SUPREME COURT
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent, v. KIRNPAL GREWAL, Defendant/Appellant.	**CASE NO. S217896** Appellate Case No: F065450, consolidated with F065451, F065689 Kern County Sup Ct No. CV-276959
PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent, v. PHILLIP WALKER, Defendant/Appellant.	Appellate Case No: F065451, consolidated with F065450, F065689 Kern County Sup Ct No. CV-276961
PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent, v. JOHN C. STIDMAN, Defendant/Appellant.	Appellate Case No: F065689, consolidated with F065450, F065451 Kern County Sup Ct No. CV-276958

ANSWER TO PETITION FOR REVIEW

LISA S. GREEN, District Attorney
County of Kern, State of California
GREGORY A. PULSKAMP, SBN 166784
Supervising Deputy District Attorney
1215 Truxtun Avenue, 4th Floor
Bakersfield, California 93301
Telephone: (661) 868-1659
Attorney for Plaintiff and Respondent

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INTRODUCTION

Respondent, the People of the State of California, answer the two petitions for review challenging the California Court of Appeal for the Fifth District's published decision in *People v. Grewal et al.* (2014) 224 Cal.App.4th 527 (*Grewal*).[1]

Petitioners operated internet café sweepstakes gambling schemes in Kern County. Petitioners purportedly offered legitimate retail business products, most prominently the sale of internet access time or computer time, which they promoted with a "sweepstakes" that patrons played most

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[1] The People's answer addresses two petitions for review: (1) Petition of Appellants Kirnpal Grewal and Phillip Ernest Walker in *People of the State of California v. Grewal, et al.*, Co. App. Case Nos. F065450 and F065451, Supreme Court Case No. S217896; and (2) Petition of Appellant John C. Stidman in *People of the State of California v. Grewal, et al.*, Co. App. Case No. F065689, Supreme Court Case No. S217896. These two matters were consolidated for oral argument in the Court of Appeal, and now all three appellants have petitioned for review in this Court. Because the appellants challenge the same decision and raise very similar arguments in support of their petitions, the People address their petitions jointly herein. The People will refer to the two groups of appellants collectively as "Petitioners" in this brief. A petition for review challenging a separate unpublished decision by the same appellate court was filed in two other related consolidated sweepstakes gambling cases that were argued contemporaneously with *Grewal*. (*People v. Nasser, et al.*, Co. App. Nos. F066645 & F066646 (Collectively, *Nasser*), Supreme Court Case No. S217979.) As recognized by the Court of Appeal, the only difference between *Grewal* and *Nasser* was that *Nasser* involved the purported sweepstakes promotion of the sale of long distance phone cards. (*Grewal, supra*, at p. 531, fn. 1.)

often using gambling-themed games.[2] The purported sweepstakes were operated using sophisticated computer software on computer networks in Petitioners' businesses. Patrons of Petitioners' businesses played the gambling-themed games on the software systems and won cash prizes. Petitioners' businesses were essentially mini-casinos that used integrated computer systems to evade California's gambling laws.

The Court of Appeal found that Petitioner's gambling schemes were unlawful under Penal Code section 330b. With much hyperbole, Petitioners misrepresent the Court of Appeal's decision—alleging it will create "chaos" and threaten promotional sweepstakes such as those used by McDonald's and Coca Cola. But the sky is not falling in the world of legitimate promotional sweepstakes—it has only collapsed on Petitioners' illegal internet café "sweepstakes" gambling schemes. Far from criminalizing lawful business promotions and home computers, the Court of Appeal's decision merely applied the established precedent of *People ex rel. Bill Lockyer v. Pacific Gaming Technologies* (2000) 82 Cal.App.4th 699 (*Lockyer*), which dealt with a very similar sweepstakes gambling scheme, and held that the scheme was illegal under Penal Code section 330b. The Court of Appeal also relied upon the persuasive reasoning of a very recent decision of the United States District Court for the Southern

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[2] The term "sweepstakes" is used solely to describe the ruse used by petitioners in their gambling schemes. This term is not intended to in any way connote that the schemes are legitimate or lawful.

District of California, which held that internet café sweepstakes gambling operations almost identical to Petitioners' schemes violated Penal Code section 330b. (*Lucky Bob's Internet Café, LLC v. California Dept. of Justice, et al.* (S.D.Cal. 2013) 2013 U.S. Dist. Lexis 62470 (*Lucky Bob's*).)

Instead of the on-point precedent relied upon by the Court of Appeal in its *Grewal* decision, Petitioners employ an expansive and unwarranted reading of *Trinkle v. California State Lottery* (2003) 105 Cal.App.4th 1401 (*Trinkle II*). In *Trinkle II*, the California Court of Appeal for the Third Appellate District held that the State Lottery's sale of lawful paper lottery tickets by means of an ordinary vending machine did not convert that vending machine into an illegal slot machine. (*Trinkle II*, supra, 105 Cal.App.4th at p. 1411.) The facts in *Trinkle II* are inapplicable to Petitioners' schemes. Indeed, Petitioners' operations are far more similar to the illegal sweepstakes gambling schemes that were at issue in the *Lockyer* and *Lucky Bob's* decisions.

Accordingly, review is not necessary to secure uniformity of decision and these petitions do not present a viable ground for review under California Rules of Court, rule 8.500(b)(1). The People request that this Court deny the petitions.

THERE ARE NO BASES TO GRANT REVIEW

A. There is no conflict between the Districts; *Trinkle II* is inapposite to the *Grewal* Decision.

While the Court of Appeal in *Grewal* took issue with some of *Trinkle II's* dicta, *Grewal* set forth the reasons why *Trinkle II* did not apply to Petitioner's illegal operations.

> *Trinkle II* is distinguishable factually because, in the words of a recent federal district court decision, it involved a passive vending machine that "simply delivered a finished product--the lottery ticket." (*Lucky Bob's Internet Café, LLC v. California Dept. of Justice* (S.D.Cal. 2013) 2013 U.S.Dist. Lexis 62470, p. *8 (*Lucky Bob's*).) Here, in contrast, all the trappings and experiences involved in playing traditional slot machines are actualized in one form or another by defendants' sweepstakes software systems and networked computer terminals, since in each case points are received upon making a purchase, a game program is activated by the customer at a terminal, points are used or bet in selected increments, audio-visual scenes are played out on the screen to create the feel and anticipation of a slot machine or other gambling game, and prizes are won. For these reasons, the *integrated systems in our case are in a different category than the vending machine* in *Trinkle II*. The mere fact that winnings are based on a predetermined sequence of results programmed into the software system, rather than on a randomly spinning wheel (or the like), does not change the nature and character of devices herein, which as integrated systems function as slot machines.

(*Grewal, supra*, 224 Cal.App.4th at p. 545, fn. omitted, italics added.)

The *Grewal* court also endorsed the reasoning of the federal District Court in *Lucky Bob's*. In *Lucky Bob's*, the District Court heard arguments identical to the Petitioners' here. In *Lucky Bob's*, the District Court distinguished *Trinkle II*:

> The [internet café sweepstakes gambling] system here is more similar to the vending machines at issue in *Lockyer*. In *Lockyer*, the vending machines dispensed pre-paid telephone cards, but also had a sweepstakes feature that randomly paid out money after playing visual and audio displays that mimicked a slot machine. [Citation.] Winners were determined by a preset computer program, which decided "predetermined winners spread out over a period of time." [Citation.] The court in *Lockyer* held that the vending machine was an illegal slot machine under Section 330. [Citation.]

(*Lucky Bob's, supra*, 2013 U.S. Dist. Lexis 62470, *9.)

In short, the Court of Appeal, like the federal District Court before it, simply distinguished *Trinkle II*, and found *Lockyer* to be the more applicable precedent to follow in relation to Petitioners' gambling schemes. The Court's decision in *Grewal* represents sound legal reasoning and does not create a conflict with *Trinkle II*—a case it did not rely upon.

In addition to properly relying upon California precedent, the Court of Appeal's decision in *Grewal* is in full accord with numerous non-California decisions addressing the illegal internet café "sweepstakes" gambling phenomenon. For example, the Alabama Supreme Court held that "Quincy's MegaSweeps" sweepstakes software system violated the state's gambling laws in *Barber v. Jefferson County Racing Association* (2006) 960 So.2d 599 [*overruled* on other ground by *Tyson v. Macon County* (2010) 43 So.3d 587, 591].) The Mississippi Court of Appeals held that a similar computer system that sold telephone cards along with offering "sweepstakes" prizes constituted a slot machine under Mississippi law in *Moore v. Mississippi Gaming Commission* (2011) 64 So.3d 537. The

United States Court of Appeals for the Fifth Circuit affirmed a criminal conviction of an internet café operator for illegal gambling under Texas state law in *United States v. Davis* (5th Cir. 2012) 690 F.3d 330. Far from being an anomalous case, *Grewal* is a mainstream case consistent with other state appellate court decisions addressing these same types of gambling systems.

B. The *Grewal* decision does not criminalize legitimate promotional sweepstakes

Petitioners, without any supporting evidence in the record on appeal, advance hypothetical scenarios asserting that the *Grewal* decision will criminalize sweepstakes promotions such as those offered by McDonald's and Coca Cola. In the context of claims of discriminatory enforcement, courts have consistently rebuffed other sweepstakes gambling schemes' efforts to compare themselves with legitimate retail sweepstakes promotions. (*People v. Shira* (1976) 62 Cal.App.3d 442, 464, fn. 15 [where the court refused to address a discriminatory prosecution argument on appeal because the record did not contain "an adequate showing of an intentional and purposeful singling out of defendants for prosecution on an 'invidious discrimination' basis"]; *State of New Mexico v. Vento* (2012) 286 P.2d 627, 634-635 [rejecting a criminal defendant's invitation to compare his internet café gambling scheme to promotions conducted by McDonald's, Coca-Cola or Albertson's]; see also *Lockyer*, *supra*, 82

Cal.App.4th at p. 704, fn. 7 [appellate court rejected claim by Venda Tel operator that its illegal device was lawful because Coca-Cola and M&M's also dispensed products from similar vending machines – appellate court observed that there was no evidence in the record to support such an argument].) Similarly, this Court should decline Petitioners' invitation to consider hypothetical scenarios not before it.

Moreover, the very similar holding in *Lockyer* did not result in adverse effects on legitimate promotional sweepstakes that Petitioners suggest will result here. Indeed, the claim that they conduct legitimate promotional sweepstakes is Petitioners' primary ruse—one used to sow doubt and confusion among law enforcement and the courts regarding the true nature of their gambling systems. But the mere denomination of something as a sweepstakes promotion does not make an otherwise illegal activity legal. (Bus. & Prof. Code, § 17539.3, subd. (c); see also Bus. & Prof. Code, § 17539.5, subd. (a)(12).)

C. The Rule of Lenity has no application to these cases

Citing well-established and applicable precedent, the Court of Appeal's decision fully addressed the non-application of the rule of lenity to these matters. (*Grewal, supra*, 224 Cal.App.4th at pp. 538-539.) The Court found there was no ambiguity as to the meaning of Penal Code section 330b that would warrant the rule of lenity's application to

Petitioners' gambling schemes. (*Ibid.*) This Court has described California's multiple statutory definitions of slot machines as "broad." (*Hotel Employees & Restaurant Employees International Union v. Davis* (1999) 21 Cal.4th 585, 593-594.) There is no ambiguity as to the meaning of Penal Code section 330b, and certainly no reasonable competing statutory interpretation that requires the rule of lenity's application to this case. The language of the statute and the legislative intent are clear, and there is no reason to resort to the strained extension of *Trinkle II* proffered by Petitioners.

"Application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability. [Citation.]" (*Liparota v. United States* (1985) 471 U.S. 419, 427.) Petitioners here are not at all unwary and were on full notice of the risk of criminality in their actions. Indeed, their sweepstakes gambling systems are a deliberate and sophisticated attempt to circumvent state gambling laws. (See Dunbar & Russell, *The History of Internet Cafes and the Current Approach to Their Regulation* (2012) 3 U.N.L.V. Gaming L.J. 243.) This is certainly not a situation that warrants a new extension of the rule lenity, especially not to protect opportunistic criminals attempting to exploit what they see as loopholes in California's gambling laws.

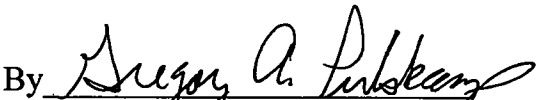
CONCLUSION

Review of the Fifth District Court of Appeal's *Grewal* decision is not necessary to secure uniformity of decision nor is it necessary to settle an important question of law. Petitioners' dissatisfaction with the result of the *Grewal* decision is not proper grounds for review. The *Grewal* decision is wholly consistent with existing case law and California's gambling statutes, and does not warrant review by this Court.

Dated: May 7, 2014

Respectfully submitted,

LISA S. GREEN
District Attorney, County of Kern

By 
GREGORY A. PULSKAMP
Supervising Deputy District Attorney

CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to the California Rules of Court, rule 8.204(c)(1), the foregoing **ANSWER TO PETITION FOR REVIEW** is produced using 13-point Times New Roman type and contains Approximately 2,042 words, including footnotes, not including the tables of content and authorities, this certificate, or the proof of service, which is less than the 14,000 words permitted by this rule, as counted by Microsoft Word, the computer program used to prepare this Brief.

Dated: May 7, 2014

GREGORY A. PULSKAMP
Supervising Deputy District Attorney

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[Pursuant to CCP § 1013(a) & (c) and CA Rules of Court, rule 8.212(c)(2)

I declare that I am employed in the County of Kern, State of California; that I am over the age of eighteen years; that I am not a party to this action; and that my business address is 1215 Truxtun Avenue, Bakersfield, California 93301.

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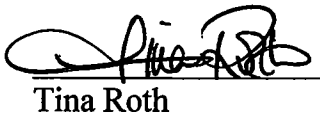
☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 7, 2014, at Bakersfield, California.



Tina Roth

SERVICE LIST

Tory Edward Griffin Hunt Jeppson & Griffin LLP 1478 Stone Point Drive, Suite 100 Roseville, California 95661	[1] Copy; Regular Mail Attorney for *Defendant/Appellant, John C. Stidman*
G. Randall Garrou, Esq. Jerome H. Mooney, Esq. Weston, Garrou & Mooney 12121 Wilshire Blvd., Suite 525 Los Angeles, California 90025	[1] Copy; Regular Mail Attorneys for *Defendants/Appellants, Kirnpal Grewal and Phillip E. Walker*
Office of the Clerk Fifth District Court of Appeal 2424 Ventura Street Fresno, California 93721	[1] Copy; Regular Mail
Superior Court of California County of Kern Civil Appeals Division 1415 Truxtun Avenue Bakersfield, California 93301	[1] Copy; Regular Mail
Office of the Clerk Supreme Court of California 350 McAllister Street San Francisco, California 94102-4797	[1] PDF Submitted electronically and [1] Original plus [8] copies sent via Federal Express Overnight Mail.