

## OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Administrative Cause No.: DHS-1120-001313  
Underlying/State Agency Action No.: 318-444

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**Five Star Dive Bar,**  
Petitioner,

**v.**

**Indiana Department of Homeland Security,**  
Respondent.

### NON-FINAL ORDER OF DISMISSAL

This matter was set for a telephonic initial prehearing conference on December 9, 2020 and the Petitioner failed to appear for the initial prehearing conference. The Respondent agreed to give the Petitioner an opportunity to reschedule and the ALJ left Petitioner a voice message and sent an email to Petitioner advising him that he missed the initial prehearing conference and he may reschedule by contacting the ALJ. On December 17, 2020, the ALJ sent a second email to the representative for Petitioner and advised that he had until close of business on December 18, 2020 to reschedule, otherwise the ALJ would issue a proposed order of default or dismissal. The ALJ did not receive a response from Petitioner and accordingly issued a Proposed Order of Dismissal on December 21, 2020. The Petitioner then responded on December 21, 2020, stating that he was unable to respond and reschedule due to illness and asked how to proceed. The ALJ provided information regarding Petitioner's options and a template that Petitioner could utilize to respond to the Proposed Order of Dismissal.

The timeline set out in the Proposed Order of Dismissal was seven (7) days to file a response. To date, the Petitioner has not submitted a response. Accordingly, the ALJ issues this Non-Final Order of Dismissal. The ALJ has enclosed with this Non-Final Order of Dismissal a complete record of proceedings and correspondence between the ALJ and the parties for reference.

Indiana Code § 4-21.5-3-29(d) requires any party seeking to preserve an objection to this order for judicial review to file the objection with the Commission within fifteen (15) days after the service of this order. The objection must be in writing and must identify the basis for the objection with reasonable particularity.

In the absence of an objection from a party or notice from the Commission of its intent to review any issue related to this order, the Commission shall affirm this order in accordance

with Ind. Code § 4-21.5-3-29(c). **The Commission will consider this Non-Final Order of Dismissal on February 2, 2021 at 9:00 a.m.** at the Indiana State Library, Room 211, 315 W. Ohio Street, Indianapolis, IN 46202. If the Commission's meeting must be conducted electronically/remotely due to the ongoing COVID-19 public health emergency, details will be provided on the Commission main web page (<http://www.in.gov/dhs/2375.htm>) in advance of the meeting date.

So Ordered: January 6, 2021



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Hon. Chelsea E. Smith, Administrative Law Judge  
Indiana Office of Administrative Law Proceedings

Distributed to the Parties:

**Jason Curtis**

Representative for Petitioner

Five Star Dive Bar

54226 Echo Lane

Bristol, IN 46507

[jasonkzk@gmail.com](mailto:jasonkzk@gmail.com)

*Via U.S. Mail and E-mail*

**Justin Guedel**

Counsel for Respondent

Indiana Department of Homeland Security

302 W. Washington Street, Room E-208

Indianapolis, IN 46204

[jguedel@dhs.in.gov](mailto:jguedel@dhs.in.gov)

(317) 234-9515

*Via E-mail*

Five Star Dive Bar v. Indiana Department of Homeland Security

Cause No. DHS-1120-001313

Record of Proceedings:

1. Petition for Review
2. Notice of Administrative Filing from OALP
3. Notice of Appointment of Administrative Law Judge and Order Setting Initial Prehearing Conference
4. Proposed Order of Dismissal

Email Correspondence with Petitioner regarding Initial Prehearing Conference and Proposed Order of Dismissal:

1. Email from ALJ Smith to Petitioner on December 9, 2020 (about rescheduling the IPC)
2. Email from ALJ Smith to Petitioner on December 17, 2020 (about rescheduling the IPC)
3. Email from ALJ Smith to Petitioner on December 21, 2020 (with Proposed Order of Dismissal)
4. Email from Petitioner to ALJ Smith on December 21, 2020 (about being ill and asking for options)
5. Email from ALJ Smith to Petitioner on December 21, 2020 (with instructions and template)



**From:** [noreply@formstack.com](mailto:noreply@formstack.com)  
**To:** [OALP](#)  
**Subject:** Request by Agency  
**Date:** Wednesday, November 18, 2020 6:03:32 PM

FILE DATED: NOV 18 2020

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## Formstack Submission For: **Request by Agency 2354**

Submitted at 11/18/20 6:00 PM

<b>UID:</b>	120101817521414
:	
<b>What agency is submitting this request? (Whether on behalf of the agency itself or on behalf of a board or commission):</b>	Department Homeland Security
<b>What is the name of your agency?:</b>	
<b>In what role will your agency serve during this administrative proceeding?:</b>	None of the above
<b>If this is a request from a particular division of your agency or from a board or commission related to your agency, then what is the division, board or commission?:</b>	Indiana Fire Prevention and Building Safety Commission
<b>What type of action is this?:</b>	Sanctions/Civil Penalty Order
<b>Tell us the cause, complaint or order number or other identifier (if any) listed on the action.:</b>	Sanctions Order No. 318-444
<b>What is the primary county in which the</b>	

<b>aggrieved or effected individual/entity is located?:</b>	Elkhart
<b>Is there an effective date identified in the action?:</b>	
<b>On what date did the agency receive the appeal request?:</b>	Nov 18, 2020
<b>Upload a copy of the appeal request, action, or notice that forms the basis for this request. If the document you wish to upload contains PII or other confidential information, do not upload the document. Instead, submit the form and send the documents to OALP in a separate manner following the agreed upon procedure between your agency and OALP. (Reach out to OALP to define a procedure for this if it is not already established.):</b>	<a href="#">View File</a>
<b>Upload a copy of the appeal request, action, or notice that forms the basis for this request. If the document you wish to upload contains PII or other confidential information, do not upload the document. Instead, submit the form and send the documents to OALP in a separate manner following the agreed upon procedure between your agency and OALP. (Reach out to OALP to define a procedure for this if it is not already established.):</b>	
<b>Is this a time sensitive request in need of expedited ALJ assignment and review due to federal or state requirements?:</b>	No
<b>Add a Party:</b>	Petitioner/ Complainant / Appellant
<b>Enter the Person's Name:</b>	Jason Curtis
<b>Title:</b>	Owner
<b>Entity or Business Name of Party (if applicable):</b>	Five Star Dive Bar

<b>Party's Mailing Address:</b>	54226 Echo Lane Bristol, IN 46507
<b>Telephone Number:</b>	(574) 326-9269
<b>Extension:</b>	
<b>E-mail Address:</b>	jasonkzk@gmail.com
<p><b>Please enter the contact information for any intervenor, interested party, or other party associated with or connected to the First Party that has a right to receive information about the case (if applicable). Enter the role, name, mailing address, phone, and e-mail.:</b></p>	
<b>Is the First Party represented by an attorney or non-attorney representative?:</b>	No
<b>Add Party:</b>	Respondent / Appellee
<b>Enter Person's Name:</b>	Chad Sharp
<b>Title:</b>	Inspector
<b>Entity or Business Name of Party (if applicable) :</b>	Indiana Department of Homeland Security
<b>Party's Mailing Address:</b>	302 W. Washington Street Indiana Government Center South, Room E208 Indianapolis, IN 46204
<b>Telephone Number:</b>	(317) 273-2864
<b>Extension :</b>	
<b>E-mail Address :</b>	csharp@dhs.in.gov
<p><b>Please enter the contact information for any intervenor, interested party, or other party associated with or connected to the</b></p>	

**First Party that has a right to receive information about the case (if applicable). Enter the role, name, mailing address, phone, and e-mail.:**

**Is the Second Party represented by an attorney or non-attorney representative?:** Yes

**Attorney or Representative Name:**

**Indiana Attorney Number (if applicable):**

**Firm Name (if applicable):**

**Attorney or Representative's Phone Number:**

**Extension:**

**Attorney or Representative s Email Address:**

**Attorney or Representative 's Mailing Address:** IN

**If Party One has additional attorney or non-attorney representatives, list their contact information here (name, mailing address (if different than above), e-mail, and telephone number).:**

**Attorney or Representative Name:** Justin Guedel

**Indiana Attorney Number (if applicable):** 32619-49

**Firm Name (if applicable):** Indiana Department of Homeland Security

**Attorney or Representative 's Phone Number:** (317) 234-9515

**Extension:**

**Attorney or Representative 's Email Address:** jguedel@dhs.in.gov

**Attorney or Representative s Mailing Address:**

302 W. Washington  
Street  
Indiana Government  
Center South, Room  
E208  
Indianapolis, IN 46204

**If Party Two has additional attorney or non-attorney representatives, list their contact information here (name, mailing address (if different than above), e-mail, and telephone number):**

**Checkbox 3:**

I certify, under penalty of perjury, that the information that I have provided is true, complete, and correct to the best of my knowledge and belief. The date and time on which you submit this petition will be saved and may be used to assess timeliness of your request.



# INDIANA FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Wednesday, November 18, 2020  
By Electronic Mail

Jason Curtis  
Petitioner  
Five Star Dive Bar  
54226 Echo Lane  
Bristol, IN 46507  
jasonkzk@gmail.com



FILE DATED: **NOV 18 2020**

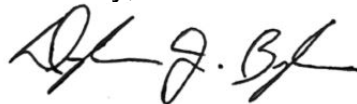
**Re: Petition for Administrative Review – IDHS Sanctions Order No. 318-444 – Five Star Dive Bar**

Dear Mr. Curtis:

The Indiana Fire Prevention and Building Safety Commission (Commission) is in receipt of your electronically-filed petition for administrative review of Indiana Department of Homeland Security (IDHS) Sanctions Order No. 318-444 – Five Star Dive Bar, submitted on Wednesday, November 18, 2020. Pursuant to the requirements of Indiana Code § 4-21.5-3-7, your petition for administrative review is hereby granted by the Commission.

Your petition will now be forwarded to the Indiana Office on Administrative Law Proceedings (OALP) to be assigned to the Commission's administrative law judge. OALP or the judge will contact you directly to make arrangements for further proceedings. Should you have any questions, you may contact the Indiana Department of Homeland Security's deputy general counsel assigned to this matter, Justin Guedel, at [jguedel@dhs.in.gov](mailto:jguedel@dhs.in.gov) or (317) 234-9515.

Sincerely,



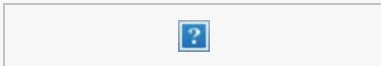
Douglas J. Boyle, Director  
Indiana Fire Prevention and Building Safety Commission  
Indiana Department of Homeland Security  
Indiana Government Center South, Room E-208  
302 W. Washington Street  
Indianapolis, IN 46204  
[dboyle@dhs.in.gov](mailto:dboyle@dhs.in.gov)

Enclosure

cc: Justin K. Guedel, IDHS Deputy General Counsel – representing the Respondent  
(by electronic mail)

**From:** [noreply@formstack.com](mailto:noreply@formstack.com)  
**To:** [DHS Legal Mailbox](#)  
**Subject:** Petition for Review  
**Date:** Wednesday, November 18, 2020 11:31:52 AM  
**Attachments:** [68379161\\_Doc Nov 18, 2020 at 11-15 AM.pdf](#)  
[68380022\\_IMG\\_0042.PNG](#)  
[68380035\\_Doc Nov 18, 2020 at 11-16 AM.pdf](#)  
[68380034\\_Doc Nov 18, 2020 at 11-17 AM.pdf](#)

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## Formstack Submission For: [petition for review](#)

Submitted at 11/18/20 11:31 AM

<b>Individual Name:</b>	JASON CURTIS
<b>Business Name: :</b>	Five Star Dive Bar
<b>Phone Number:</b>	(574) 326-9269
<b>Email Address:</b>	Jasonkzk@gmail.com
<b>Mailing Address:</b>	54226 Echo Ln Bristol, IN 46507
<b>Are you represented by an attorney?:</b>	No
<b>Attorney Name:</b>	
<b>Firm:</b>	
<b>Phone Number:</b>	
<b>Email Address:</b>	

<b>Mailing Address:</b>	
<b>Order Number:</b>	318444
<b>Facility   Device   Boiler ID:</b>	
<b>Date Order Received:</b>	Nov 04, 2020
<b>How did you receive the Order? :</b>	Hand Delivery
<b>Entity Issuing Order:</b>	Indiana Department of Homeland Security
<b>Entity Name:</b>	
<b>Upload Order:</b>	<a href="#">View File</a>
<b>Was this order specifically directed to you?:</b>	Yes
<b>Explain:</b>	
<b>Have you been aggrieved or adversely affected by the order?:</b>	Yes
<b>Explain:</b>	Under Covid guidelines is stressing enough but these service providers required to provide the work are stretched and unable to meet these guidelines. we already had these scheduled. The Fire alarm testing report that is required cannot be completed until 11/27/2020 and falls outside of this window for appeal. The other two are now completed - omne of them was completed 48 hours after the fine was levied.
<b>If the order was not specifically directed to you</b>	

**and you have not been aggrieved or adversely affected by the order, are you entitled to review under some other law? :**

**What law?:**

**I request review of the entire order described above:**

Yes

**If you are not requesting review of the entire order, what is the scope of your request?:**

**I request a stay of effectiveness:**

Yes

**What is the basis of your challenge? :**

During the pandemic I could not get this work performed inside the required window. all work has now been performed and most of it within 2-3 days of the fines being levied. the third item is scheduled for 11/27/20 and falls outside of ,my appeal window of 15 days.

**What is your desired outcome? :**

To remove the fines and stay compliant within the sates guidelines.

**Additional information in support of my request:**

I have attached both receipts for the two completed items as well as the service ticket for the fire alarm testing.

**Additional Attachments:**



[Direct Link to Image](#)

**Additional**

[View File](#)

**Attachments:**

**Additional  
Attachments:**

[View File](#)

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038



Indiana Department of Homeland Security  
 302 W. Washington Street, Room E208  
 Indianapolis, IN 46204  
 Phone: 317-232-2222

<b>Permit Number</b>	<b>Sanction Number</b>
AE2034609C	318-444

Visit us at: <http://www.in.gov/dhs>

**Date** 11/04/2020 **Type** Sanctions  
**Results** Sanctions

**Location** **Owner**  
**Name** FIVE STAR DIVE BAR **Name** JASON CURTIS  
**Street** 526 S Main Street **Street** 526 S Main Street  
**City** Elkhart **City** Elkhart  
**Zip** 46516 **Zip** 46516

**Sanctioned By** **Permit**  
**Name** Chad Sharp **State Number** AE2034609C  
**Email** CSharp@dhs.IN.gov **Type** Amusement & Entertainment Annual Location  
**Phone** 317-273-3864

**Sanctions**

**Notice of Violations**

#	Code	Description	Order	Correct By	Fee
	Sec. 907.8.5 2014 Edition IFC 675 IAC 22-2.5	The building owner shall be responsible to maintain the fire and life safety systems in an operable condition at all times. Service personnel shall meet the qualification requirements of NFPA 72 for maintaining, inspecting and testing such systems. A written record shall be maintained and shall be made available to the fire code official.	Provide proper documentation of most recent annual fire alarm testing report.	10/24/2020	\$250.00
	Sec. 7.3.1.1.1 2010 Edition NFPA 10 675 IAC 28-1-2	Fire extinguishers shall be subjected to maintenance at intervals of not more than 1 year, at the time of hydrostatic test, or when specifically indicated by an inspection or electronic notification.	Provide proper documentation of most recent documentation of annual fire extinguisher testing report.	10/24/2020	\$250.00
	Sec. 904.11.6.2 2014 Edition IFC 675 IAC 22-2.5	Automatic fire-extinguishing systems shall be serviced at least every six months and after activation of the system. Inspection shall be by qualified individuals, and a certificate of inspection shall be forwarded to the fire code official upon completion.	Provide proper documentation of most recent kitchen suppression system inspection report.	10/24/2020	\$250.00

MUST BE DONE 30 DAYS From Today

Let Chad know ASAP when everything is done

**Adam Bert**

10:53 AM

To: jasonkzk &gt;

## Service Ticket Number: 1923899

Here is the Open Ticket information for the fire inspection.

Service Ticket Number: 1923899

System Account: AES5020 - Burg/Fire

Service Level: 24X7

Panel: AV32FBPT

Site: 5 Star Dive Bar

526 S Main St

Elkhart, IN 46514

(574) 294-7500

Problem: Inspection - Fire

Comments: Would like a fire inspection done for the local fire marshal.

Scheduled For: 11/25/2020 11:00:00 AM

**ADAM BERT**

ADMINISTRATIVE ASSISTANT

**PER MAR SECURITY SERVICES**

SOUTH BEND

[PERMARSECURITY.COM](http://PERMARSECURITY.COM)

D [\(574\) 252-5276](tel:(574)252-5276)



CHEM-CLEAN POWER WASHING & RESTAURANT CLEANING

# HOOD CLEANING INSPECTION REPORT

Company Name Five Star Dive Bar  
Address 526 S. Main St Elkhart, IN 46516  
Phone (574) 326-6129 (Raguel)

Date of Cleaning 11.9.2020  
Hood Size 11' HOOD  
Duct Size 30" X 10"

Plenum Area Cleaned

Duct Work Cleaned

Hood Fan Cleaned

Grease Trap(s) Cleaned

Grease Cup(s) Cleaned

Outside Hood Cleaned

Outside Hood Top Cleaned

Outside Hood Walls Cleaned

Hood Drip Area Cleaned

Inside Hood Walls Cleaned

Inside Hood Top Cleaned

Filter(s) Cleaned

# of Filter(s) 6 Size of Filter(s) (19 1/2" X 19" X 2) (24 X 19 X 2) (19 X 15 X 2)

Exhaust Fan and Fresh Air Make-Up working properly (YES/NO)

Notes / Suggestions [Signature]

Hood Cleaning Technician [Signature] Date Nov 11, 2020

Responsible Party Signature [Signature] Print Name [Signature]

All Hoods Cleaned per Manufacturers Specifications  
Chem-Clean is not responsible for hoods not working per Manufacturers Specifications and do not meet Manufactured UL Listing  
Hoods per State Code shall be Cleaned / Maintained Quarterly. Chem-Clean can not remain liable for Hoods not cleaned per Codes.



# FIRE SUPPRESSION SYSTEMS REPORT



## FOX FIRE SAFETY, INC.

(574) 674-0910 • Fax: (574) 674-0911

4605 Lincolnway East • Mishawaka, IN 46544

www.FoxFireSafetyInc.com



### Customer Information

Name: 5 STAR DIVE BAR  
 Address: 526 S. MAIN ST  
 City: ELKHART  
 State: IN Zip: \_\_\_\_\_  
 Phone: 326-6129  
 Owner/Mgr: Raqueil

### Service Information

Circle One: (Semi-Annual) Recharge Installation Renovation

System Type: Pyrochem - PCL DBL 4/2 Wet or Dry

#### Links

165°	280°	360°
450° <u>6</u>	500°	

Electric or Gas fuel Shutoff: MECH. GAS

Alarm: N/A

Last Regulator Test Date: 08'

Last Hydro Test Date: 081 Next Hydro Test Date: 201

Type of Control: EN-MCU3

1. All appliances properly covered with correct nozzles	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
2. Duct and plenum covered with correct nozzles	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
3. Check operation of pressure switch or microswitch	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
4. Check if seals intact, free of tampering	N/A <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
5. System fully charged, free from discharge	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
6. Pressure gauge in proper range	N/A <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
7. Check cartridge assembly - weigh and replace	N/A <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
8. Trip system from most remote detector	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
9. Test for proper operation from remote pull station	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
10. Check operation of gas valve & all equipment shut off	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
11. Clean nozzles - free of grease and/or dirt	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
12. Replace fuse links with same	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
13. Exhaust fan in operational order	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>

14. All hood filters in place	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
15. Fuel shut-off in on position	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
16. Manual & remote set / seals intact	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
17. Clean system cylinder and component parts	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
18. Check that tension lever / turnbuckle for cable tension is in proper position.	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
19. Portable extinguishers properly serviced	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
20. Service & certification tag on system/sealed	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>

Date of Last Hood Cleaning: 9/17/18

### Duct Plenum Appliance Size Location Nozzle Type

2-BURNER, 24" Charbroiler, 60" Griddle  
1H / 1H / 2H, 1H

2-15" X 14" FANES  
2-2H

3-1H = PLENUMS  
2-2D = DUCTS

### Comments & Deficiencies

TRUCK, DUE FOR HYDROTEST. HOODS NEED CLEANED.

This system was inspected and found to be OPERABLE  NON-OPERABLE

Time In: \_\_\_\_\_ Time Out: \_\_\_\_\_ Date: 11/16/20 Service Tech: [Signature]

Customer Authorized Agent: X [Signature]



**Office of Administrative  
Law Proceedings**  
402 W. Washington St., Rm. W161  
Indianapolis, IN 46204-2745

**Eric J. Holcomb**  
*Governor*

**Matthew A. Brown**  
*Director*

November 19, 2020

**NOTICE OF ADMINISTRATIVE FILING - Case No.: DHS-1120-001313**

Dear Parties,

An appeal request has been filed with the Office of Administrative Law Proceedings.

The case number is listed above. An ALJ will be assigned to this case and will reach out to the parties soon.

Should you have any questions, please contact us at (317) 234-6689 or [OALP@oalp.in.gov](mailto:OALP@oalp.in.gov).

Thank you,  
Office of Administrative Law Proceedings

## OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Administrative Cause No.: DHS-1120-001313  
Underlying/State Agency Action No.: 318-444

**Five Star Dive Bar,**  
Petitioner,

**v.**

**Indiana Department of Homeland Security,**  
Respondent.

### NOTICE OF APPOINTMENT OF ADMINISTRATIVE LAW JUDGE AND ORDER SETTING INITIAL PREHEARING CONFERENCE

On November 18, 2020, Jason Curtis, on behalf of the Petitioner, Five Star Dive Bar, filed a Petition for Review of an order issued by the Indiana Department of Homeland Security, the Respondent. The Fire Prevention and Building Safety Commission, the Ultimate Authority in this matter, granted the Petition for Review on November 18, 2020. **The filing of this Petition begins a proceeding controlled by the Indiana Administrative Orders and Procedures Act, codified at Ind. Code § 4-21.5.** The undersigned has been appointed as the ALJ in this matter. The name, official title, and contact information for the ALJ are as follows:

Hon. Chelsea E. Smith  
Administrative Law Judge  
Office of Administrative Law Proceedings  
402 W. Washington Street, Room W161  
Indianapolis, IN 46204-2745  
Telephone: (317) 234-8917  
Email: [chelsmith@oalp.in.gov](mailto:chelsmith@oalp.in.gov)

Motions and pleadings should be filed with the ALJ at the address shown above. As an alternative to U.S. Mail, service may also be made to the ALJ via electronic mail. The parties are cautioned, however, that while service via U.S. Mail may be perfected upon mailing, service by electronic mail is perfected only upon receipt. A copy of each motion or pleading, and any other communications sent to the ALJ, must be served upon all parties of record or their attorneys. The parties to this action are the Petitioner, Five Star Dive Bar, and the Respondent, the Indiana Department of Homeland Security.

Pursuant to Ind. Code §§ 4-21.5-3-18 and 19, the Administrative Law Judge (ALJ) sets an Initial Prehearing Conference in the above-captioned matter for **Wednesday, December 9, 2020 at 3:00 p.m. (EST)**. This is not a hearing on the merits of the appeal. The parties are encouraged to engage in discussions aimed at informally resolving this matter prior to the Initial Prehearing Conference, but this is not a settlement conference.

The purpose of the Initial Prehearing Conference is to resolve or clarify issues and preliminary matters related to the appeal, discuss the outcome of any informal discussions aimed at settlement if any have already taken place, determine whether the issues on appeal may potentially be resolved informally, and prepare for a hearing if settlement is not possible. In addition, any of the matters listed in Ind. Code § 4-21.5-3-19(c) may also be discussed. The ALJ will issue an Order incorporating the matters discussed following the Initial Prehearing Conference.

The Initial Prehearing Conference will be conducted by telephone and, unless the parties advise otherwise, is not expected to last longer than an hour. The ALJ will initiate the call using the following telephone numbers:

Jason Curtis: (574) 326-9269

Justin Guedel: (317) 234-9515

If a telephone number is incorrect or a different number is preferred, please advise the ALJ at the earliest opportunity. If a party is unavailable to participate at the set date and/or time, the party must request a continuance and suggest an alternative date and/or time. The ALJ's preference is to hold hearings on Wednesdays and would ask that the parties confer with one another prior to requesting a continuance to suggest a date and time that is amenable to both sides.

Per Ind. Code § 4-21.5-3-11, the ALJ may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending with either party to this matter without notice and opportunity for all parties to participate in the communication. Therefore, if any party wishes to contact the ALJ regarding any matter related to this appeal, please do so by email ([chelsmith@oalp.in.gov](mailto:chelsmith@oalp.in.gov)) and copy all parties involved, whenever practicable.

Any party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have the proceeding dismissed pursuant to Indiana Code § 4-21.5-3-24.

So Ordered: November 20, 2020



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Hon. Chelsea E. Smith, Administrative Law Judge  
Indiana Office of Administrative Law Proceedings

Distributed to Parties:

**Jason Curtis**

Representative for Petitioner

Five Star Dive Bar

54226 Echo Lane

Bristol, IN 46507

[jasonkzk@gmail.com](mailto:jasonkzk@gmail.com)

*Via U.S. Mail*

**Justin Guedel**

Counsel for Respondent

Indiana Department of Homeland Security

302 W. Washington Street, Room E-208

Indianapolis, IN 46204

[jguedel@dhs.in.gov](mailto:jguedel@dhs.in.gov)

(317) 234-9515

*Via E-mail*

## OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Administrative Cause No.: DHS-1120-001313  
Underlying/State Agency Action No.: 318-444

---

**Five Star Dive Bar,**  
Petitioner,

**v.**

**Indiana Department of Homeland Security,**  
Respondent.

### PROPOSED ORDER OF DISMISSAL

On November 20, 2020, the undersigned Administrative Law Judge (ALJ) issued a Notice of Appointment of Administrative Law Judge and Order Setting Initial Prehearing Conference. The initial prehearing conference was scheduled for December 9, 2020 at 3:00 p.m. (EST) and was to be conducted by conference call. The ALJ listed the following phone number for the Petitioner's representative, Jason Curtis: (574) 326-9269.

The parties were advised to inform the ALJ if they would like to use a different phone number or if either party wished to have the initial prehearing conference rescheduled. The parties were also advised that any party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have the proceeding dismissed pursuant to Indiana Code § 4-21.5-3-24.

The ALJ did not receive any correspondence from the parties in advance of the scheduled initial prehearing conference. On the scheduled date and time of the initial prehearing conference, the ALJ contacted the Respondent's counsel, Justin Guedel, and then attempted to reach the Petitioner's representative at the phone number above. Mr. Curtis did not answer, so the ALJ also tried contacting him at the Five Star Dive Bar main office but did not receive an answer and therefore left a voice message. The ALJ then emailed Mr. Curtis at [jasonkzk@gmail.com](mailto:jasonkzk@gmail.com) and advised that he should reach out at his earliest convenience to reschedule. To date, the ALJ has not received any communication from Mr. Curtis. On December 17, 2020, the ALJ followed up a second time via email and advised that a default order would be issued in accordance with Ind. Code § 4-21.5-3-24 for failure to attend or participate in a prehearing conference, hearing, or other stage of the proceeding if a request to reschedule was not made before close of business on December 18, 2020. The ALJ did not receive such a request and issues this Proposed Order of Dismissal accordingly.

As it is the Petitioner in this matter who has failed to participate, it is appropriate to issue a dismissal rather than a default order. The Petitioner will have seven (7) days to file a motion requesting that the proposed default order not be imposed and stating the grounds for the request. If the ALJ does not receive a motion from Petitioner within seven (7) days, the ALJ will issue a Non-Final Order of Dismissal, recommending that the Ultimate Authority dismisses this matter without prejudice.

So Ordered: December 21, 2020



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Hon. Chelsea E. Smith, Administrative Law Judge  
Indiana Office of Administrative Law Proceedings

Distributed to Parties:

**Jason Curtis**

Representative for Petitioner

Five Star Dive Bar

54226 Echo Lane

Bristol, IN 46507

[jasonkzk@gmail.com](mailto:jasonkzk@gmail.com)

*Via U.S. Mail*

**Justin Guedel**

Counsel for Respondent

Indiana Department of Homeland Security

302 W. Washington Street, Room E-208

Indianapolis, IN 46204

[jguedel@dhs.in.gov](mailto:jguedel@dhs.in.gov)

(317) 234-9515

*Via E-mail*

**From:** [Smith, Chelsea \(OALP\)](#)  
**To:** [Jason Curtis](#); [Guedel, Justin K](#)  
**Subject:** RE: Five Star Dive Bar v. Indiana Department of Homeland Security  
**Date:** Monday, December 21, 2020 4:21:00 PM  
**Attachments:** [Proposed Order of Dismissal \(DHS-1120-001313\).pdf](#)  
[ResponsetoEntryofProposedDefaultOrderTemplate \(2\).docx](#)  
[image002.png](#)  
[image004.png](#)  
[image006.png](#)  
[image008.png](#)

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Hello, Mr. Curtis.

Please review the attached Proposed Order of Dismissal, which provides instructions regarding how you may proceed. I have attached a copy of a template you may utilize for filing a response to the Proposed Order of Default (or Dismissal), though you are not required to use this template if you wish to file a response. Please make sure you copy Mr. Guedel on any communication you send to me in the future.

Best regards,



**Chelsea E. Smith**

Administrative Law Judge  
Office of Administrative Law Proceedings

**Phone** 317-426-0751

**Email** [chelsmith@oalp.in.gov](mailto:chelsmith@oalp.in.gov)

**Web** [www.in.gov/oalp](http://www.in.gov/oalp)

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**From:** Jason Curtis <jasonkzk@gmail.com>  
**Sent:** Monday, December 21, 2020 4:08 PM  
**To:** Smith, Chelsea (OALP) <ChelSmith@oalp.IN.gov>  
**Subject:** Re: Five Star Dive Bar v. Indiana Department of Homeland Security

**\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\***

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I am just now seeing this message. I am so sorry I was out with Covid. Not sure what I can do now.

On Mon, Dec 21, 2020 at 1:07 PM Smith, Chelsea (OALP) <[ChelSmith@oalp.in.gov](mailto:ChelSmith@oalp.in.gov)> wrote:

Good afternoon,

Attached please find a Proposed Order of Dismissal, which I issued in this matter today. Please carefully review the attached Order. Hard copies will be distributed in accordance with the distribution list.

Best regards,





**Chelsea E. Smith**

Administrative Law Judge  
Office of Administrative Law Proceedings

**Phone** 317-426-0751

**Email** [chelsmith@oalp.in.gov](mailto:chelsmith@oalp.in.gov)

**Web** [www.in.gov/oalp](http://www.in.gov/oalp)

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**From:** Smith, Chelsea (OALP)

**Sent:** Thursday, December 17, 2020 9:25 AM

**To:** [jasonkzk@gmail.com](mailto:jasonkzk@gmail.com)

**Cc:** Guedel, Justin K <[JGuedel@dhs.IN.gov](mailto:JGuedel@dhs.IN.gov)>

**Subject:** RE: Five Star Dive Bar v. Indiana Department of Homeland Security

Good morning, Mr. Curtis.

I still have not received any indication from you that you would like to reschedule the initial prehearing conference for your appeal. If I do not hear from you by 4:30 p.m. (EST) on Friday, December 18, 2020, I will issue a proposed order of default in accordance with [IC 4-21.5-3-24\(a\)\(3\)](#) and my Order Setting Initial Prehearing Conference.

Best regards,



**Chelsea E. Smith**

Administrative Law Judge  
Office of Administrative Law Proceedings

**Phone** 317-426-0751

**Email** [chelsmith@oalp.in.gov](mailto:chelsmith@oalp.in.gov)

**Web** [www.in.gov/oalp](http://www.in.gov/oalp)

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**From:** Smith, Chelsea (OALP)

**Sent:** Wednesday, December 9, 2020 4:09 PM

**To:** [jasonkzk@gmail.com](mailto:jasonkzk@gmail.com); Guedel, Justin K <[JGuedel@dhs.IN.gov](mailto:JGuedel@dhs.IN.gov)>

**Subject:** Five Star Dive Bar v. Indiana Department of Homeland Security

Good afternoon, Mr. Curtis.

The initial prehearing conference for your appeal of the IDHS Sanctions Order #318-444 was set for this afternoon at 3:00 p.m. EST. The hearing was to be conducted by telephone and the number I intended to use was listed on the attached Notice of Hearing, which you should have received by mail. I tried reaching you at that number for the initial prehearing conference and

also tried calling the Five Star Dive Bar office but was unable to reach you. I left a voice message at your office. If you would like to continue to pursue this appeal, please contact me at your earliest opportunity to reschedule the initial prehearing conference.

Best regards,



**Chelsea E. Smith**

Administrative Law Judge  
Office of Administrative Law Proceedings

**Phone** 317-426-0751

**Email** [chelsmith@oalp.in.gov](mailto:chelsmith@oalp.in.gov)

**Web** [www.in.gov/oalp](http://www.in.gov/oalp)

--

Jason Curtis