IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Dotty's Cafe a/k/a Illinois Cafe & Services Company, LLC, and Stella's Place and Shelby's a/k/a Laredo Hospitality Ventures, LLC,

Plaintiffs,

v.

Illinois Gaming Board,

Defendant.

Case No. _____

COMPLAINT

Dotty's Cafe, a/k/a Illinois Cafe & Services Company, LLC ("Dotty's"), and Stella's Place and Shelby's, a/k/a Laredo Hospitality Ventures, LLC ("Stella's" and "Shelby's"), bring this Complaint against the State of Illinois Gaming Board (the "Board") seeking declaratory and injunctive relief.

NATURE OF THE ACTION

1. The Illinois General Assembly adopted the Video Gaming Act, 230 ILCS 40/1 *et seq.* in 2009 to permit qualified retail establishments across the State—including bars, restaurants, cafes, truck stops, fraternal organizations, and veterans' halls—to add electronic gaming devices (otherwise known as video gaming terminals) so their patrons could play video poker, video blackjack, video slots, and other gaming platforms, subject to municipal approval. Until the first establishments licensed under the Video Gaming Act started operating in 2012, electronic gaming devices were restricted to riverboat casinos.

2. Dotty's, Stella's, and Shelby's are three examples of the more than 5,800 local establishments now licensed to host electronic gaming, known as "licensed locations."

3. Two provisions of the Video Gaming Act and one Board policy are

unconstitutional. The Act arbitrarily forces two statutorily separated parties—licensed locations and "terminal operators"—into contracts with each other; mandates that they split the profits of video gaming without taking into account their relative investments, expenses, and efforts; and then forbids them from freely negotiating the terms of their legislatively imposed joint venture. Making matters worse, the Board policy—issued without following proper procedure and untethered to any actual legislative grant of authority—arbitrarily restricts the parties' ability to share or negotiate business-essential costs.

4. There is no rational basis for these provisions of the Act or the Board policy, and they work together to unfairly restrict the parties' freedom of contract. The net effect of these statutory provisions and Board policy is the unfair favoritism of terminal operators at the expense of licensed locations. Specifically, Plaintiffs challenge the following provisions and policy:

I. **The Dual Licensing Prohibition**: The Video Gaming Act creates separate groups of licensees and irrationally prohibits licensed locations from obtaining a license to serve as their own "terminal operator." 230 ILCS 40/30. This prohibition excludes all licensed locations—even those that satisfy all licensing and regulatory requirements—from becoming terminal operators, and unconstitutionally forces them to contract with a third-party terminal operator to install the video games located within their own establishments.

II. **The Profit Diversion Provision**: The Video Gaming Act illegally diverts a mandatory 50 percent of the after-tax profits generated by video gaming from all licensed locations to terminal operators without any regard for, or ability to negotiate, the sharing of profits based on the parties' relative investments, expenses, and effort. 230 ILCS 40/25(c).

III. **The Advertising and Promotions Policy**: The Illinois Gaming Board's February 1, 2017 Policy on Inducements, Advertising and Promotions by Video Gaming Licensees ("Advertising and Promotions Policy"), like the policies the Board previously released covering the same topics, unconstitutionally dictates how terminal operators and licensed locations can pay for certain essential operating expenses, such as complimentary food and beverages for gaming patrons and advertising about a location's video games. The policy favors terminal operators at the expense of licensed locations by eliminating several types of business arrangements

that terminal operators and licensed locations had previously used to share costs, now mandating that licensed locations assume such costs.

5. The two specific components of the Video Gaming Act and the Advertising and Promotions Policy identified above are unconstitutional under the due process and equal protection clauses of the Illinois and United States Constitutions, and the statutory provisions constitute special legislation in violation of Article IV § 13 of the Illinois Constitution. The Advertising and Promotions Policy also exceeds the scope of the Video Gaming Act, was enacted without following proper procedure, and is otherwise arbitrary and capricious.

6. *First*, the Dual Licensing Prohibition conflicts with the due process and equal protection clauses of the Illinois and United States Constitutions and serves no rational purpose. The provision forces licensed locations that own, maintain, and operate their businesses to participate in an unnecessary joint venture with an unrelated terminal operator. This forced relationship serves no regulatory purpose because terminal operators have no role in monitoring or otherwise ensuring the integrity of video gaming, the statute imposes no special or heightened licensing review on them, and they are not authorized to perform maintenance on a terminal's internal components or technology without the presence of a Gaming Board representative. Oversight of the video gaming industry is instead the responsibility of the Board, which maintains strict control over all aspects of video gaming and can turn off any video gaming device that presents a regulatory concern. Thus, the Dual Licensing Prohibition violates Plaintiffs' due process and equal protection rights, and also constitutes special legislation in violation of Article IV § 13 of the Illinois Constitution.

7. *Second*, the Profit Diversion Provision represents an unconstitutional and irrational transfer of wealth from licensed locations to terminal operators. Because the Profit Diversion Provision favors terminal operators and serves no legitimate state interest, it violates

Plaintiffs' due process and equal protection rights, and also constitutes improper special legislation.

8. *Third*, the most recent Advertising and Promotions Policy (revised in February 2017)—which went into effect without following the proper procedure—represents yet another unconstitutional mandate on how costs are split between two independent businesses. All of the Board's previous policies on advertising and promotions were faulty too, because the Board has never had the authority under the Video Gaming Act to regulate how licensed locations and terminal operators allocate the costs of advertising and promotions or split ATM fees. Indeed, each time the Board has released a policy covering advertising and promotions, it has fundamentally misinterpreted the Act by improperly focusing on the exchange of "anything of value" without recognizing that such an exchange is prohibited only if it specifically represents "an[] incentive or inducement to locate video terminals in that establishment." 230 ILCS 40/25(c). Moreover, the particular manner in which the Board has decided who receives what revenue or bears which expenses is unconstitutional, arbitrary, and capricious.

9. The Profit Diversion Provision, Dual Licensing Prohibition, and Advertising and Promotions Policy are unconstitutional on their face and unfair to the business owners and entrepreneurs that own and operate establishments across the State. Illinois' video gaming industry will continue uninterrupted without these three unconstitutional laws. Plaintiffs ask the Court to strike these unconstitutional and unfair provisions of the Video Gaming Act and the Advertising and Promotions Policy. Doing so will permit the participants of the video gaming industry to freely negotiate, contract, and compete.

THE PARTIES

10. Dotty's Cafe is a licensed location under the Video Gaming Act. It is the Doing Business As ("DBA") of Illinois Cafe & Services Company, LLC. Illinois Cafe & Services

Company, LLC, is a limited liability company organized under the laws of South Dakota and has its principal place of business in DuPage County, Illinois. Dotty's has 21 locations in Cook County.

11. Stella's Place and Shelby's are licensed locations under the Video Gaming Act. They are the DBAs of Laredo Hospitality Ventures, LLC, a limited liability company organized under the laws of Illinois, which has its principal place of business in Cook County, Illinois, where it has 25 locations.

12. The Illinois Gaming Board was created by the Riverboat Gambling Act, 230 ILCS 10/5, and its principal offices are in Cook County, Illinois and Sangamon County, Illinois. The Board is responsible for supervising all video gaming in Illinois under the Video Gaming Act, 230 ILCS 40/78.

13. Plaintiffs have complied with the notice requirement of Illinois Supreme Court Rule 19 by naming the Illinois Gaming Board as a defendant.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action under Ill. Const. 1970 art. 6, § 9 and 735 ILCS 5/2-701 because there is an actual controversy between Plaintiffs and Defendant concerning the issues on which declaratory judgment and injunctive relief is sought.

15. Plaintiffs' controversy with the Board is ripe for declaratory judgment because their challenge is legal in nature and it would impose an undue hardship to compel them to first bring the issue before the Board by violating what the Board considers a valid statute and policy.

16. Venue is proper in the Circuit Court of Cook County under 735 ILCS 5/2-101 because a substantial part of the transaction that forms the center of the controversy occurred in Cook County, Plaintiffs own and operate businesses in Cook County, and because the Board maintains its principal office in Cook County.

THE VIDEO GAMING ACT

17. In July 2009, the Illinois General Assembly introduced, approved, and passed the Video Gaming Act as an eleventh-hour amendment to an omnibus revenue bill designed to fund capital projects. The Act expanded the options for electronic gaming beyond the riverboat casinos to which it was previously restricted. The Video Gaming Act established several new categories of licenses and charged the Board, which was created to oversee the riverboat casinos almost 20 years earlier, with implementing the provisions of the new Act. After some delays, video gaming ultimately debuted in Illinois in 2012.

18. The State receives 5/6 of the taxes generated by each video gaming terminal, with the remaining 1/6 going to the local municipality. 230 ILCS 40/60(b). Taxes paid to the State under the Video Gaming Act are earmarked for the State Capital Projects Fund (230 ILCS 40/60(b)), which pays for State construction projects.

19. The Board licenses both casinos and the establishments created by the Video Gaming Act. Casino licensure, however, is governed by the Riverboat Gambling Act, while the provisions relevant to the licensed locations at issue here are contained principally within the Video Gaming Act.[1] In addition to the pre-existing riverboat casinos, the Video Gaming Act permits electronic gaming devices in truck stops, fraternal organizations, and veterans' halls, as well as any place licensed to serve liquor for consumption on the premises (assuming the establishment meets all other licensing requirements and is located in a municipality that has not prohibited video gaming). 230 ILCS 40/35(b)(2) & 55. Licensed locations are limited to a total

[1] The Video Gaming Act does, however, incorporate the Riverboat Gambling Act wherever the two do not conflict. 230 ILCS 40/80. To maintain consistency with statutory and regulatory language, this Complaint restricts its use of the term "video gaming" to the activities covered by the Video Gaming Act, using the more general term "electronic gaming" for the industry of which video gaming is a part.

of five electronic gaming devices. 230 ILCS 40/25(e). That limitation does not apply to riverboat casinos.

20. Video gaming has been a success in Illinois. Its success and popularity conceal a lost opportunity, however, because the Video Gaming Act places a disincentive on local establishments to improve their consumers' video gaming experience. The Video Gaming Act's requirement that licensed locations accept adhesion contracts mandating them to pay 50% of their profits to third-party terminal operators has created an artificial impediment to the industry's ability to provide consumers the best experience possible. In addition, the Advertising and Promotions Policy only worsens this problem by arbitrarily and unconstitutionally dictating how licensed locations and terminal operators share the costs necessary to generate the profits the statute says they must split.

BACKGROUND ON DOTTY'S, STELLA'S, AND SHELBY'S

21. Dotty's, Stella's, and Shelby's offer safe, quiet, cafe-style establishments for patrons to enjoy electronic gaming. Plaintiffs' retail establishments serve food and beverages, including liquor, and provide a local, comfortable, inviting, and well-lit atmosphere. Most patrons come from within a three-mile radius. Plaintiffs' establishments are typically storefronts in commercial developments anchored by a grocery, drug, or other retail store.

22. Dotty's, Stella's, and Shelby's business model complements other electronic gaming establishments that are available to customers, including casinos, restaurants, bars, truck stops, fraternal organizations, and veterans' halls. Each type of establishment caters to a different segment of the electronic gaming market.

23. Combined, Plaintiffs currently own and operate just over 100 locations in Illinois spanning 21 different counties. They provide stable employment for about 500 Illinoisans—Dotty's employs around 270 people, and Stella's and Shelby's employ about another 220 people.

More than three-quarters of their employees are female, and between 25 and 40 percent are minorities. For these workers, Dotty's, Stella's, and Shelby's maintain workers' compensation insurance and provide a competitive health and benefits package.

24. Each time Dotty's, Stella's, or Shelby's opens a new location in Illinois, they inject new commercial energy into a local community. They engage with local governments, obtain all necessary state and local permits, hire Illinois contractors to build out their establishments, and staff their locations with people from the surrounding area. Opening each new location requires an initial investment by Plaintiffs of approximately $200,000. Dotty's, Stella's, and Shelby's join local chambers of commerce and participate in local festivals and community fundraisers.

LICENSED LOCATIONS ARE UNJUSTLY HARMED BY THE DUAL LICENSING PROHIBITION, THE PROFIT DIVERSION PROVISION, AND THE ADVERTISING AND PROMOTIONS POLICY

25. The Dual Licensing Prohibition and Profit Diversion Provision work in tandem to statutorily separate licensed locations and terminal operators while also forcing them into profit-splitting joint ventures. The Advertising and Promotions Policy then forbids locations and terminal operators from negotiating an equitable split of costs and other revenues critical to their mandated joint venture's success by imposing 100% of certain costs on licensed locations, decreeing that terminal operators pay no more than 50% of other costs, and mandating that locations are unable to collect more than 50% of the ATM fees generated by dual-function ATMs. The two statutory provisions and the Board Policy serve no legitimate purpose, and their only effect is to channel money from one set of Illinois businesses, licensed locations, to another, terminal operators. The Advertising and Promotions Policy was enacted without following proper procedure, is beyond the rulemaking authority granted to the Board by the Video Gaming Act (which it fundamentally misinterprets), and is, at a minimum, arbitrary and capricious.

I. THE DUAL LICENSING PROHIBITION VIOLATES THE ILLINOIS AND UNITED STATES CONSTITUTIONS.

26. The Dual Licensing Prohibition does nothing other than protect the interests of the terminal operators. Without it, some establishments—including Plaintiffs'—would buy and maintain their own video gaming terminals, rather than being forced into a mandated contract with terminal operators. Economic protectionism of this sort is not a legitimate state interest.

I.A. License Categories

27. The Video Gaming Act creates six types of licenses: "manufacturer," "distributor," "terminal operator," "location," "technician," and "terminal handler." 230 ILCS 40/25. Within the "location" license category there are "licensed establishments," "licensed truck stop establishments," "licensed fraternal establishments," and "licensed veterans establishments." *See* 230 ILCS 40/55. The differences among the location licensees are not significant for this action, which concerns the unfair treatment of all licensed locations.

28. Today, the Video Gaming Act requires two separate and independent licenses—a terminal operator's license and a location license—to deliver the games to the customer. *See* 230 ILCS 40/25(c) & (e). Licensed locations host the games for the customers. Under the Video Gaming Act, locations are the licensees who "operate" the "video gaming terminals." *See* 230 ILCS 40/25(e) & (h). But those licensed locations are not permitted to hold a "terminal operator's license." Instead, a separate terminal operator's license gives its holder the right to "own, maintain, or place" a video gaming terminal inside a licensed location. 230 ILCS 40/25(c).

29. Under the Video Gaming Act, the responsibilities necessary for a retail location to function are arbitrarily divided between the location and terminal operator licenses. At present, licensed locations cannot own the video gaming terminals they offer to customers in their own local establishments, nor can they own gaming terminals in other unrelated establishments. By

the same token, terminal operators cannot own a place for customers to play their video gaming terminals. Both licensees are in the retail, customer-facing sector of the video gaming industry and their division serves no legitimate purpose.

I.B. Licensed Locations Are Forced Into Contracts of Adhesion

30. Licensed locations are ineligible for a terminal operator's license under the current Dual Licensing Prohibition, 230 ILCS 40/30:

> An owner or manager of a licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment may not be licensed as a video gaming terminal manufacturer, distributor, or operator, and shall only contract with a licensed operator to place and service this equipment.

31. The Dual Licensing Prohibition strictly prohibits any overlapping ownership between a licensed location and a licensed terminal operator. *See* 230 ILCS 40/30. In practice, this requirement forces the owners of licensed locations—who otherwise may satisfy all regulatory requirements to become licensed terminal operators—to enter into contracts with a third party, even if they would prefer not to and are fully capable of paying for and managing their own video gaming terminals.

32. For example, a licensed location cannot even have its own employees clear a jammed bill from a machine, but must instead call its terminal operator to dispatch a technician from off-site. Such service calls could leave a terminal out of service for several days, causing the licensed location to lose gaming customers and revenue.

33. This unfair situation is worsened by the fact that terminal operators—which licensed locations are forced to depend on for routine terminal maintenance—are also allowed to compete with licensed locations for gaming consumers' business. Indeed, while licensed locations are not permitted to own terminal operators, riverboat casino owners have no such

prohibition. Illinois' riverboat casino owners are permitted to operate electronic gaming at their casinos, while simultaneously owning some of the largest terminal operators in Illinois. Moreover, a provision of the Video Gaming Act that originally capped the market share any single terminal operator could control at 5% was eliminated in 2010, *see* 230 ILCS 40/25(c); P.A. 96-1410, § 5 (eff. Jul. 30, 2010), leaving no statutory limit to the control a riverboat casino can now wield over the supposedly independent video gaming industry.

34. The reality is that terminal operators have the ability to move customers from one gaming location to another. Casino-owned terminal operators, for example, can leverage their dual position to drive electronic gaming patrons from establishments licensed under the Video Gaming Act to riverboat casinos, harming their involuntary contractual "partners" for their own benefit. For example, riverboat-owned terminal operators can link a video gaming rewards program they offer to a bar, restaurant, cafe, or other licensed location with the rewards program they offer at their riverboat casinos. Likewise, riverboat-owned terminal operators can "prioritize" a location's maintenance requests based on their own priorities or interests rather than customer service—for example, taking several days to clear a routine bill jam. This system is unfair.

I.C. Compelling Licensed Locations to Enter Into These Joint Ventures Serves No Legitimate Purpose

35. The Video Gaming Act does not explain the purpose of the Dual Licensing Prohibition. Legislative history provides no insight either, and the General Assembly has never offered a policy justification for the Dual Licensing Prohibition. That is because the Dual Licensing Prohibition is *not* rationally related to any legitimate governmental interest. Terminal operators are not involved in monitoring the video gaming devices themselves or the revenue they generate, the statute does not subject them to any different or heightened scrutiny to

participate in and protect the video game industry, and they are not trusted with more technical aspects of terminal maintenance, such as those that involve a terminal's internal components or software upgrades. Moreover, the Video Gaming Act requires no prior experience operating video game terminals to obtain a terminal operator's license.

36. Instead, the Dual Licensing Prohibition exists solely to preserve the privileged status of a class of people, terminal operators, who are guaranteed 50% of the after-tax profits generated from providing video gaming to consumers without a rational connection to the investment, expenses, or effort necessary to run that business.

I.C.1. Terminal Operators Are Not Responsible For Monitoring

37. The Video Gaming Act and the rules implementing it create a highly detailed and comprehensive method for ensuring that the Board is able to collect taxes efficiently and accurately. A sophisticated central computer system run by an independent third party monitors all video gaming conducted in the State of Illinois. 230 ILCS 40/15(15). Each and every video gaming terminal is connected directly to this system, which keeps meticulous real-time accounting data of each terminal's income, payouts to customers, and the taxes owed to state and local governments. *Id.*

38. Terminal operators are expressly forbidden from serving as the central communications system vendor. 230 ILCS 40/15. Instead, that vendor is chosen through a state-controlled bidding process and subject to a separate certification process.

39. In the words of Board Administrator Mark Ostrowski: "We're tied to a central system. . . . [F]rom an accounting and auditing standpoint you know exactly what [the] state is

entitled to, and you know exactly what the terminal operators and locations are entitled to." GE News, *Pennsylvania, Indiana Look To Illinois As Model VGT Market* (January 30, 2017).[2]

40. Thus, terminal operators are not part of the Video Gaming Act's monitoring scheme.

I.C.2. Terminal Operators Are Not Subject to Special or Heightened Scrutiny By The Video Gaming Act

41. *Every* applicant for *each* type of license under the Video Gaming Act must meet the same criteria set forth in Section 9 of the Riverboat Gambling Act. 230 ILCS 40/45(a). No license of any kind may be granted to someone who has been convicted of operating a so-called "gray game"—the industry term for an illegal, pre-Video Gaming Act video poker machine—or to anyone controlled by such a person. 230 ILCS 40/45(a-5). The statute demands that applicants for every kind of license submit to the same background check. 230 ILCS 40/45(b). All licensees must disclose every person with more than a 1% pecuniary interest. 230 ILCS 40/45(c). People with questionable habits or business associations are barred from holding any type of license. 230 ILCS 40/45(d).

42. Put simply, the terms of the Video Gaming Act itself impose the same background restrictions on those seeking a location license as those seeking a terminal operator's license.

I.C.3. Terminal Operators Are Not The Sole Providers Of Terminal Maintenance And Are Not Trusted To Make Most Repairs

43. Being employed by a terminal operator alone does not permit a person access to the inner components of a video gaming terminal: that individual must also have a terminal

[2] Available at http://www.goldenent.com/news-articles/ge-news/pennsylvania-indiana-look-illinois-model-vgt-market/.

handler's license. 230 ILCS 40/25(d-5). Manufacturers and distributors may also employ terminal handlers. 230 ILCS 40/25(d-5).

44. Furthermore, the vast majority of terminal repairs require the presence of a Board representative. Thus, terminal operators are not entrusted to perform system upgrades without oversight, nor can they independently make any repairs to a terminal's internal mechanisms, including its chips, logic board, or circuitry. *See* Illinois Gaming Board Policies For Video Gaming Terminal Locks, Logic Area Access, Security Seals And Ram Clear Chips (Amended August 2, 2016).[3]

45. Thus, terminal operators are *not* a specialized and segregated terminal maintenance crew. They are not trusted with maintenance that could affect the integrity of the video gaming terminal or the Board's ability to monitor a terminal's performance.

II. THE PROFIT DIVERSION PROVISION VIOLATES THE ILLINOIS AND UNITED STATES CONSTITUTIONS.

46. The Profit Diversion Provision sends half of the profits from a licensed location's video gaming terminals directly to the terminal operator (230 ILCS 40/25(c)):

> Of the after-tax profits from a video gaming terminal, 50% shall be paid to the terminal operator and 50% shall be paid to the licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment, notwithstanding any agreement to the contrary.

The current statutory scheme requiring establishments to transfer 50% of their profits to a terminal operator, and not allowing an arm's-length negotiation, is fundamentally unfair. The amount in profits the Video Gaming Act divvies out to each party is not rationally related to the contributions or investments each party may make toward the business or the amount each party

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[3] *Available at* https://www.igb.illinois.gov/FilesVideoLaw/LocksLogicaccessSealsRamClearpolicy.pdf.

has at risk.

47. The arbitrariness at the heart of the Profit Diversion Provision is apparent from the different type and amount of expenses that fall on licensed locations and terminal operators, as well as the different levels of risk to their investment. For example, licensed locations make investments in real estate, invest in employees to appropriately staff all locations (including payroll and employee benefits), and invest in all physical overhead and maintenance expenses. The expenses of a terminal operator are generally limited to the video gaming terminals and their maintenance (which an independent contractor is also capable of performing). The amount and type of investment each party makes at a particular location depends on the particulars of that location. In that light, the Profit Diversion Provision's one-size-fits-all approach is arbitrary and unfair.

48. At present, licensed locations cannot avoid or modify by contract the Video Gaming Act's requirement that they surrender half of their profits from each gaming terminal to a third-party terminal operator.

49. The only real effect of the Profit Diversion Provision is plain: the arbitrary protection of the economic interests of terminal operators from market forces that would allow some licensed locations to negotiate better deals for themselves. This is not a legitimate government interest.

III. THE INDUCEMENT, ADVERTISING AND PROMOTIONS POLICY VIOLATES THE ILLINOIS AND UNITED STATES CONSTITUTIONS, EXCEEDS THE SCOPE OF THE VIDEO GAMING ACT, AND IS OTHERWISE ARBITRARY AND CAPRICIOUS.

50. On February 1, 2017, the Board's newest Advertising and Promotions Policy took effect. Part I of the policy interprets part of Section 25(c) of the Video Gaming Act (the "Anti-Inducement Provision"), which states: "No terminal operator may give anything of value, including but not limited to a loan or financing arrangement, to a licensed establishment . . . as

any incentive or inducement to locate video terminals in that establishment." 230 ILCS 40/25(c). A violation of this provision of Section 25 is a Class 4 felony offense. *Id.*

51. By using "inducement" in Section 25(c) of the statute, and by making a violation a felony offense punishable by a term of imprisonment, the Illinois legislature prohibited payments made with the specific intent on the part of the terminal operator to serve as an "incentive or inducement to locate video terminals in" the licensed location that receives the unlawful payment of value.

52. As with past policies covering the same topics, the Board's newest Advertising and Promotions Policy improperly interprets the word "inducement" in Section 25(c) to mean something far broader: "*Any* payment of cash, goods, services or loan or financing arrangement by a Terminal Operator to a Licensed Location, any of its owners, agents, representatives, or a third party on behalf of a Licensed Location, its owners, agents or representatives." (Advertising and Promotions Policy at § I.B (emphasis added).)

53. On its face, the Board's definition of "inducement" goes far beyond the specific bribes and kickbacks Section 25(c) criminalizes by untethering the exchange of "cash, goods, [or] services" from the specific intent of providing an "inducement to locate terminals in [an] establishment." There is no statutory authority for such an expanded definition.

54. Part II and Part III of the same Board policy then attempt to regulate precisely how licensed locations and terminal operators must share certain revenues and costs associated with their statutorily imposed joint venture's advertising and promotions. (*See* Advertising and Promotions Policy at §§ II and III.)

55. But Section 25(c) *does not grant* the Board the authority to unilaterally dictate the allocation of revenues and expenses between terminal operators and licensed locations. Section

25(c) empowers the Board to pass rules that prevent terminal operators from bribing the owners of licensed locations to "locate" terminals at their establishment. No part of it authorizes the Board to dictate the outcome of third-party contract negotiations.

56. The Board cannot legitimize its allocation of these revenues and expenses as an interpretation of its own rules implementing Section 25(c). *See* 11 Ill. Adm. Code §§ 1800.250(l) & 270(d). Rules 250(l) and 270(d) do little more than restate Section 25(c)'s prohibition against terminal operators' giving to a licensed location any "incentive or inducement to locate video terminals in that establishment." The rules' material departure from Section 25(c) is that they unreasonably expand the unambiguous term "to locate" into the much broader "to locate, *keep or maintain* video gaming terminals at the licensed video gaming location." 11 Ill. Adm. Code §§ 1800.250(l) & 270(d) (emphasis added). Even as enacted, however, these rules provide no basis for the Board to dictate how licensed locations and terminal operators share the costs of advertising and promotions.

57. Nor can the Board justify its Advertising and Promotions Policy with the Video Gaming Act's direction to "establish[] standards for advertising video gaming," that is, to regulate *content*. 230 ILCS 40/78(a)(3)(iii). The Board's policy exceeds its authority because it assigns the payment of expenses related to advertising and promotions, an area disconnected from the authority to regulate content or "standards."

58. Put simply, no part of the Video Gaming Act authorizes the Board to regulate who pays for advertising and promotional expenses in the first place. The Advertising and Promotions Policy is thus illegal, enacted in excess of the Board's authority. And because its favoritism of terminal operators serves no legitimate state interest, it is also unconstitutional.

59. Furthermore, *even if* the Advertising and Promotions Policy had enough statutory footing in Section 25(c) or the Board's rules construing it to constitute a valid exercise of the Board's authority, the terms of the policy itself are arbitrary and capricious. Not only do they regulate the division of advertising and promotions expenses without any regard to the specific intent to bribe, but they are internally inconsistent, requiring the parties to share certain costs while forbidding them from sharing others, with no discernible logic behind the distinctions.

60. And despite the fact that the Advertising and Promotions Policy purports to be an "agency statement of general applicability that implements, applies, interprets, or prescribes law or policy," 5 ILCS 100/1-70, the Board did not follow the rulemaking procedures prescribed by the Illinois Administrative Procedure Act, 5 ILCS 100/1 *et seq.*

III.A. The Board Lacks Authority to Regulate Cost-Sharing for Advertising and Promotions and Its Policy Fundamentally Misinterprets the Act

61. The Act instructs the Board to "establish[] standards for advertising video gaming," which includes the content of advertising—not the sharing of costs. 230 ILCS 40/78(a)(3). Using its rulemaking authority, the Board requires licensed locations and terminal operators to:

> Conduct advertising and promotional activities in accordance with this Part and in a manner that does not reflect adversely on or that would discredit or tend to discredit the Illinois gaming industry or the State of Illinois.

11 Ill. Adm. Code §§ 1800.250(n) & 1800.270(e). And it threatens disciplinary action for:

> Engaging in, or facilitating, any unfair methods of competition or unfair or deceptive acts or practices, including, but not limited to, the use or employment of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact in the conduct of any video gaming operation[.]

11 Ill. Adm. Code § 1800.310(a)(21).

62. The Board does *not*, however, have the authority to say who must pay for advertising and promotions that comply with those rules.

63. Who pays for food and beverage giveaways, items of nominal value, various prizes and rewards, or advertising has no bearing on the reputation of the Illinois gaming industry or the State of Illinois.

64. The current Advertising and Promotions Policy went into effect the same day the Board placed it on its website—February 1, 2017—and superseded a previous policy statement by the same name (the "2014 Policy"). All of the Board's policies covering advertising and promotions have arbitrarily restricted the ability of licensed locations and terminal operators to share certain expenses that affect both parties' businesses. The 2017 Policy, however, seeks to impose even more arbitrary restrictions that enrich terminal operators at the expense of licensed locations.

65. Notably, none of the Board's Advertising and Promotions Policies appear in the Illinois Administrative Code. The Board also did not submit these policy statements to the Joint Committee on Administrative Rules, which would have reviewed the policies prior to their effective date.

66. Advertising and promotional programs are an important part of driving customers to visit licensed locations for video gaming. The Board's longstanding policy prior to February 1, 2017 permitted licensed locations to give away free food and beverages, and said "[t]hese giveaways may be paid by the Licensed Location or the Licensed Terminal Operator (or split)." (2014 Policy at § III.B.) Similarly, licensed locations could give away certain promotional items such as t-shirts, cups, and the like with the freedom to determine amongst themselves who paid for such items. (2014 Policy at § III.B.) The Board noted that raffles were an appropriate

promotion—and was silent on who the Board allowed to pay for the prizes. (2014 Policy at § III.B.) Unless advertising promoted *only* the terminal operator or *only* the licensed location, cost-splitting was permitted. (2014 Policy at § II.C.)

67. Moreover, the 2014 Policy—while still based upon a fundamental misinterpretation of the Act—recognized that a number of cost-sharing and revenue-allocating agreements are not covered by the Video Gaming Act's Anti-Inducement Provision. (*See* 2014 Policy at § I.C.) Thus, a licensed location and terminal operator could negotiate and share many of the costs and expenses necessary to operate a licensed location. (*Id.*) Finally, the 2014 Policy provided that "ATM fees acquired from patron use of dual function ATM/ticket payout devices may be shared or allocated to a Licensed Location." (*Id.* at § I.C.7.)

III.B. The Board's 2017 Policy Is Manifestly Unfair to Licensed Locations

68. The Board's February 1, 2017 Advertising and Promotions Policy unfairly favors terminal operators by regulating many aspects of the video gaming industry that the General Assembly left to the negotiation of licensed locations and terminal operators.

69. For example, video gaming patrons may be provided with free food and beverages—indeed, consumer expectations require licensed locations to provide such promotions—but the Board has dictated that licensed locations cannot negotiate with terminal operators to share such expenses. (Advertising and Promotions Policy at § III.B.) Similarly, the Board has mandated that a terminal operator is never allowed to pay more than half the cost of all giveaways, unless the promotions bear the terminal operator's logo, representing yet another effort by the Board to favor terminal operators. (*Id.*)

70. Further, the Board's most recent Advertising and Promotions Policy reassigns ATM fees from dual-function ATMs that licensed locations were previously allowed to collect in

total, now mandating that such fees be shared with terminal operators. (*See id.* at § I.E.1.) The new ATM policy is yet another effort to gift licensed location revenue to terminal operators.

71. All told, the Advertising and Promotions Policy unfairly leaves every licensed location with less money to cover its costs and to reinvest into the business and the customers' gaming experience.

III.C. The Board's Regulation Is Arbitrary and Capricious

72. The Video Gaming Act's Anti-Inducement Provision is designed to combat bribery, not negotiated cost-sharing. The Act does not forbid the exchange of all items of value; rather, as with other anti-bribery laws, it is the purpose for which a transfer is made that makes the transfer illegal. *Cf.* 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), & 78dd-3(a); 18 U.S.C. § 201(b); 720 ILCS 5/29A-1; 720 ILCS 5/33-1. Moreover, the Act criminalizes only one party to the transaction, namely, the one in the position to know that its "conscious objective or purpose is to accomplish" the offense defined by the statute. 720 ILCS 5/4-4 (describing intent crimes).

73. And the Board has recognized that the Anti-Inducement Provision cannot and does not cover all services that a terminal operator might provide. For example, terminal operators are permitted to bear the entire cost of bases, chairs, and stools associated with a terminal and video surveillance or alarm systems that monitor the gaming area. (Advertising and Promotions Policy at §§ I.C.3–4; 2014 Policy at §§ I.C.5–6.)

74. Further, in certain cases, the Board outright *mandates* that terminal operators give value to licensed locations, e.g., half the cost of promotional giveaways, like free vacations. (Advertising and Promotions Policy at § III.B.) The Board's policies are incoherent, inconsistent, and arbitrary when it comes to what money can permissibly flow from terminal operators to licensed locations.

75. The Board is not authorized to expand the scope of the Anti-Inducement Provision's Class 4 felony.

76. The Advertising and Promotions Policy thus reaches beyond bribery to improperly address the sharing of honestly earned revenue. But that is not a topic the General Assembly intended the Board to consider. The Board disregarded the fact that many bars and restaurants gave up the ATMs they previously had by directing patrons to the dual-function machines. And in stripping the requirement of a corrupt purpose or intent from a felony that includes that purpose in its formulation, the Board's policy bears no relation to a difference in view or agency expertise. In short, it is arbitrary and capricious. *See Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 505–06 (1988).

77. There is no logic to the arbitrary and capricious distinctions between cost-sharing that is allowed, cost-sharing that is required, and cost-sharing that is forbidden under the Board's policy. Even under the new policy, licensed locations and terminal operators are commanded to share the cost of certain promotional giveaways, like free vacations, but prohibited from going halves on chicken tenders. (Advertising and Promotions Policy § III.B.)

COUNT I: DUAL LICENSURE (DUE PROCESS)

78. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

79. Dotty's, Stella's, and Shelby's have a right to the due process of law under the Fourteenth Amendment to the U.S. Constitution and Article I, section 2 of the Illinois Constitution. Federal constitutional rights may be enforced under 42 U.S.C. § 1983.

80. The Video Gaming Act's prohibition on dual licensing denies Dotty's, Stella's, and Shelby's a terminal operator's license without advancing a legitimate government interest.

81. The Video Gaming Act's prohibition on dual licensing thus deprives them of their right to due process of law.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the prohibition on dual licensing in 230 ILCS 40/30 is unconstitutional;

(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Video Gaming Act's prohibition on dual licensure;

(3) Award Plaintiffs their attorney's fees and costs under 42 U.S.C. § 1988 (prevailing party in federal civil rights suit); and

(4) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT II: DUAL LICENSURE (EQUAL PROTECTION)

82. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

83. Dotty's, Stella's, and Shelby's have a right to equal protection under the laws under the Fourteenth Amendment to the U.S. Constitution and Article I, section 2 of the Illinois Constitution. Federal constitutional rights may be enforced under 42 U.S.C. § 1983.

84. The Video Gaming Act's prohibition on dual licensing denies Dotty's, Stella's, and Shelby's a terminal operator's license—a benefit they would otherwise be entitled to—for the arbitrary reason that they were eligible to be and became licensed locations.

85. The Video Gaming Act's prohibition on dual licensing thus deprives them of their right to the equal protection of the laws.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the prohibition on dual licensing in 230 ILCS 40/30 is unconstitutional;

(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Video Gaming Act's prohibition on dual licensure;

(3) Award Plaintiffs their attorney's fees and costs under 42 U.S.C. § 1988 (prevailing party in federal civil rights suit); and

(4) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT III: DUAL LICENSURE (SPECIAL LEGISLATION)

86. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

87. Article IV, Section 13 of the Illinois Constitution prohibits the passage of a special or local law when a general law is or can be made applicable. It bars discrimination in favor of a select group where the classification is arbitrary. *Elementary Sch. Dist. 159 v. Schiller*, 221 Ill. 2d 130 (2006).

88. The Video Gaming Act's prohibition on dual licensing is special legislation that discriminates in favor of terminal operators.

89. But for the prohibition of dual licensing, licensed locations that otherwise meet the qualifications for a terminal operator's license could purchase and maintain video gaming terminals for themselves.

90. The prohibition of dual licensing thus confers on terminal operators a special benefit or exclusive privilege denied to others who are similarly situated.

91. That legislative classification is arbitrary and serves no legitimate state rationale.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the prohibition on dual licensing in 230 ILCS 40/30 is unconstitutional;

(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Video Gaming Act's prohibition on dual licensure; and

(3) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT IV: PROFIT DIVERSION (DUE PROCESS)

92. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

93. Dotty's, Stella's, and Shelby's have a right to the due process of law under the Fourteenth Amendment to the U.S. Constitution and Article I, section 2 of the Illinois Constitution. Federal constitutional rights may be enforced under 42 U.S.C. § 1983.

94. The Video Gaming Act's requirement that Dotty's, Stella's, and Shelby's automatically give up half of a terminal's after-tax profits to a terminal operator without regard to the parties' relative investments, expenses, and efforts deprives Dotty's, Stella's, and Shelby's of property without due process of law.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the requirement in 230 ILCS 40/25(c) that licensed locations and terminal operators split after-tax profits from a terminal is unconstitutional;

(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Video Gaming Act's requirement that licensed locations and terminal operators must split profits equally;

(3) Award Plaintiffs their attorney's fees and costs under 42 U.S.C. § 1988 (prevailing party in federal civil rights suit); and

(4) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT V: PROFIT DIVERSION (EQUAL PROTECTION)

95. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

96. Dotty's, Stella's, and Shelby's have a right to equal protection under the laws under the Fourteenth Amendment to the U.S. Constitution and Article I, section 2 of the Illinois Constitution. Federal constitutional rights may be enforced under 42 U.S.C. § 1983.

97. The Video Gaming Act's requirement that Dotty's, Stella's, and Shelby's automatically give up half of a terminal's after-tax profits to a terminal operator without regard to the parties' relative investments, expenses, and efforts unfairly favors terminal operators at the expense of licensed locations.

98. The Video Gaming Act's profit diversion provision thus deprives them of their right to the equal protection of the laws.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the requirement in 230 ILCS 40/25(c) that licensed locations and terminal operators split after-tax profits from a terminal is unconstitutional;

(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Video Gaming Act's requirement that licensed locations and terminal operators must split profits equally;

(3) Award Plaintiffs their attorney's fees and costs under 42 U.S.C. § 1988 (prevailing party in federal civil rights suit); and

(4) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT VI: PROFIT DIVERSION (SPECIAL LEGISLATION)

99. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

100. Article IV, Section 13 of the Illinois Constitution prohibits the passage of a special or local law when a general law is or can be made applicable. It bars discrimination in favor of a select group where the classification is arbitrary. *Elementary Sch. Dist. 159 v. Schiller*, 221 Ill. 2d 130 (2006).

101. The Video Gaming Act's requirement that Dotty's, Stella's, and Shelby's automatically give up half of a terminal's after-tax profits to a terminal operator without regard to the parties' relative investments, expenses, and efforts is special legislation that discriminates in favor of terminal operators.

102. But for the provision requiring licensed locations to divert half of their profits to terminal operators, licensed locations would negotiate their contracts freely and at arm's length. Considering their investments, expenses, and efforts as compared to the investments, expenses, and efforts of terminal operators, Plaintiffs would not agree to pay half of each terminal's profits to terminal operators.

103. The provision diverting half of a terminal's profits thus confers on terminal operators a special benefit or exclusive privilege denied to others who are similarly situated.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the requirement in 230 ILCS 40/25(c) that licensed locations and terminal operators split after-tax profits from a terminal is unconstitutional;

(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Video Gaming Act's requirement that licensed locations and terminal operators must split profits equally; and

(3) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT VII: ADVERTISING & PROMOTIONS POLICY (ILLINOIS ADMINISTRATIVE PROCEDURE ACT)

104. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

105. The Advertising and Promotions Policy is an agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, and it does not satisfy any of the exemptions from the definition of a "rule" in 5 ILCS 100/1-70 or from the rulemaking procedures prescribed in 5 ILCS 100/5-35.

106. Prior to the adoption of the Advertising and Promotions Policy, the Board did not accomplish the actions required by Sections 5-40, 5-45, or 5-50 of the Illinois Administrative Procedure Act.

107. The Advertising and Promotions Policy is invalid by the terms of 5 ILCS 100/5-35(b).

108. Dotty's, Stella's, and Shelby's may initiate a proceeding to contest the Advertising and Promotions Policy on the ground of noncompliance with the Illinois Administrative Procedure Act under 5 ILCS 100/5-35(b).

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the Advertising and Promotions Policy is not valid because the Board failed to comply with the Illinois Administrative Procedure Act;

(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Advertising and Promotions Policy;

(3) Award Plaintiffs their attorney's fees and costs under 5 ILCS 100/10-55(c) (invalidating administrative rule); and

(4) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT VIII: ADVERTISING & PROMOTIONS POLICY (EXCEEDS SCOPE OF VIDEO GAMING ACT)

109. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

110. The Board lacks the statutory authority to enact a rule, regulation, or policy dictating how terminal operators and licensed locations must share advertising and promotional expenses.

111. The Board enacted the February 1, 2017 Advertising and Promotions Policy, dictating terminal operators and licensed locations must share advertising and promotional expenses.

112. The Board exceeded the scope of its authority under the Video Gaming Act when it enacted the February 1, 2017 Advertising and Promotions Policy.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the Board's February 1, 2017 Advertising and Promotions Policy governing how licensed locations and terminal operators may pay for advertising and promotions costs exceeded the Board's rulemaking authority;

(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Board's February 1, 2017 Advertising and Promotions Policy governing how licensed locations and terminal operators may pay for advertising and promotions costs;

(3) Award Plaintiffs their attorney's fees and costs under 5 ILCS 100/10-55(c) (invalidating administrative rule); and

(4) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT IX: ADVERTISING & PROMOTIONS POLICY (ARBITRARY & CAPRICIOUS)

113. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

114. The statement concerning how revenue from a dual-function ATM/redemption machine may be allocated in the Board's February 1, 2017 Advertising and Promotions Policy is arbitrary and capricious.

115. The distinctions between cost-sharing that is allowed and cost-sharing that is not allowed contained in the Board's February 1, 2017 Advertising and Promotions Policy are arbitrary and capricious.

116. The Board relied on factors unsupported by the Video Gaming Act when it regulated the sharing of advertising and promotional expenses and the division of ATM fees.

117. The Board failed to consider the nature of existing business relationships between terminal operators and licensed locations when it regulated the sharing of advertising and promotional expenses and the division of ATM fees.

118. No reasonable difference of opinion or agency expertise can justify the Board's regulation of the sharing of advertising and promotional expenses by reference to regulating the content of advertising and promotions.

119. No reasonable difference of opinion or agency expertise can justify the Board's regulation of the sharing of advertising and promotional expenses by reference to preventing unlawful inducements.

120. No reasonable difference of opinion or agency expertise can justify the Board's regulation of ATM fees by reference to preventing unlawful inducements.

121. The Board's shift in its regulation of advertising and promotional expenses and the ATM fees was sudden and unexplained.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the prohibition on inducements in 230 ILCS 40/25(c) requires the guilty party to act with the purpose or intent to induce a licensed location to locate video terminals in its establishment;

(2) Find and declare that the Board's February 1, 2017 Advertising and Promotions Policy governing the division of ATM fees and how licensed locations and terminal operators may pay for advertising and promotions costs is arbitrary and capricious;

(3) Issue a preliminary and/or permanent injunction against implementing or enforcing the Board's February 1, 2017 Advertising and Promotions

Policy governing the division of ATM fees and how licensed locations and terminal operators may pay for advertising and promotions costs;

(4) Award Plaintiffs their attorney's fees and costs under 5 ILCS 100/10-55(c) (invalidating administrative rule); and

(5) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT X: ADVERTISING & PROMOTIONS POLICY (DUE PROCESS)

122. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

123. Dotty's, Stella's, and Shelby's have a right to the due process of law under the Fourteenth Amendment to the U.S. Constitution and Article I, section 2 of the Illinois Constitution. Federal constitutional rights may be enforced under 42 U.S.C. § 1983.

124. The Board's February 1, 2017 Advertising and Promotions Policy governing the division of ATM fees and the sharing of advertising and promotional expenses imposes additional expenses on licensed locations and deprives them of revenue streams they previously received legally without advancing any legitimate state interest.

125. The Board's February 1, 2017 Advertising and Promotions Policy governing how Dotty's, Stella's, and Shelby's divide ATM fees and share advertising and promotional expenses with terminal operators deprives them of property without due process of law.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the Board's February 1, 2017 Advertising and Promotions Policy governing the division of ATM fees and how licensed

locations and terminal operators may pay for advertising and promotions costs is unconstitutional;

(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Board's February 1, 2017 Advertising and Promotions Policy governing the division of ATM fees and how licensed locations and terminal operators may pay for advertising and promotions costs;

(3) Award Plaintiffs their attorney's fees and costs under 5 ILCS 100/10-55(c) (invalidating administrative rule) and 42 U.S.C. § 1988 (prevailing party in federal civil rights suit); and

(4) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

COUNT XI: ADVERTISING & PROMOTIONS POLICY (EQUAL PROTECTION)

126. Plaintiffs incorporate and reallege paragraphs 1 through 77 as though fully recited herein.

127. Dotty's, Stella's, and Shelby's have a right to equal protection under the laws under the Fourteenth Amendment to the U.S. Constitution and Article I, section 2 of the Illinois Constitution. Federal constitutional rights may be enforced under 42 U.S.C. § 1983.

128. The Board's February 1, 2017 Advertising and Promotions Policy governing the division of ATM fees and the sharing of advertising and promotional expenses singles out licensed locations for additional expenses and for the deprivation of revenue streams they previously received legally.

129. The February 1, 2017 Advertising and Promotions Policy governing how Dotty's, Stella's, and Shelby's divide ATM fees and share advertising and promotional expenses with terminal operators thus deprives them of their right to the equal protection of the laws.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Find and declare that the Board's February 1, 2017 Advertising and Promotions Policy governing the division of ATM fees and how licensed locations and terminal operators may pay for advertising and promotions costs is unconstitutional;

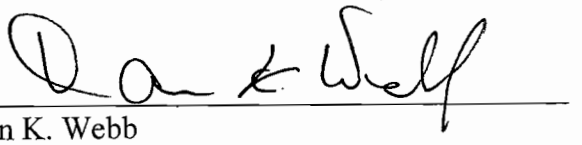
(2) Issue a preliminary and/or permanent injunction against implementing or enforcing the Board's February 1, 2017 Advertising and Promotions Policy governing the division of ATM fees and how licensed locations and terminal operators may pay for advertising and promotions costs;

(3) Award Plaintiffs their attorney's fees and costs under 5 ILCS 100/10-55(c) (invalidating administrative rule) and 42 U.S.C. § 1988 (prevailing party in federal civil rights suit); and

(4) Issue any other just relief as this Court deems fit and proper under the evidence and circumstances.

DATED: April 4, 2017

Respectfully submitted,



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