempted delivery of the certified mail on June 21, 2025, around 9:14am.
14. No further attempts at the certified mail delivery have been made.
15. On June 24, 2025, my co-counsel Emily Early emailed courtesy copies of the Complaint and Summons to Defendant Aigner at her email address, obtained from Plaintiffs from their previous attempts to regain access to the cemetery at issue in this case. Ms. Early copied me and other legal team members on the June 24, 2025 email to Ms. Aigner.
16. Defendant Aigner has not responded to Ms. Early's email on which I and other legal team members are copied.
17. On July 5, 2025, Plaintiffs received notice from an attorney that Defendant Aigner had retained him to represent her in this case. On July 7, 2025, Plaintiffs received from the Beaufort County's Sheriff's Department, via USPS mail, an affidavit of service for Defendant Aigner and Defendant Walter Harper, Jr. The affidavits of service were mailed by the Sheriff's Department on July 2 and processed by USPS on July 3, 2025.



Tyler Bailey

SWORN to and Subscribed before me

this 9 day of July, 2025

  
Notary Public for South Carolina

My Commission expires: 6/3/35

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
	)	FOURTEENTH JUDICIAL CIRCUIT
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THE BIG HOUSE CEMETERY	)	CASE NO. 2025-CP-07-01126
COMMITTEE, SHANOMA	)	
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CHISOLM, SHERIKE BENNETT,	)	MEMORANDUM IN SUPPORT OF
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THERESA AIGNER, ROBERT	)	
CODY HARPER, and WALTER	)	
ROBERT HARPER, JR.,	)	
Defendants.	)	
	)	
	)	
	)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER**

**I. INTRODUCTION**

In their Motion for Temporary Restraining Order, Plaintiffs Shanoma Watson, Julia B. Scott, Jimmy Pope, Tamika Middleton, Sheila Middleton, Mary Mack, Leroy Haynes, Sherika Chisolm, Sherike Bennett, and Arlene Covington (hereinafter collectively "Individual Plaintiffs"),

along with Plaintiff Big House Cemetery Committee (the “Committee”), seek a temporary restraining order, pursuant to South Carolina Rules of Civil Procedure 65(b), immediately enjoining Defendants from blocking Plaintiffs’ and other local community members’ access to Big House Cemetery (the “Cemetery”) on Everest Road and Everest Lane (collectively “Everest”), for at least ten days, for Plaintiffs’ planned clean-up day on July 12, 2025. Plaintiffs seek this immediate injunctive relief through at least July 12, 2025, to restore the status quo, which existed for decades before Defendants obstructed Plaintiffs’ access to the Cemetery in May 2024 and for years after Defendants moved into the neighborhood. A temporary restraining order, like temporary injunctive relief, “preserve[s] the status quo and thus avoid[s] possible irreparable injury to a party . . . .” *See Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601 (2001); *see also Cnty. Council of Charleston v. Felkel*, 244 S.C. 483–84 (1964).

The circumstances here present the rare need for a temporary restraining order. After years of honoring Plaintiffs’ rights of access to the Cemetery—which are consistent with the local cultural practices of the community—and of making verbal commitments to her neighbors that she would continue to do so, Defendant Aigner, without notice, blocked access to the sacred burial grounds of Big House Cemetery through the locked gate she placed on Everest Lane leading to the Cemetery. Then, Defendants Robert Cody Harper and Walter Robert Harper Jr. further blocked access with an additional gate on Everest Road.

On April 30, 2025, Plaintiffs filed their Complaint for Injunctive, Declaratory, and Monetary Relief against Defendants alleging that Defendants have illegally blocked access to the Big House Cemetery in violation of their rights under South Carolina cemetery law (First Cause of Action) and easement law (Second Cause of Action). Compl., *BHCC v. Aigner*, Case No. 2025CP0701126 (filed Apr. 30 2025). And on July 9, 2026, they filed a Verified Amended



Complaint to add factual allegations related to Plaintiffs' immediate need to remove Defendants' obstructions for purposes of access to the Cemetery via Everest for a planned clean-up day on July 12, 2025; to make several other factual corrections; and to verify all of the factual allegations of their pleading. Verified Am. Compl., *BHCC v. Aigner*, Case No. 2025CP0701126 (filed July 9, 2025).

Since filing this case, Plaintiffs made multiple attempts to serve Defendants<sup>1</sup> and only recently learned within the last few days that service had been perfected on all Defendants<sup>2</sup>. Accordingly, Plaintiffs now move for a temporary restraining order to redress Plaintiffs' harm, including through at least July 12 for their planned clean-up day.

Plaintiffs meet all elements for a temporary injunctive relief under South Carolina law. First, Plaintiffs currently suffer from the immediate, irreparable harm caused by the locked gates on Everest that block access to the Cemetery and will continue to suffer such harm in the absence of court intervention. Second, Plaintiffs are likely to succeed on the merits of their claims. Third, no adequate remedy at law exists, as only an order of the Court will prevent the immediate, irreparable harm from which Plaintiffs are suffering and will continue to suffer, including the harm

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<sup>1</sup> Plaintiffs hired a professional process server to serve Defendant Aigner at her home in early May 2025. Because the gate erected by Defendant Aigner with a "NO TRESPASSING" sign prevents visitors from accessing her front door, the process server left a business card at Defendant Aigner's gate. The server returned on a later date to find the business card had been removed, and left another business card at Defendant Aigner's gate. The process server never heard from Defendant Aigner. *See* Affidavit of Tyler Bailey ("Bailey Aff."), attached as Exhibit A, ¶¶ 3-8. On June 18, 2025, Plaintiffs then attempted service on Defendant Aigner through a certified mail package that included the summons and complaint, *see* Bailey Aff., Ex. A, ¶¶ 12-13, and also requested that the local Sheriff's department attempt service of the summons and complaint on all Defendants, *id.* ¶¶ 9-11. Plaintiffs soon thereafter received an affidavit of service from the Sheriff's Department that Defendant Robert Cody Harper had been served on June 10. *Id.* ¶¶ 10. Next, because Plaintiffs had not received confirmation of service on Defendant Aigner, they sent a courtesy email to Defendant Aigner using an email address that Defendant Aigner has previously used contact to Individual Plaintiffs to inform her of the filed complaint, to provide a courtesy copy of said complaint, and to inform her of the multiple attempts to serve her. Defendant Aigner did not respond. *See id.* ¶¶ 15-16.

<sup>2</sup> On July 5, 2025, Plaintiffs learned that Defendant Aigner had retained legal counsel to represent her in this matter, and on July 7, 2025, Plaintiffs received via USPS mail, an affidavit of service from the Beaufort County Sheriff's Office that Defendant Aigner and Defendant Walter Harper, Jr. had been served on June 10, 2025. These affidavits confirmed Plaintiffs' awareness, for the first time, of service on all Defendants. *See* Bailey Aff., Ex. A, ¶ 17.

arising from their inability to access the Cemetery for their planned clean-up day on July 12. Therefore, Plaintiffs are entitled to a temporary restraining order (“TRO”), enjoining Defendants from blocking access to the Cemetery through at least July 12, 2025. If the TRO is granted, Plaintiffs also seek a hearing to convert the TRO into a preliminary injunction order pending a trial on the merits.

## **II. FACTUAL BACKGROUND**

### **A. Longstanding Neighborhood Practices Regarding Big House Cemetery.**

The Cemetery is used by members of the Gullah Geechee community on St. Helena Island, many of whom live in close proximity to the Cemetery. Verified Am. Compl. ¶ 29. For centuries, cemeteries have been sacred sites for the Gullah Geechee people, who survived enslavement on the Island. Their practice of placing cemeteries near the water and facing east emerged during that period so that their ancestors who came across the Atlantic Ocean unwillingly could transcend back to Africa over the water in the afterlife. *Id.* ¶ 47.

Individual Plaintiffs, some of whom are members of Plaintiffs Big House Cemetery Committee (the “Committee”), have relied on the Cemetery, as generations of their families are buried there. *Id.* ¶¶ 51, 53. According to local funeral directors and community members, including Individual Plaintiffs, the Cemetery has been used for nearly two centuries as a communal burial site for local families, including those of individual Plaintiffs, such as the Popes (Plaintiffs Mr. Pope, Ms. Mack, Ms. Bennett, Ms. Chisolm, Ms. Sheila Middleton, and Ms. Tamika Middleton); the Scotts (Plaintiff Ms. Scott); and the Haynes (Plaintiff Pastor Haynes). *Id.* ¶ 58.

These practices of the Committee members and of Individual Plaintiffs are consistent with the land use priorities and values of Beaufort County, and St. Helena Island specifically. Since 1999, Beaufort County has had a local ordinance protecting St. Helena Island, including the

protection of cemeteries and a prohibition on gated communities. *Id.* ¶ 40. A 2023 update to the ordinance includes specific reference to “sacred burial grounds, including graveyards and cemeteries” that are meant to be protected by the Cultural Protection Overlay District (“CPO”) created by the ordinance and covering all of St. Helena Island. *Id.* ¶ 41. More specifically, in order to protect the historic and cultural heritage of the Island, the ordinance prohibits incompatible land uses including residential neighborhoods where “a gate, guard, barrier, or other similar” structure is used for “the purpose of controlling the movement of track and people into and out of the neighborhood.” *Id.* ¶ 42.

For decades, Individual Plaintiffs, along with funeral homes and other community members, have accessed the Cemetery by turning off of Seaside Road onto Everest Lane, continuing down Everest Lane until it turns northeast and into Everest Road, and then continuing down Everest Road until it ends near the entrance to the Cemetery. Everest Lane and Road (collectively “Everest”) provides the only access to the Cemetery for hearses, funeral processions, gravediggers, tombstones, and cleaning equipment for the Cemetery grounds. *Id.* ¶¶ 84-86.

The Cemetery has been used by the community for cost-free burial plots for decades and to freely visit with and maintain the plots of their deceased relatives and loved ones. *Id.* ¶¶ 65-68. Committee members, Individual Plaintiffs, and funeral homes have accessed the Cemetery for funerals, visits, care and maintenance, and clean-up days by driving from Seaside Road to the Cemetery using Everest. *Id.* ¶¶ 83, 86. Committee members, Individual Plaintiffs, and their family members visit and tend to the Cemetery in advance of and on birthdays, anniversaries, days of familial significance, like death anniversaries, and days of national significance, like Juneteenth and the Fourth of July. *Id.* ¶¶ 121, 202-07.

Committee members, Individual Plaintiffs, and other local Gullah Geechee community members have long maintained the Cemetery through annual cemetery cleanup days to clear brush, overgrowth, and other natural debris that would otherwise cover the graves, including headstones and other markers. *Id.* ¶ 73. Clean-up days hold cultural significance for spending time together in the Cemetery and are significant to the maintenance of the burial plots. Plaintiffs have been unable to hold a clean-up day since March 2024. They are typically held in the weeks before Mother's Day each year. *Id.* ¶ 74.

All of these usual practices have been abruptly discontinued due to the unlawful obstruction discussed below in II.B. and II.C. Plaintiffs suffer from the accumulating harms of multiple missed birthdays, anniversaries, days of familial significance, and days of national significance without being able to visit their loved ones in the Cemetery and provide for the Cemetery's upkeep. *Id.* ¶¶ 202-06.

**B. Defendant Aigner's Move to the Neighborhood and Subsequent Disruption of the Status Quo through Unlawful Obstruction of Access to the Cemetery.**

Defendant Aigner purchased her property along Everest Lane in 2020. At that time and for several years after, she respected and honored Individual Plaintiffs' local practice to access and use the Cemetery and the easement that has existed on Everest for years; that traverses her property; and that community members, including Individual Plaintiffs, have used to access, visit, bury in, and conduct funerals, interments, clean-up days, and other sacred ceremonies at the Cemetery. Verified Am. Compl. ¶¶ 89-92.

Defendant Aigner later placed a locked gate on Everest Lane in late 2023. When she did so, Defendant Aigner provided Individual Plaintiffs, other community members, and local funeral homes with the code to unlock her gate. *Id.* ¶¶ 90-91. However, on or around Mother's Day in 2024, Individual Plaintiffs discovered that the gate code had been changed without notice to them,

blocking their and other community members' access to the Cemetery via Everest. *Id.* ¶ 93. At some point Defendant Aigner posted a sign at the gate, the top of which read, "NOTICE: PRIVATE PROPERTY Landowners Only Beyond This Point." *Id.* ¶ 94. In effect, Defendant Aigner has turned that end of Everest into a gated community that encloses roadway access to the Cemetery, in contravention of the CPO; limiting access only to those who live behind these gates; and thereby preventing access to the Cemetery for Individual Plaintiffs and other local community members to the Cemetery. This obstruction has effectively shut down the Cemetery since May 2024. *Id.* ¶ 97.

**C. Harper and Harper Jr.'s Disruption of the Status Quo through Unlawful Obstruction of Access to the Cemetery.**

Shortly after Defendant Aigner placed her gate with the unshared code on Everest, Defendants Harper and Harper Jr. placed a second gate. This second gate is located at the entrance to the Cemetery off of Everest Road, which Individual Plaintiffs and funeral homes have used to enter the Cemetery for at least several decades. This obstruction has further cemented the effective shut down of the Cemetery since Defendant Aigner's gate was erected. Verified Am. Compl. ¶ 96.

**E. Plaintiffs' Harm Due to Defendants' Obstructions.**

Plaintiffs are unable to visit, care for, or maintain the Cemetery, and this has caused Plaintiffs to not be able to engage in their usual practice of honoring their ancestors in death as they did in life by spending time at and tending to their burial sites and by maintaining the physical condition of the Cemetery in accordance with its sacredness. Verified Am. Compl. ¶ 106.

Moreover, Committee members and Individual Plaintiffs have historically visited their loved ones on days of national and familial significance. *Id.* ¶¶ 121, 129, 141, 149, 155, 167, 177, 183, 196, 202-207. This includes national days of significance like Mother's Day, Juneteenth (on June 19, 2025), Father's Day (on June 15, 2025 this year), and the Fourth of July. It also includes

familial days of significance, to include birthdays of the deceased, birthdays of the living who wish to share part of the day with deceased loved ones, and death anniversary dates, which occur regularly and often, given the number of people buried in the Cemetery and the deep connection of the living relatives to the Cemetery. But Plaintiffs are no longer able to make these visits in celebration of their loved ones due to Defendants' obstructions. *Id.* ¶¶ 202-07.

Third, Plaintiffs have plans to host a community clean-up day on July 12, 2025, which has been impossible since Defendants' obstructions. *Id.* ¶¶ 206-07. Absent intervention by this Court, the community clean-up day will not move forward, as a result of Defendants' ongoing misconduct at the center of this suit. *Id.* ¶ 206-07, 216, 232.

## **II. LEGAL ARGUMENT**

### **A. Standard for Temporary Injunctive Relief.**

For temporary injunctive relief to be granted, the plaintiff must establish a prima facie case by showing: (1) irreparable harm if the injunction is not granted; (2) likelihood of success on the merits of the litigation; and (3) that there is no adequate remedy at law. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51 (Ct. App. 2009) (citing *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121 (2004)); *see also Cnty. Council of Charleston v. Felkel*, 244 S.C. 483–84 (1964) (affirming lower court issuance of temporary restraining order to preserve status quo). “The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, but the plaintiff must present a reasonable question as to the existence of such a right.” *Id.* at 51 (citing *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 456 (Ct. App. 2005)). Once a plaintiff makes a prima facie showing that it is entitled to injunctive relief, “a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.” *Id.* (quoting *Helsel v. North Myrtle Beach*, 307 S.C. 29, 32 (1992)).

**B. Plaintiffs Are Entitled to Temporary Injunctive Relief**  
**Under SCRCP 65(b).**

Plaintiffs satisfy the requirements for temporary injunctive relief and thus, are entitled to the requested equitable relief. First, as long as Defendants are not enjoined from blocking access to Big House Cemetery, Plaintiffs suffer, and will continue to suffer, irreparable injury through obstructed access to the sacred burial grounds of their ancestors that have been used by their families for generations, including for their planned clean-up day on July 12, 2025. Second, Plaintiffs are likely to succeed on the merits, as South Carolina cemetery law has long protected the rights they possess and seek to enforce. Finally, no adequate remedy at law exists.

***1. Plaintiffs Suffer and Will Continue to Suffer Immediate, Irreparable Harms in the Absence of Injunctive Relief.***

Irreparable harm is, by its very nature, harm that is difficult, if not impossible to quantify. *See e.g. Columbia Broad. Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 477-78 (1972) (holding that the mere uncertainty of fixing the measure of damage may be sufficient to justify equitable jurisdiction). While irreparable harm is a fact-based inquiry that depends on the particularities in each case, South Carolina courts have found irreparable harm, for example, where residents' right to use and enjoy their property was interfered with by the noise and traffic caused by a bed and breakfast operating in the subdivision in violation of restrictive covenants, *AJG Holdings, LLC v. Dunn*, at 52, and where residents "had legitimate grievances" about traffic, excessive noise, trespass, roaming dogs, and illegal and improper parking, *Ware v. Beaufort Cnty.*, No. 2023-000581, 2025 WL 18400, at \*5 (S.C. Ct. App. Jan. 2, 2025).

Here, Plaintiffs suffer from the abrupt disruption of long-established and openly known uses of the neighborhood road, Everest, to access the Cemetery that even Defendants acknowledged and respected for years. Lack of access to the Cemetery represents an ongoing,

daily harm to Individual Plaintiffs—one that deepens on days of significance but that is felt every day. The deprivation of these rights means that:

- no clean-up day has taken place in more than a year, leaving the Cemetery in a continually devolving inhospitable state for Individual Plaintiffs and Committee members to visit and care for the Cemetery, where their loved ones rest, Verified Am. Compl. ¶¶ 82, 97-99, 205-07;
- the planned July 12, 2025 clean-up day – already 42 days into hurricane season – will not be able to take place without court intervention, *see id.* ¶¶ 206, 216, 232; *see also* Shannon Beard, *Hurricane season has started. Here's what to know*, NPR (June 1, 2025), <https://www.npr.org/2025/06/01/nx-s1-5419515/hurricane-season-starts-atlantic-storms-what-to-know>;
- days of familial significance like Individual Plaintiffs' and Committee members' families' death anniversaries and birthdays have come and gone without Individual Plaintiffs and Committee members being able to follow their usual practice of visiting with the deceased loved ones and will continue to pass without Plaintiffs being able to exercise these practices, *id.* ¶¶ 202-04;
- days of national significance like Mother's Day, Father's Day, Juneteenth, the Fourth of July and others have come and gone, without Plaintiffs getting to follow their usual practice of visiting with the deceased loved ones and will continue to pass without Plaintiffs being able to engage in these practices, *id.*;
- Plaintiff Watson, who has lost family members, is still unable to bury them in the Cemetery, *id.* ¶¶ 108-18;



- Plaintiffs cannot make end-of-life arrangements for themselves or their loved ones to be buried in the Cemetery, *id.* ¶¶ 119-26, 206, 216, 232; and
- Plaintiffs are deprived of the expectation under South Carolina law that they be able to honor and take care of their dead.

Each of these deprivations on its own establishes an immediate, irreparable harm. *See Darlington Oil Co. v. Pee Dee Oil & Ice Co.*, 62 S.C. 196 (1901) (reversing the denial of a temporary injunction because the denial of access to property is irreparable harm, making the temporary injunction proper).

## ***2. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.***

A plaintiff has shown a likelihood of success on the merits if the facts alleged constitute a prima facie showing. In evaluating whether a prima facie case has been made, courts only look to the allegations in the complaint. *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007) (“The merits of the underlying case are to be considered only to the extent necessary to determine whether there has been a prima facie showing to support a temporary injunction.” (quoting *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001))); *see also Compton v. S.C. Dept. of Correcs.*, 392 S.C. 361, 367-8 (2011).

### **a. First Cause of Action: Rights to Access Cemetery.**

South Carolina has a clear reverence for cemeteries and has long protected the rights of heirs to access, visit, and care for the gravesites of deceased loved ones for cemetery purposes: “the public, and specifically the heirs and descendants of the people buried on the property have substantive rights” regarding access to cemeteries. *See, e.g., Huxfield*, 388 S.C. at 571-72 (finding a plaintiff-association of descendants had substantive right to access, control, and maintain a cemetery). Thus, traditional property laws do not apply to restrict access to cemeteries. *See id.* at

570 (“A cemetery is not subject to the laws of ordinary property.” (quoting & citing 14 Am. Jur. 2d *Cemeteries* § 2)); *Kelly v. Tiner*, 91 S.C. 41, 74 S.E. 30, 33 (1912); *see also Re: Visits to cemeteries or family burial plots on private land*, Informal Op., S.C. Office of Att’y Gen. (2002) (quoting *Scruggs v. Beason*, 246 Ala. 405, 408, 20 So. 2d 774, 775 (1945)). Cemetery rights also necessarily include the right to ingress to, and egress from, the cemetery and thus, to access roads necessary to enter and exit a cemetery. *Accord Huxfield*, 388 S.C. at 571, 572 (citation omitted)

A court's equity powers are properly used in order to protect the rights of those owning lots in or having relatives buried in a cemetery. *See* 14 Am. Jur. 2d *Cemeteries* § 47; *Huxfield*, 388 S.C. at 572. “[W]hen a graveyard is set apart for the use of the public, . . . those who have kindred buried there can maintain a suit for any unlawful interferences and trespass.” *Kelly*, 91 S.C. at 49. Courts from other jurisdictions have likewise prevented the blocking of access to cemeteries in recognition of the rights of individuals with relatives buried in cemeteries to maintain and care for the cemetery. *See Ebenezer Baptist Church, Inc. v. White*, 513 So. 2d 1011, 1014 (Ala. 1987); *Mingledorff v. Crum*, 388 So. 2d 632, 636–37 (Fla. Dist. Ct. App. 1980); *Com., Dep’t of Fish & Wildlife Res. v. Garner*, 896 S.W.2d 10, 12-13 (Ky. 1995); *Scruggs*, 20 So. 2d 774, 775 (Ala. 1945); *Stewart v. Compton*, 549 S.W.2d 833 (Ky. App. 1977).

Here, Plaintiffs are likely to succeed on the merits of their claim to cemetery rights under the First Cause of Action of the Verified Amended Complaint because they have deceased relatives and loved ones buried in the Big House Cemetery, and the gates erected by Defendants are preventing Plaintiffs from continuing to exercise these rights, consistent with their decades-long practice of ingress to and egress from the Cemetery using Everest, and visiting, caring for, and maintaining the Cemetery. At minimum, this creates the *prima facie* case of success on the merits under South Carolina cemetery law that is necessary for issuance of a temporary restraining order.

**b. Second Cause of Action: Existence of Easement Along Everest.**

“An easement is a right given to a person to use the land of another for a specific purpose.”

*Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229 (2016) (quoting *Bundy v. Shirley*, 412 S.C. 292, 304 (2015)).

A right of way is simply an easement across another's land along a particular line for a particular purpose, such as for ingress and egress, utility lines, drainage or other such purposes. The term ‘right of way’ is often used both to refer to the easement itself, i.e., the legal right to the use of the other's land, and to refer to the actual location of the strip of land which is occupied by the easement.

John B. McArthur, 12 S.C. Jur. *Easements* § 18 (2024). The determination of the existence of an easement is a question of fact in a law action and subject to an ‘any evidence’ standard of review when tried by a judge without a jury.” *S.C. Dep’t of Transp. v. Horry Cnty.*, 391 S.C. 76, 82 (2011). As such, “[a] court may take its own view of the evidence . . . .” *Tupper v. Dorchester County*, 326 S.C. 318, 323 (1997).

Here, Plaintiffs are likely to succeed on the merits of their claim for at least one type of easement under their Second Cause of Action: an easement by prescription along Everest to access the Cemetery. An easement by prescription exists where the plaintiff establishes (1) the identity of the thing enjoyed, and (2) open, notorious, continuous, uninterrupted use, (3) for a period of 20 years. *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229, 231 (2016); *Bundy v. Shirley*, 412 S.C. 292, 304 (2015). In this case, the thing enjoyed is Everest, which has been used by Committee members and Individual Plaintiffs, as well as the broader community, openly, notoriously, continuously, and without interruption to access the Cemetery.

Everest has been used *openly* not only by Committee Members and Individual Plaintiffs, but other local community members, for decades to access the Cemetery for funeral processions, burials, clean-up days, and visits to the Cemetery. *See* Verified Am. Compl. ¶¶ 50-88, 102-201,

222-26. This well-traversed path along Everest has been the only route for Individual Plaintiffs, as well as other local community members and funeral homes, to access the Cemetery. *Id.* ¶ 86.

Everest has also been used *notoriously* by Committee Members, Individual Plaintiffs, and other community members, as Defendants, previous owners of Defendants' properties on Everest, and other current and previous owners of property off of Everest have known of, and took no issue with, said use of Everest for these purposes related to the Cemetery for decades. *Id.* ¶¶ 88, 218, 224-229. Indeed, Everest has remained a necessary route to the Cemetery, providing the only access to the final resting place for Individual Plaintiffs' and other community members' relatives and other loved ones at the Cemetery. *Id.* ¶8, 224-27. Finally, for these same reasons, Everest has been used continuously and without interruption for at least the duration of Individual Plaintiff Julia B. Scott's life, who is 81-years-old and is the eldest of Plaintiffs. Indeed, funeral home directors that perform funerals in the Cemetery estimated that Everest has been used to access the Cemetery for at least 100 years. *Id.* ¶¶ 86-87, 119-21, 218, 224-27.

South Carolina law is clear that the obstruction of an easement is a violation of the rights of those to whom the easement belongs if it unreasonably interferes with the right of passage. To illustrate, in *Judy v. Kennedy*, 398 S.C. 471, 478 (Ct. App. 2012), the South Carolina Court of Appeals found that the defendant who erected a gate to protect against vandalism and littering had violated the plaintiffs' ingress and egress easement across a road and thus ordered the defendant to provide the plaintiffs with the code to the gate, plus remote controls, to open the gate and had to let plaintiffs know any changes to the gate code.

And in *Davis v. Epting*, 317 S.C. 315 (Ct. App. 1994), the South Carolina Court of Appeals went even further in its ruling to uphold the trial court's injunction to prohibit the defendant from obstructing access over and across a road in violation of the plaintiff's easement. The court found

that the defendant's obstruction was "not necessary for either the preservation or use of [his] property." *Id.* at 319. The court thus ordered the defendant to remove the barricade and fence that blocked the right of way because alternative means existed to protect the defendant's property from the issues that the defendant was concerned about—all of which the court characterized as "minor problems such as litter, signs knocked over, and golf cart tracks across the lawn." *Id.* at 317 n.1.

Based on the foregoing, Plaintiffs are likely to succeed on the merits of their South Carolina easement claim because an easement by prescription, among other possible easements, exists on Everest, and Defendants' actions to erect locked gates flout the existence of this easement and unlawfully interfere with Plaintiffs' rights to use and enjoy Everest to access the Cemetery.

### ***3. No Adequate Remedy at Law Exists.***

The final factor this Court should consider is whether Plaintiffs have an adequate remedy at law. *See Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 545 (2006).

The adequate remedy at law must be equitable and provide for "preservation of the property at issue until the matter has been adjudicated." *Grosshuesch v. Cramer*, 367 S.C. 1, 5 (2005). Neither the ability to call law enforcement or to pursue damages is an adequate remedy at law for intrusions on property rights. *AJG Holdings, LLC*, 382 S.C. at 52 (affirming finding that "criminal law resolutions and an award of monetary damages [were] . . . inadequate remedies for intrusions on Respondents' property rights").

Even where a legal remedy like money damages exists, injunctive relief is appropriate where, as here, the wrongful act continues. *See Levine v. Spartanburg Reg. Serv. Dist., Inc.*, 367 S.C. 458, 467 (Ct. App. 2005) (holding that an injunction is proper where monetary damages alone would not remedy harm); *see also Columbia Broad. Sys., Inc. v. Custom Recording Co.*, 258 S.C.

465, 477-478 (1972) (rejecting argument that availability of money damages was a sufficient basis upon which to deny a motion for temporary injunction, where wrongful act may continue).

While some Plaintiffs may be able to articulate damages from being denied access to the Cemetery for funerals, Plaintiffs will never be able to place a monetary value on regular access to visit and care for the burial sites of their ancestors and loved ones, including and especially for clean-up days and on birthdays, death anniversaries, and other days of significance. Thus, Plaintiffs have no adequate remedy to redress the harm arising from their inability to access the Cemetery via Everest, including for their planned clean-up day on July 12, 2025, and beyond.

### **III. CONCLUSION**

Plaintiffs respectfully request that the Court issue a temporary restraining order for at least 10 days—unless the Court finds good cause to extend that 10-day period; during those 10 days, hold a hearing on request for a temporary injunction to present evidence in support of said requested injunction; and following the hearing, convert the Temporary Restraining Order into an order for a temporary injunction, enjoining Defendants from blocking access to the Big House Cemetery for the pendency of this litigation.

Respectfully submitted, this 9th day of July, 2025.

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*\*Motions for admission pro hac vice pending*