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

RESPONDENT'S ANSWER TO APPELLANTS' OPENING BRIEFS

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

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

RESPONDENT'S ANSWER TO APPELLANTS' OPENING BRIEFS

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other Resources

INTRODUCTION

"Experience teaches that those who have a penchant or passion for gambling are very ingenious in inventing new devices and contrivances with which to gratify their appetite for gambling, and at the same time evade the letter, if not the spirit, of the law. . . ." (*McCall v. State* (Ariz. 1961) 161 P. 893, 895.)

In these consolidated appeals, the latest technological contrivance in a long line of illegal gambling schemes is being brought before this Court. Appellants[1] purportedly offer legitimate retail business products, most prominently the sale of internet access time or computer time, which they promote with a sweepstakes[2] that patrons play most often using electronic gambling-themed games at computer terminals to win cash prizes. The sweepstakes are provided using sophisticated computer software on private computer networks operated by Appellants' businesses.

Appellants' businesses are little more than mini-casinos seeking to exploit a perceived loophole in California's gambling laws. Appellants' patrons, the police, the public, and even Appellants themselves, know that the product being purveyed is illegal gambling in the guise of a promotional sweepstakes. Appellant Walker describes these gambling-themed games as "an entertaining pseudo-interactive interface that simulates games of chance." (Walker Clerk's Transcript ("CT"), p. 44:24-25.) The only problem with that very artful description is that Appellants' sweepstakes are actual games of chance played for money by patrons to win cash prizes.

---

[1] The term "Appellants" as used herein refers to all three of the Appellants in these consolidated appeals unless used with an express reference to a specifically named Appellant or Appellants.

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

Accordingly, the Penal Code's express provisions and the overwhelming weight of legal authority from California and other jurisdictions establish the illegality of these sweepstakes gambling schemes.

Against this overwhelming authority, Appellants, as they must, rely desperately upon *Trinkle v. California State Lottery* (2003) 105 Cal.App.4th 1401 (*Trinkle II*). That case, however, does not involve sweepstakes gambling machines. Instead, *Trinkle II* merely examines the legality of selling lawful state lottery tickets through ordinary vending machines. Reading *Trinkle II* in a dramatically expansive manner, Appellants ask this Court to re-write California's slot machine and gambling device prohibitions to sanction their sweepstakes gaming schemes as a new, and unregulated, form of legal gambling.

The Trial Court and the Fifth District Court of Appeal ("the Court of Appeal") recognized these sophisticated sweepstakes schemes for what they plainly are: illegal gambling. These Courts, therefore, supported the People's request to preliminarily enjoin Appellants from operating the sweepstakes schemes as part of their businesses.

The People request that this Court also recognize this latest deliberate and contrived effort to unlawfully purvey gambling in California, and strongly affirm the Court of Appeal's decision.

STATEMENT OF CASE

I. STATEMENT OF FACTS

A. Appellant Stidman's I Zone Internet Café

Appellant Stidman owns and operated the I Zone Internet Café ("I Zone") in Bakersfield, California. (Stidman CT, p. 44.) The I Zone sold internet time to the public through a system of computer terminals located on its premises. (Stidman CT, pp. 56, 71-72.) The I Zone purportedly promoted the sale of internet time and other products with sweepstakes that

were effectuated through a software program from Capital Bingo ("Sweepstakes Gaming System"). (Stidman CT, pp. 30-31, 44, 54-56.) Capital Bingo's Sweepstakes Gaming System is available throughout California. (Stidman CT, p. 44.)

Under the Sweepstakes Gaming System, patrons at the I Zone could purchase internet time for $20.00 per hour. (Stidman CT, pp. 29:19-21, 71.) Identification of the patron, purchase of products, and play of the sweepstakes games was effectuated with a magnetic striped card. (Stidman CT, p. 30.) With the purchase of internet time, a patron received 100 "sweepstakes points" for each dollar spent. (Stidman CT, pp. 29:1-2, 71:14-16.) I Zone patrons also received 500 sweepstakes points when they first purchased internet time as a "new sign-up" and an additional 500 sweepstakes points for the first $20.00 of internet time purchased each day. (Stidman CT, pp. 29-30, 71, 80.)

Although Appellant characterized the additional points as being "free," Appellant's own promotional flyer indicated that some type of purchase was necessary in order to receive these additional points. (Stidman CT, p. 93.) A form was available under which patrons could have ostensibly mailed-in a "self addressed stamped envelope" to receive four free sweepstakes entries per day. (Stidman CT, pp. 72:17-18, 89.) Based upon the above discussed rate of 100 "sweepstakes points" for each dollar spent, this mail-in option appeared to be valued at $.04. According to Appellant's mail-in form, the patron had to pay postage both ways and wait "10 to 14 business days" for the company to handle the mail-in request. (Stidman CT, p. 89.) Appellant Stidman submitted no evidence as to the actual use of this mail-in free play option.

Using the sweepstakes points within the Sweepstakes Gaming System at the I Zone, patrons could and did win cash prizes ranging up to a top prize of $3,000.00. (Stidman CT, pp. 30, 82-82, 171, 173.) Under the

Sweepstakes Gaming System, patrons won such cash prizes based upon chance. (Stidman CT, pp. 56, 68, 71-72.) Appellant Stidman's retained expert described the selection of winners on the Sweepstakes Gaming System as follows:

> The Capital business center model incorporates three separate and distinct servers; 1) the Management Terminal; 2) the Point of Sale Terminal; and, 3) the Internet Terminal. It is at the Management Terminal where all sweepstakes entries are produced and *randomly arranged.* Each batch of sweepstakes entries has a finite number of entries and a finite number of winners and losers. Once a batch of sweepstakes entries is produced at the Management Terminal, it is "stacked" and then transferred to the Point of Sale Terminal in exactly the same order as when it left the Management Terminal. Each time a customer reveals the results of a sweepstakes entry, either at the Internet Terminal or at the Point of Sale Terminal, the next available sweepstakes entry in the stack is revealed. Put more clearly, the Internet Terminal simply acts as a reader and displays the results of the next sequential sweepstakes entry in the stack as it was originally arranged and transferred from the Management Terminal. In fact, exactly the same results would be revealed whether the customer chooses to have them displayed in paper format at the Point of Sale Terminal or in electronic format at an Internet Terminal. (Stidman CT, p. 56, italics added.)

Appellant Stidman's investigator described the operations at the I Zone. He entered the I Zone with his wife and approached one of the employees. (Stidman CT, p. 71.) He purchased $20.00 of internet time and received 2000 sweepstakes points with the purchase, plus an additional 500 sweepstakes points for his first $20.00 purchase of the day and another 500 sweepstakes points as a "new sign-up." (*Ibid.*) He was provided with a magnetic striped card with numbers on the back that the I Zone employee swiped through a machine located at the register. (*Ibid.*) The investigator and his wife proceeded to a computer station that was touch screen

activated. (*Ibid.*) Alluding to the I Zone's Sweepstakes Gaming System, the investigator stated as follows:

> The prize of course is something that you win. *Chance* means there is a *random* element involved. *This too, is part of any sweepstakes game*. Consideration means that the participant pays directly to enter the game. Here is the distinction, for example when you play the McDonald's Monopoly Game, which is a sweepstakes, you don't buy the pieces. You buy a Big Mac with fries or chicken McNuggets. When you buy the food, you get a free entry into the Monopoly Game. . . . This is exactly how I found the sweepstakes game to work at the I Zone Internet Café . . . (Stidman CT, pp. 71-72, italics added.)

The investigator noted in his statement that the I Zone employee "had to raise his voice over the background music and the ringing and chiming of the sweepstakes games." (Stidman CT, p. 72:14-15.) In a transcript of his second visit to the I Zone, Appellant Stidman's investigator is quoted in the following exchange with his wife while playing the sweepstakes games:

> "[Investigator's Wife]: Let's go to what we played yesterday. Gin (sic) Up. So it has zero interest so we need to put how much we want to bet.
>
> [Investigator]: When we buy our internet time we got, looks like, 43 free points.
>
> [Investigator's Wife]: That was there, yes. That was already there. You have to buy like 25 cents, 50 cents, 75 cents, a dollar. And we'll do a dollar. And we press it and—okay we won so it gave us 60. So now we won 20, gave us 60. Now we'll do it again. And we didn't win anything.
>
> [Investigator]: We're down to 2300 sweepstake

points. That's with a $1 entry. Total win of 60. This will be our fifth spin.

[Investigator's Wife]: Still nothing and we're down to 2100.

[Investigator]: Six spins. Seven spins.

[Investigator's Wife]: Yeah. Okay we won.

[Investigator]: You are alive.

[Investigator's Wife]: *Wow! We just won 1,000 points.*

[Investigator]: *That's $10.*

[Investigator's Wife]: Pretty cool. Which gave us 19---

[Investigator]: Sweepstake points.

[Investigator's Wife]: -- sweepstake points. And total win is 1660. Okay, let's try our luck again. *Okay, I just won 500.*

[Investigator]: *That's $5. We're up to $15.60.*

[Investigator's Wife]: *And we bought $20 worth, right?*

[Investigator]: Yes

[Investigator's Wife]: Won 800. And sweepstake points are still 1600. Total win is 2360. Now it's silent. That's weird. Won 80 points.

[Investigator]: Okay. Game ending. Internet browser still shows it 2 hours, 6 minutes, and 31 seconds. Returning back to the game. Play Baby Bucks and we are entering $1 back to the game.

[Investigator's Wife]: Oh. *You only won $20.*

[Investigator]: Alright.

[Investigator's Wife]: Okay. Sweepstakes points 1400. Let's try it again. 1300. Okay. Nothing. Sweepstake points are now 100.

[Investigator]: (inaudible- background noise) internet browser.

[Investigator's Wife]: Okay one more time. Okay.

[Investigator]: Internet browser. 2 minutes 6 seconds.

[Investigator's Wife]: It's 2 hours, 6 minutes, 24 seconds and counting down while on the internet browser. Close.

[Investigator's Wife]: So as long as you play the game you're making more internet time.

[Investigator]: No you're not losing internet---

[Investigator's Wife]: Oh you're not losing.

[Investigator]: Please don't confuse the situation up here. Try to clear that in my brain. So we want to go to [a] game—which game would you like to play now? Dream Catcher, Fat Cat, Boiling Point, All American, Tropical Treasures, Baby Bucks, Monkey Bucks, Jim Up, Jim It Up, and Prospector's Paradise and back to Rain Catcher.

[Investigator's Wife]: Let's play Tropical Treasures.

[Investigator]: Tropical Treasures.

[Investigator's Wife]: Oh wow. You going to *bet a $1 or 25?*

[Investigator]: *25 cents. 50 cents.*

[Investigator's Wife]: Our sweepstakes points went down to a 1,000 now.

[Investigator]: Uh huh. But our total win is over here. And what happened is when we lose all our sweepstake points, *we're betting a hundred at a time, going from a 1,000 to 900, we can ultimately purchase more sweepstakes points with our money.*

[Investigator's Wife]: Can I roll it again? . . ."

(Stidman CT, pp. 82-84, italics added; see also pp. 90-124 showing computer screen shots of the gambling-themed games that Appellant Stidman's investigator and his wife were playing as referenced in their transcribed exchange.)

Law enforcement officers entered the I Zone on several occasions and never observed anyone using the internet, but rather observed that the patrons were all "playing the sweepstakes games." (Stidman CT, pp. 29:7-10, 30:17-18, 173:14-16.) Likewise, Appellant Stidman proffered evidence that at least some I Zone patrons had a considerable surplus balance of internet time on their accounts. (Stidman CT, pp. 144-149.) Appellant Stidman's employee also admitted that some customers made purchases not for the internet time, but ". . . in order to obtain sweepstake entries. . ." (Stidman CT, p. 64:2-6.)

B. Appellant Walker's OZ Internet Café And Hub, And Appellant Grewal's A To Z Cafe

Appellants Walker and Grewal respectively own the OZ Internet Café and Hub (the "OZ"), and the A to Z Café (the "A to Z") in

Bakersfield, California.[3] The OZ sold computer time which included access to the internet using computer terminals on the premises. (Walker CT, pp. 44, 65.) The OZ purportedly promoted the sale of the internet time and other products with a sweepstakes that was effectuated through a software program created by "Figure Eight Software" ("Sweepstakes Gaming System").[4] (Walker CT, pp. 24, 44-46, 66.)

Under the Sweepstakes Gaming System, OZ patrons could purchase internet time for $10.00 per hour. (Walker CT, p. 23:18.) Patron identification, product purchase, and sweepstakes game play was effectuated by a personal-identification-number (PIN) that was assigned to each patron by OZ employees. (CT pp. 45, 83.) With the purchase of internet time, a patron received 100 "sweepstakes points" for each dollar spent. (Walker CT, pp. 23:18-19, 83:12-17.) OZ patrons coming into the business also received an additional 100 sweepstakes points each day. (Walker CT, p. 24:7-9.) First-time customers received 500 additional sweepstakes points. (Walker CT, p. 83:12-17.) Appellant Walker did not advertise the availability of these additional points outside of the business because "it attracts the wrong kind of people." (Walker CT, p. 24:9.)

Using these sweepstakes points within the Sweepstakes Gaming System at the OZ, patrons could win cash prizes ranging up to a top prize of

---

[3] Appellants Walker's and Grewal's businesses were essentially identical in their operation. (*People v. Grewal, et al.* (2014) 224 Cal.App.4th 527, 536; see also, Appellant Grewal's and Walker's Opening Brief (Grewal AOB), *People v. Grewal, et al.*, Case No. S217896, p. 3.) To avoid unnecessary repetition, the People will address only Appellant Walker's facts as being applicable to both businesses. All citations to facts in the Clerk's Transcript for Appellant Walker are equally applicable to Appellant Grewal.

[4] Because there is no material difference in their operations, this is the same term used to describe the software system and sweepstakes operated by Appellant Stidman.

$10,000.00. (Walker CT, pp. 24, 66, 70.) Sweepstakes prizes could be revealed by asking an OZ employee to open the results, pushing an instant reveal button at one of the computer terminals, or by playing games at computer terminals that had "appearances similar to common games of chance." (Walker CT, pp. 45, 83, 28-40.) Under the Sweepstakes Gaming System, patrons won cash prizes based upon chance set forth in odds tables for winning cash prizes. (Walker CT, pp. 66:11-12, 70.) Patrons did not know if they had won a cash prize until it was revealed through the Sweepstakes Gaming System. (Walker CT, p. 66:6-10.) The manner in which the winners were selected in the Sweepstakes Gaming System was described in Appellant Walker's "Official Sweepstake Rules" as follows:

> 6. HOW WINNERS ARE SELECTED. Resident in the computer inside the Sponsor's computer *intranet* are multiple finite deals of entries. The entries are in effect, *electronic game pieces*. Each electronic game piece has an assigned value, as low as zero. Please see the *official odds disclosure table for the amounts* of each prize. Each time you cause the electronic system to reveal an entry's value the computer will sequentially select one entry from the finite deal of entries. The specific *entry pool* involved is determined by the type of reveal theme that you select and the number of points you choose to reveal at one time. Again, see the *odds table* for detail. . . . (Walker CT, p. 68, parag. 6, italics added.)

In addition, Appellant Walker described the unpredictable nature of the Sweepstake Gaming System as follows:

> Sweepstake entries are drawn sequentially from one of 32 *sweepstake pools* which have been previously created by the software company and *over which we have no control.* Even though the winning entries are all *predetermined* well before any patron access or participation, *neither we nor the customer will know if his/her entry wins a prize until it has been drawn and then revealed.* (Walker CT, p. 66:6-10, italics added.)

The OZ provided for a mail-in free play option that included the following rules: "Participation in the promotional game, whether by free entry or by purchase, is limited to the premises of the Sponsor. You must have a valid user account with login ID and password, to participate. . . ." (Walker CT, p. 68, parag. 4-5.) Appellant Walker submitted no evidence as to the actual use of this mail-in free play option. Law enforcement officers entered the OZ on several occasions and always saw patrons playing the gambling-themed games. (Walker CT, pp. 23:6-7, 83:6-11.)

II. PROCEDURAL HISTORY

The People agree with the procedural history of these cases as set forth in the opinion of the Court of Appeal. (*People v. Grewal, et al.* (2014) 224 Cal.App.4th 527, 536 (*Grewal*).)

ISSUE PRESENTED

Are the "sweepstakes" games at issue in these cases subject to Penal Code section 330b, subdivision (d), on the ground they constitute "slot machine[s] or device[s]"?

ARGUMENT

I. BACKGROUND OF THE SWEEPSTAKES CAFÉ GAMBLING PHENOMENON

Appellants' gambling schemes are not isolated ventures. Indeed, as described herein, courts throughout the United States have been dealing with illegal sweepstakes schemes essentially identical to those of Appellants. In the fall 2012 edition of the University of Nevada Las Vegas Gaming Law Journal, the authors did an in-depth review of the sweepstakes café phenomenon, generally describing it as follows:

> In recent years, a new phenomenon of "convenience gambling" has spread across the country. Utilizing the speed and sophistication of networked computer technology,

proprietors are offering the appeal of slot machine gambling in strip mall store fronts under the legal cover of laws drafted for sweepstakes designed in the 1970s and 1980s for Publisher's Clearing House and the McDonald's Monopoly game. However, unlike the games intended to drive sales of commercial products, these new gambling enterprises appear more focused on the typical casino goal of attracting gambling revenue rather than increased profits from the underlying non-gambling business. These new forms of gambling operate under the innocuous moniker of "Internet cafe," and are pushing the boundaries of gambling laws and regulations. Quite often, the communities in which they operate are ill-equipped to deal with their oversight.

The term "Internet café" requires further explanation, as it is a bit of a misnomer. On most occasions, patrons of an Internet cafe are not interested in accessing the Internet, nor are they enjoying the relaxing coffee-infused environment generally imagined when one fashions a mental picture of a "cafe." Rather, the type of Internet cafe at issue in this Article, also known as an "adult amusement arcade" or "convenience casino," is a place where people go to play electronic sweepstakes games that look and sound almost identical to slot machines found in regulated casinos around the world. The name "Internet café" is derived from the commercial product purportedly sold by these operations, i.e. internet time, and the intent of the proprietor to demonstrate facial compliance with state gambling laws. Many states in which these facilities operate have laws allowing a commercial business to conduct promotional sweepstakes in conjunction with the sale of a "good or service" to its customers. The sweepstakes serve as a marketing aid to drive sales of the underlying commercial product. These sweepstakes promotions range from the well-known "look under the cap" games of soft drink manufacturers to code numbers on restaurant and store receipts, which when entered following an online consumer satisfaction survey enroll the customer into a prize drawing.

* * * *

The argument of Internet cafe operators is that their operations are no different from McDonald's, Coca-Cola, or Home Depot. Counsel for a coalition of Internet cafes was quoted in Florida as saying:

> The sweepstakes is simply a marketing tool used to promote the Internet and telephone time purchased at these cafes. . . .
>
> Despite this purported legal justification in support of their legitimacy, many customers, and even media outlets, are entirely unaware that this "marketing tool" is not the actual underlying business, and that Internet cafes are not essentially casinos. The fact that the games played so closely resemble slot machines and are located inside facilities that have names such as "Luxxor Casino" or "Lucky 777 Café" further blurs the line as to what the underlying business actually entails. (Dunbar and Russell, *The History of Internet Cafes and the Current Approach to Their Regulation* (Fall 2012) 3 UNLV Gaming L.J. 243 pp. *243-*245.)

While some states may be having difficulty dealing with these sophisticated gambling schemes, California law unqualifiedly prohibits such schemes, no matter how well disguised.

II. THE SWEEPSTAKES GAMING SYSTEMS VIOLATE PENAL CODE SECTION 330b

A. Well-Accepted Rules Of Construction Should Be Applied To The Language Of Penal Code Section 330b

"The interpretation and construction of a statute, such as a [gambling statute], and its applicability to a given situation, are questions of law for the reviewing court. [Citations.]" (*Bell Gardens Bicycle Club v. Dep't of Justice* (1995) 36 Cal.App.4th 717, 746.)

California's broad Penal Code provisions on gambling devices forbid a wide range of electronic and mechanical machines beyond traditional casino-style slots. (Pen. Code §§ 330a, 330b, 330.1.)[5]

---

[5] Penal Code sections 330b and 330.1 have similar definitions of a "slot machine or device." (*Trinkle v. Stroh* (1997) 60 Cal.App.4th 771, 778-780 & fn. 4.) Penal Code section 330a also has a similar definition of "slot or card machine, contrivance, appliance or mechanical device." (*Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21

Appellants invite this court to wholly undercut these long-standing prohibitory statutes by adopting a tortured and narrow construction of them. But contrary to Appellants' proposed statutory reconstruction, it is well-accepted that the starting place for statutory construction is a plain reading of the statutes based upon the "ordinary import of the language employed." (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208.)

With respect to Penal Code section 330b, subdivision (d),[6] Appellants would have this Court delete, ignore, or change the statute's language. They advocate ignoring the phrase "or by any other means" with respect to the so-called "insertion" element necessary to establish a violation of subdivision (d). Appellants also suggest deleting or ignoring language that a violation of section 330b, subdivision (d), will be found

---

Cal.4th 585, 593-594.) For purposes of this brief, Penal Code section 330b is discussed in the most detail, but the analysis is applicable to all three statutes.

[6] In its entirety, Penal Code section 330b, subdivision (d), defines a "slot machine or device" as unlawful if it:

> is adapted, or may readily be converted, for use in a way that, as a result of the insertion of any piece of money or coin or other object, or by any other means, the machine or device is caused to operate or may be operated, and by reason of any element of hazard or chance or other outcome of operation unpredictable by him or her, the user may receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or additional chance or right to use the slot machine or device, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value, or which may be given in trade, irrespective of whether it may, apart from any element of hazard or chance or unpredictable outcome of operation, also sell, deliver or present some merchandise, indication of weight, entertainment or thing of value.

"irrespective of whether [the gambling device] may, apart from any element of hazard or chance or unpredictable outcome of operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value." Perhaps most importantly, Appellants implore the Court to re-write the statute by changing the word "or" to "and" in the phrase "by reason of any element of hazard or chance *or* of other outcome of operation unpredictable by him or her . . . ." [7]

In contrast to Appellants' proposed revisions to Penal Code section 330b, subdivision (d), the People ask this Court to apply the statute's language as written, "'according to the usual, ordinary import of the language employed in framing [it]'. . . '[giving significance] to every word, phrase, sentence and part of [subdivision (d)] in pursuance of the legislative purpose.'" (*Fontana Unified School District v. Burman, supra*, 45 Cal.3d at p. 218)

B. The Sweepstakes Gaming Systems Contain All The Elements Of Gambling Devices Under Penal Code Section 330b

At its essence, Penal Code section 330b finds a device to be a gambling device (or slot machine) if "by the insertion of money and purely by chance (without any skill whatsoever), the user may receive or become entitled to receive money." (*People ex rel. Bill Lockyer v. Pacific Gaming Technologies* (2000) 82 Cal.App.4th 699, 703 (*Pacific Gaming Technologies*).) California courts have found this statute's broad scope to

---

[7] Appellant Stidman repeatedly refers to the Court of Appeal's adherence to the statutory language as injecting a "subjective component" into the statute. (Stidman AOB, p. 22.) First, "unpredictable by [the user of the device]" was not the Court's language, it is the language of the statute. (Penal Code, § 330b, subd. (d).) Second, unpredictability of outcome can be objectively established by the evidence, as it was here.

prohibit a wide variety of devices under California law as gambling devices. (*Id.* at 703 [holding that a device that dispensed a five-minute phone card for $1.00 was a gambling device because operators also received the random chance to win a sweepstakes prize]; *Trinkle v. Stroh* (1997) 60 Cal.App.4th 771, 775-77 (*Trinkle I*) [holding a jukebox that dispensed four songs for $1.00 was a gambling device because operators also received the random chance to win a cash jackpot]; *Score Family Fun Center, Inc. v. County of San Diego* (1990) 225 Cal.App.3d 1217, 1221-1223 (*Score Family Fun Center*) [holding that a video game that simulated card games was a gambling device because operators could as a matter of chance win free games]; *Merandette v. City and County of San Francisco* (1979) 88 Cal.App.3d 105, 113-14 (*Merandette*) [finding that video devices that offered free games by chance can also be prohibited by this statute].)

Based on the above authority, Appellants' Sweepstakes Gaming Systems, as operated and observed on their private computer networks, constituted illegal gambling devices under Penal Code section 330b.[8] For the payment of money, patrons could have, based upon "chance" or "other outcome of operation unpredictable by" the patron, won cash prizes of up to $3,000 (Stidman) and $10,000.00 (Walker and Grewal). (Pen. Code § 330b, subd. (d); Walker CT, pp. 12, 66, 70, 83-84; Stidman CT, pp. 30, 56, 68, 71, 82-84, 171, 173.)

---

[8] Appellants would like to force law enforcement to ignore the actual operation of their devices as can be observed by anyone, and require a painstaking review of their sophisticated software to see if they have somehow managed to build outcome predictability into their systems. But such a showing is simply not required by the statute.

C. The Sweepstakes Gaming Systems Satisfy The "Insertion" Requirement Stated In Penal Code Section 330b

Appellants' attempt to exclude their Sweepstakes Gaming Systems on the basis that a physical item was not manually inserted into the Sweepstakes Gaming Systems is not credible and should be quickly rejected. Indeed, the record shows that Appellant Stidman's Sweepstakes Gaming System required the insertion of a magnetic striped card in order to make it operational. (Stidman CT, p. 30.) Therefore, the argument is a non-issue with respect to Appellant Stidman.

While the Sweepstakes Gaming Systems used by Appellants Grewal and Walker were activated by having patrons type in a PIN, this method still falls squarely within the statute which expressly includes devices that may be operated by the physical insertion of an object ". . . *or by any other means*." (Pen. Code § 330b, subd. (d), italics added.) Penal Code section 330a reinforces the point by including devices that may be operated by depositing physical items ". . . or in any other manner." (Pen. Code § 330a, subd. (a).) Penal Code section 330.1 adds even greater clarity and consistency in the law by including devices that may be operated by the insertion of a physical item ". . . or may be operated or played, mechanically, electrically, automatically, or manually." (Pen. Code § 330.1, subd. (f).) Therefore, the Court of Appeal correctly held that "[h]ere, the insertion of a PIN or the swiping of a magnetic card at the computer terminal in order to activate or access the sweepstakes games and thereby use points received upon paying money at the register (ostensibly to purchase a product) plainly came within the broad scope of the statute[s]." (*Grewal, supra*, 224 Cal.App.4th at pp. 760-761.) If Appellants could evade the scope of California's slot machine and gambling device prohibitions by merely using a PIN or magnetic striped

card to identify their customers and effectuate betting, then there would be no reason for them to resort to their sweepstakes ruse.

D. The Chance Element In Penal Code Section 330b Is In The Alternative To An Outcome (Winning Or Not Winning Cash Prizes) Unpredictable To The User

Penal Code section 330b explicitly states that a device may qualify as a gambling device if the prize is awarded ". . . by reason of any element of hazard or chance *or* of other outcome of operation unpredictable by him or her." (Pen. Code § 330b, subd. (d), italics added.) The Court of Appeal in this case properly noted that the defined terms are "clearly in the disjunctive" and that the statute "refers to *chance* 'or' *unpredictable* outcome." (*Grewal, supra*, 224 Cal.App.4th at p. 541, italics in original.)

Contrary to Appellants' contention, the Court of Appeal was not acting in a cavalier manner when they settled on this interpretation. In fact, the Court of Appeal appropriately acted in accordance with the statute's plain reading and traditional rules of statutory construction. (See, e.g., *People v. Beaver* (2010) 186 Cal.App.4th 107, 117.) Further, the Court of Appeal was not the first appellate court to place significance on Penal Code section 330b's use of the disjunctive "or." The Appellate Court in *Score Family Fun Center* made the same observation:

> The . . . premise that to be an illegal slot machine, the results of playing the game must occur both "by reason of any element of hazard or chance" *and* be unpredictable to the user is not supported by the language of the statute. The statute provides a machine is a slot machine if "by reason of any element of hazard or chance *or* of other outcome of such operation unpredictable by him, the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value or additional chance or right to use such slot machine . . . ." (Pen. Code § 330b, subd. [(d)].) (*Score Family Fun Center, supra,* 225 Cal.App.3d at p. 1221, fn. omitted, italics in original.)

This Court, too, has reached this same self-evident conclusion in statutory construction stating: "use of the word 'or' in a statute indicates an intention to use it disjunctively so as to designate alternative or separate categories. [Citations.]" (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 690.) With respect to the precise construction that Appellants argue for here, that the use of "or" in a statute should be construed as "and," this Court stated: "the language of [the statute] does *not* reasonably permit us to interpret the first 'or' . . . as meaning 'and.' Such a construction can only be reached by rewriting the statute's language." (*People v. Garcia* (1999) 21 Cal.4th 1, 11, italics in original.) This same disjunctive use of the term "or" is mandated under Penal Code section 330b, subdivision (d).

E. The Sweepstakes Gaming Systems Operated In A Manner That Was Unpredictable To The Users

It is beyond dispute that Appellants' Sweepstakes Gaming Systems operated in a manner that was unpredictable to the user. Appellants have openly conceded that the patrons had no control over the outcome (Stidman CT, pp. 56, 68, 71-72; Walker CT, pp. 45-46, 83); that no actions of skill or technique could impact the results (Stidman CT, pp. 71-72; Walker CT, pp. 66, 70); and that nobody knew of the results until a particular entry had been drawn and then revealed (Stidman CT, p.56; Walker CT, pp. 45-46, 66, 68). Therefore, Appellants have conceded that their Sweepstakes Gaming Systems operated in a manner that was "unpredictable" to the user. No further showing is required to establish the requisite element under Penal Code section 330b, subdivision (d), when the statute is properly read in the disjunctive.

F. The Sweepstakes Gaming Systems Operated By Reason Of Hazard Or Chance

The "chance" outcome of the Sweepstakes Gaming Systems is shown by Appellants' use of the term "sweepstakes" and the odds tables for winning cash prizes. (See e.g., *State v. One Hundred & Fifty-Eight Gaming Devices* (Md. 1985) 49 A2d 940, 957 ["We hold that all of the seized coin-activated, free-play devices . . . which involved an element of chance and which were equipped with odds mechanisms . . . are illegal slot machines . . .] and Bus. & Prof. Code, § 17539.5 subd. (12) ["Sweepstakes" means any procedure for the distribution of anything of value by lot or by chance . . ."].)

Additionally, the Sweepstakes Gaming Systems themselves consisted of a private, interconnected network of computers and servers that all worked together to produce the end result. (Stidman CT, p. 56; Walker CT, pp. 68, 66.) Nothing in Penal Code section 330b requires a gambling device to consist of a single, stand-alone piece of equipment as it explicitly includes a ". . . machine, apparatus, or device." (Pen. Code § 330b, subd. (d).) Penal Code section 330a confirms the expansive nature of the statutes and includes any ". . . contrivance, appliance or mechanical device." (Pen. Code § 330a, subd. (a).) Penal Code section 330.1 is perhaps the broadest of all the statutes as it includes devices that ". . . may be operated or played, mechanically, electrically, automatically, or manually." (Pen. Code § 330.1, subd. (f).)

Taken individually, or collectively, these gambling device statutes cover an extremely broad range of devices. As the Court of Appeal stated, the term "apparatus" by itself fits the Sweepstakes Gaming Systems extremely well because it is defined in the dictionary as including "*a group or combination* of instruments, machinery, tools, or materials having a particular function." (*Grewal, supra*, 224 Cal.App.4th at p. 546, italics

added.) Appellants' Sweepstakes Gaming Systems fall squarely within that definition because their private network of computers and servers included one which produced "sweepstake entries" (Stidman CT, p. 56) or "electronic game pieces" (Walker CT, p. 68, parag. 6) that were then "*randomly arranged*" into "batches" (Stidman CT, p. 56) or "pools" (Walker CT, pp. 68, parag. 6, 66:6-10). These batches were then sent electronically to a server in each individual store where, at the time of play, were further dispersed to numerous individual computer terminals within the store. (Stidman CT, p. 56; Walker CT, pp. 68, parag. 6, 45-46, 83.) When the Sweepstakes Gaming Systems are viewed as the private, interconnected network of computers and servers that they are—as opposed to a collection of independent, stand-alone machines operating in isolation from one another—it becomes readily apparent that the "hazard or chance" is in fact produced within the Sweepstakes Gaming Systems themselves.

Appellants have taken the position that their Systems do not satisfy the "hazard or chance" prong because the random arrangement of the batches did not occur 1) at the time of play or 2) within the specific computer terminals used by the patrons. In other words, Appellants argue that because the sweepstake entries were 1) predetermined (i.e., produced and randomly stacked into batches before the patrons entered the sweepstakes) and 2) front-loaded (i.e., transferred to the computers in the businesses from other—albeit connected—computers and servers), their Systems cannot qualify as gambling devices. Appellants' argument should be rejected because it relies on an extremely narrow definition of gambling device. Specifically, there is absolutely no language in the Penal Code that specifies "when" a gambling device has to create the chance, or "where" within the device the chance has to be created, or "how" the chance must be established. In short, there is no statutory requirement to delve into the deep internal workings of any particular system. To the contrary, the Penal

Code clearly and simply states that as long as the device operates by reason of "hazard or chance," then the chance element of the statute is satisfied.

Well-established case law confirms this straightforward analysis and further undermines Appellants' contentions. Specifically, the Court in *Pacific Gaming Technologies* addressed the issue of "when" chance is created. In that case, the Court analyzed a system that for one dollar dispensed both pre-paid phone cards and the chance to win cash "sweepstakes" prizes. (*Pacific Gaming Technologies, supra*, 82 Cal. App. 4th at p. 699-703.) The system at issue in that case was known as a "Venda Tel" system and had "predetermined winners" that were paid out over a period of time according to pre-set odds. (*Id.* at p. 702, fn. 4.) Even though the winning entries were "predetermined," the Court nevertheless found the system qualified as a gambling device because the user had no control over the outcome, and it operated "purely by chance (without any skill whatsoever)." (*Id.* at p. 703, 707.) Therefore, as found in the *Pacific Gaming Technology* case, the fact that a system utilizes "predetermined winners" in no way prevents that system from qualifying as a gambling device under California law. The Court of Appeal very aptly explained this concept as follows:

> To use an analogy, whether a deck of cards was shuffled the day before, or at the moment the player sits down at the table and places a bet, it is still a matter of chance whether the ace of spades is the next card dealt. (*Grewal, supra*, 224 Cal.App.4th at p. 545, fn. 25.)

The Court in *Trinkle I* addressed the issue of "where" chance is created. In that case, the machine at issue was the "Match 5 Jukebox" that consisted of a standard jukebox with a *separate, but attached* "Match 5" device. (*Trinkle, supra*, 60 Cal.App.4th at pp. 775-776, 779-780.) A customer would insert one dollar into the jukebox and select four songs to play. In addition to receiving these songs, the player also received the

chance to win the jackpot if five of the thirty flashing lights on the attached Match 5 device remained lit in the same color before each song was played. (*Ibid.*)

The *Trinkle I* plaintiff argued that the system did not qualify as a gambling device because "customers did not insert money into the Match 5 device" but, "[i]nstead, they inserted money into the attached jukebox." (*Id.* at p. 779-780.) In other words, the plaintiff argued that the Court should analyze the jukebox and the Match 5 device as two separate, isolated machines in which case neither machine, standing by itself, would satisfy all the requirements of a gambling device. The Court repeatedly noted that the two machines were "attached" and therefore analyzed the machines as one system working together. As a result, the Court found that the system was in fact an unlawful gambling device under California Penal Code section 330b. (*Id.* at p. 780.) Therefore, as found in *Trinkle I*, the fact that a system is comprised of separate, but connected machines, in no way prevents that system from qualifying as a gambling device under California law. Based on the foregoing facts and law, the Sweepstakes Gaming Systems were not just "unpredictable" to the user, but also operated by reason of "hazard or chance."

Moreover, if Appellants' arguments were to be accepted, then the floodgates would be opened for casino-style video slot machines to proliferate all over the state. All the casino operators would have to do is remove the computing component within a slot machine, have pre-run results stored in its memory, and then attach it to the video display with a wire. The operators could then argue, as Appellants do here, that the video display is not a gambling device but only a "dumb terminal" that reads and displays the results. A very similar observation was noted by the Court of Appeal as follows:

> If this were not the case, then even a casino-style slot machine would be legal as long as it was operated by a computer system that had previously arranged the sequence of entry results in a fixed order. Such a computer system might conceivably frontload hundreds of millions of discrete entry results into a predetermined sequence. A customer using that device would be surprised to learn that merely because there is a preset sequence, he is not playing a game of chance. Of course, in reality, that is exactly what he is doing. . . ." (*Grewal, supra*, 224 Cal.App.4th at p. 544, fn. 24.)

G. The Sweepstakes Gaming Systems Are Gambling Devices Even Though They Provided Players With Internet Time In Addition To Chances To Win Cash Prizes

The Sweepstakes Gaming Systems qualify as unlawful gambling devices despite the fact they provided both a product (internet time) and the chance to win cash prizes. This conclusion is supported by the plain language of Penal Code section 330b which states that an otherwise qualifying gambling device remains as such ". . . irrespective of whether it may, apart from any element of hazard or chance or unpredictable outcome of operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value." (Pen. Code § 330b, subd. (d).)

This issue was analyzed thoroughly in *Trinkle I* wherein the plaintiff argued that the Match 5 Jukebox was a lawful vending machine because it provided the customers with four songs in exchange for one dollar. (*Trinkle, supra*, 60 Cal.App.4th at pp. 778, 781-783.) There, the plaintiff argued that there was a "lack of consideration" in support of the gambling charges because the players paid for the songs (not the chance to win money) and received exactly what they purchased. (*Id.* at p. 781-782.) Rejecting this position, the Court held that, by receiving the jackpot, some customers inevitably received more than what they purchased. The Court

further noted that "once the elements of chance and prize are added to a vending machine, the consideration paid from the player-purchaser's perspective is no longer solely for the product." (*Ibid.*)

The Court in *Pacific Gaming Technologies* reached a similar conclusion. In rejecting the vending machine/lack of consideration defense, the Court stated that "since the machine also dispenses a chance to win the sweepstakes, it gives more than the merchandise–which means the sum deposited is not the 'exact consideration' for the telephone card." (*Pacific Gaming Technologies*, supra, 82 Cal. App. 4th at 704 [citing *Merandette*, 88 Cal.App.3d at 113-14].) Further, in refusing to accept this defense, *Pacific Gaming Technologies* rightfully acknowledged that "any reasonable person looking at the machine would recognize its true purpose and the probable intent of its users." (*Id.* at p. 706.) In colorful language, the appellate court recognized that "if it looks like a duck, walks like a duck, and sounds like a duck, it is a duck."[9] (*Id.* at p. 701.)

Trinkle I and *Pacific Gaming Technologies* are extremely important to the enforcement of California's public policy of banning illegal gambling devices. Both decisions represent modern day enforcement actions against a century's old nuisance. Unfortunately, unscrupulous individuals have a long history of trying to convert illegal gambling devices into vending machines by adding a feature whereby the device also vends something of nominal value. Their creativity at disguising gambling devices as vending machines has become legendary. (*See Nelson* v. *State* (1927) 256 P. 939, 940 [machine that dispensed a package of mints for a nickel was a

---

[9] Appellants have referred to this quote disparagingly as a "look and feel" test. However, the case from which that quote arose is directly on point as to Appellants' operations. Indeed, the metaphorical "duck" referenced is an observed illegal gambling device. As Appellants indisputably have gone to some lengths to completely mimic illegal gambling, they should not now complain that their efforts are judicially recognized.

gambling device under Oklahoma law because the machine would also at times, by chance, dispense to the player trade checks that were redeemable for additional merchandize]; *White v. Hesse* (D.D.C. 1931) 48 F.2d 1018, 1019 [device in District of Columbia that dispensed candy for a nickel, but also provided by chance the opportunity to replay the machine for amusement only, was a gambling device and not a legal vending machine]; *People* v. *Axelrod* (1954) 130 N.Y.S.2d 301, 303-305 [a "trinket vending machine" was an illegal gambling device under New York law because the machine would by chance provide the player with different amounts of trinkets for each nickel placed into the machine].)

Appellants' technological efforts to dodge California's anti-gambling device statutes are not different. These efforts must also fail because, at their essence, these Systems are illegal gambling devices that have been added with a feature that vends internet time as a ruse to make them legal. While these Systems may be more complex than the VendaTel machine in *Pacific Gaming Technologies*, and the Match 5 Jukebox in *Trinkle I*, they violate California Penal Code section 330b for the same reasons. Indeed, given the high-stakes casino-style gambling involved in these Sweepstakes Gaming Systems, they represent a greater threat of unregulated gambling. In *Pacific Gaming Technologies*, the Venda Tel machine offered a maximum cash prize of only $100.00, and a prize payout of only 10% ($500.00 in prizes for every $5000.00 paid into the machine). (*Pacific Gaming Technologies*, *supra*, 82 Cal.App.4th at p. 702, fn. 4.) In contrast, the Sweepstakes Gaming Systems offer top prizes of $3,000 at the I Zone and $10,000 at the OZ. Given these undisputed facts, the judicial determination that the Appellants' Sweepstakes Gaming Systems are unlawful under Penal Code section 330b must be sustained.

H. The Sweepstakes Gaming Systems Are Illegal Gambling Devices Because The So-Called "Sweepstakes" Is The Product Being Merchandized

As referenced above, the statutory authority and case law in California have traditionally not permitted a "lack of consideration" defense in cases involving gambling devices that also dispensed something of value. Although a "lack of consideration" defense may be relevant to the subject matter of lotteries, lotteries are separate and distinct things in law and fact from other forms of illegal gaming. (*Western Telcon, Inc. v. California State Lottery* (1996) 13 Cal.4th 475, 484.) Nevertheless, Appellants, and especially Appellant Stidman, have advocated for an analysis involving consideration in this case. However, such an analysis only serves to confirm that Appellants' patrons were paying to play high-stakes casino-style gambling—not to use the internet.

Many years ago a California appellate court gave fair warning about illegal gambling schemes that masquerade as promotions and indicated that such schemes could be identified when "the game itself is the product being merchandized." (*People v. Shira* (1976) 62 Cal.App.3d 442, 458 (*Shira*).)[10] The *Shira* Court further noted that schemes designed to promote the play of the game itself contrast sharply with lawful promotions that use "prize tickets to increase the purchases of legitimate goods and services in the free market . . . ." (*Ibid.*) *Shira's* warning about scam promotions has certainly come to pass in regard to sweepstakes cafés.

In this case, the evidence establishes that the businesses and the patrons all recognized that the true product being merchandized was the opportunity to win money through the sweepstakes entries. First, the

---

[10]Although *Shira* dealt with a lottery scheme, the analysis regarding consideration applies equally to other forms of gambling.

atmosphere in Appellants' businesses were designed to promote the playing of the games as they were essentially mini-casinos complete with the sights and sounds of traditional Las Vegas style gambling. The photographs and videos of the I Zone (Stidman CT, pp. 91, 95-124, 32-33), the A to Z (Grewal CT, pp. 28-37, 38-39), and the OZ (Walker CT, pp. 29-40, 41-42) document this atmosphere. Even the investigator for Appellant Stidman noted that the I Zone employee "had to raise his voice over the background music and the ringing and chiming of the sweepstakes games." (Stidman CT, p. 72:14-15.)

Second, the sweepstake gaming points offered by the businesses directly correlated to the amount of money spent by a patron and functioned similarly to poker chips at a traditional casino. In other words, the points were exchanged for money at a direct ratio of one point per penny. This exchange allowed patrons to easily convert points into money and vice versa. It is also significant that all of the establishments in this industry use a variety of different exchange rates between money and internet time or phone time, but they all uniformly use the same exchange rate between points and money. This further shows that the true marketplace product is the points, and not the internet time.

Third, local law enforcement officers visited Appellants' businesses on many occasions in uniform and undercover capacities and always saw many patrons playing the gambling-themed games at the I Zone (Stidman CT, pp. 29:7-10, 30:17-18, 173:14-16), the A to Z (Grewal CT, pp. 22:6-9, 79:7-8), and the OZ (Walker CT, pp. 23:6-7, 83:6-11). They never saw any patrons using the internet except for one single occasion. (Walker CT, pp. 83:24-84:2; Grewal CT, p. 79:7-8; Stidman CT, pp. 30:17-18, 173:14-16.) On that one incident the patron told the undercover officer that he was on the internet because had already lost all of his money for the day and could no longer play the games! (Walker CT, p. 83:24-84:2.)

Fourth, the so-called "free" points were largely illusory because the first-time buyer bonus points and the daily bonus points were typically conditioned on patrons buying time. (Stidman CT, p. 93; Walker CT, p. 24, 83.) Therefore, those bonuses appeared to do nothing more than promote the pay-to-play sweepstakes itself. In addition, the mail-in options were never shown to have been used. The mail-in option at the I Zone apparently provided $.04 worth of points for which a patron would have to provide a "self addressed *stamped* envelope" and wait 10-14 "*business days*" for a response. (Stidman CT, p. 89, italics added.) The mail-in option at the OZ had to be redeemed on the premises after opening a formal account. (Walker CT, p. 68, parag. 4-5.) As noted in *Trinkle I*, a theoretical "free chance to play" that in fact provides customers with nothing is a sham. (*Trinkle I, supra*, 60 Cal.App.4th at p. 781.)

Fifth, some of the patrons had significant amounts of unused internet time on their accounts (Stidman CT, pp. 144-149), and in reality made purchases not for the internet time, but "in order to obtain sweepstake entries." (Stidman CT, p. 64:2-6.)

Sixth, and perhaps most probative, Appellant Stidman's own investigator and his wife demonstrated precisely how patrons pay money to play the games and win cash prizes based upon chance. As quoted extensively in the Statement of Facts section, Stidman's investigator and his wife both immediately translated their points into dollars and cents. (Stidman CT, pp. 82-84.) They also used terminology such as "betting" to describe what they were doing (and accurately so). (*Ibid.*) They even exhibited the excitement that entices people to gamble. Finally, the investigator explicitly stated to his wife that "we can ultimately *purchase more sweepstakes points* with our money." (*Ibid,* italics added.) He unintentionally, but honestly, drew the ultimate link between the payment of money and sweepstakes points—not internet time. This record

conclusively dispels Appellants' well-practiced arguments that sweepstakes points are simply a promotional tool to sell more internet time.

Seventh, the businesses did not survive without the sweepstakes because the sweepstakes were the business. Appellants Grewal and Walker claim that the businesses were closed "by the preliminary injunction here appealed." (Grewal AOB, p. 3, fn. 2.) That statement is absolutely incorrect. A review of the Trial Court's orders in these cases show that the orders only prohibited Appellants from "operating any business that includes any type of 'sweepstakes,' 'slot machine,' or 'lottery' feature." (Stidman CT, p. 208; Grewal CT, p. 115; Walker CT, p. 120.) The Trial Court made it very clear on the record that the order pertaining to Appellant Stidman was "to enjoin the sweepstakes operation" only and that the Court "did not intend to shut the business down." (Rep.'s Tr., *People v. Stidman*, Vol. 2 (7/23/12), p. 25:24-27 [an alternative copy of this transcript appears in Stidman CT, p. 245:24-27].)

The Trial Court made the same point on the record about the orders pertaining to Appellants Grewal and Walker by stating: "I am not ordering anything be shut down. I am simply ordering that what I perceive to be gambling to discontinue." (Rep.'s Tr., *People v. Grewal* (7/23/12), p. 26:15-17 [an alternative copy of this transcript appears in Grewal CT, p. 151:15-17].) Appellants could have continued to operate their businesses selling their purportedly viable products to the public. Nevertheless, Appellants closed their businesses. (Grewal AOB, p. 3, fn. 2.) To the extent that Appellants' businesses were not commercially viable absent the sweepstakes component that in itself underscores that the true product was the sweepstakes themselves.

In sum, the record in these cases is more than sufficient for this Court to reject any defense put forth by Appellants based on a claim that the patrons were paying for internet time and not the sweepstakes.

III. COURTS FROM OTHER JURISDICTIONS HAVE DETERMINED THAT SYSTEMS VERY SIMILAR TO THE SWEEPSTAKES GAMING SYSTEMS ARE UNLAWFUL GAMBLING DEVICES

A number of courts from around the country have analyzed systems that are virtually identical to Appellants' Sweepstakes Gaming Systems. In those cases, the so-called "sweepstakes" promoters have followed a similar script. They market devices that purport to sell either telephone time or internet time along with the opportunity to win large cash prizes. They permit players to "reveal" the sweepstakes' outcome on computer terminals that mimic the operation of traditional casino-style slot machines or other casino games. They also offer some version of limited free play opportunities. Significantly, these courts have consistently rejected the arguments of sweepstakes café operators as nothing more than creative attempts to use modern technology to disguise unlawful gambling devices.

The Alabama Supreme Court reviewed the legality of "Quincy's MegaSweeps" (MegaSweeps) in *Barber v. Jefferson County Racing Association* (2006) 960 So.2d 599 (*Barber*) [*overruled* on other ground by *Tyson v. Macon County* (2010) 43 So.3d 587, 591]. MegaSweeps involved a sophisticated computer system that sold customers internet access plus the chance to win cash prizes. (*Id.* at p. 604.) For every one dollar spent, customers received internet time plus 100 sweepstakes entries. Winning and losing sweepstakes outcomes were predetermined when the internet time was purchased by consumers. (*Id.* at p. 605.) Customers had the option of revealing the entries' outcome on electronic readers in an "entertaining format." (*Ibid.*) These readers looked like slot machines, and provided customers with a prize payout of 92%. (*Id.* at p. 606.) Based on these facts, the Alabama Supreme Court held that the MegaSweeps system was a slot machine under Alabama law.

In reaching this conclusion, the Alabama Supreme Court rejected the argument that the element of chance was missing because the operation of the electronic readers did not control the sweepstakes' outcome. The court found that MegaSweeps operated as a network system and that it was "immaterial that the readers" did not by themselves "assign values to the entries." (*Barber*, *supra*, 960 So.2d at pp. 609-610.) As the court concluded on this issue, "the element of chance is as much a feature of the MegaSweeps network system as of a stand-alone slot machine." (*Id.* at p. 610.) In expanding on this critical holding, the court further observed that in the "computer age" it is "simply inconsequential" that the chance takes place at the point of sale and not at the readers. (*Id.* at p. 614.)

The Alabama Supreme Court's decision in *Barber* is not alone in striking down devices that mirror Appellants' Sweepstakes Gaming Systems. 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 (*Moore*). Similar to *Barber*, *Moore* rejected the argument that the element of chance was missing because the internet café's computer terminals—which displayed the results of the sweepstakes entries through simulated slot machine games—did not control the outcome of the predetermined winners and losers. (*Id.* at pp. 539-541.) The court reiterated that "the element of chance is viewed from the player's" perspective. (*Id.* at p 541.) Therefore, chance was present even though the computer terminal did not impact the entries' outcome because the "consumer did not know whether the card contained a winning or losing sweepstakes points." (*Ibid.*)

As sweepstakes systems similar to the Sweepstakes Gaming Systems persist in spreading across the country, courts continue to issue opinions consistent with *Barber* and *Moore*. The United States Court of Appeals for

the Fifth Circuit affirmed a criminal conviction for illegal gambling under Texas state law in *United States v. Davis* (5th Cir. 2012) 690 F.3d 330 (*Davis*). Once again, the court reviewed a sweepstakes promotion at internet cafés that offered for money sweepstakes entries plus internet time. (*Id.* at p. 333.) The sweepstakes entries could be revealed "by playing a variety of casino-like games available on each computer terminal." (*Ibid.*) In affirming the illegal gambling convictions, the Fifth Circuit in *Davis* held that the sweepstakes system under review constituted illegal gambling under Texas state law. (*Id.* at pp. 332-342.)

Similarly, a United States District Court in Pennsylvania denied a motion for a temporary restraining order by a sweepstakes operator in *Telesweeps of Butler Valley v. Kelly* (M.D. Pa. Oct. 10, 2012) 2012 U.S. Dist. LEXIS 146157 (Butler). The plaintiff was in the business of selling phone cards and internet time, and allegedly promoted the sale of these products with sweepstakes entries. The results of the sweepstakes entries could be revealed on computer terminals that were "tailored to mimic slot machines and other amusing casino-style games." (Id. at p. *3.) In reviewing the element of chance under an ordinance that prohibited simulated gambling devices, *Butler* rejected the argument that chance was not present because the sweepstakes outcomes were predetermined prior to their reveal on the game display. Whether randomization occurred through the operation of the game display, or through the predetermined distribution of game entries, the court held that "both methods present to the player a game of chance." (Id. at p. *10.) Moreover, *Butler* observed that it was "too much for this Court to accept" plaintiff's argument that its sweepstakes system did not constitute gambling when plaintiff worked to create an "experience which mimics casino-style games as closely as possible" for players. (*Ibid.*)

Most recently, in *Lucky Bob's Internet Café, LLC v. California Department of Justice* (S.D. Cal., Order of May 1, 2013, No. 11-CV-148 BEN) 2013 U.S.Dist. Lexis 62470 (*Lucky Bob's*), the United States District Court for the Southern District of California ruled, applying California law, on the unlawfulness of sweepstakes operations nearly identical to Appellants' Sweepstakes Gaming Systems in the instant cases. [11] In *Lucky Bob's*, [12] the sweepstakes was ostensibly to promote the sale of internet time just as Appellants purport to do here. (*Lucky Bob's* at pp. *4-*5.) The court went on to find that sweepstakes cafes violated California's prohibitions on slot machines and gambling devices under the Penal Code, stating:

> Here, the World Touch Gaming system constitutes an illegal gambling device under [Penal Code] Section 330b. First, the insertion of money or other object caused the machines to operate. Customers operated the system by depositing cash into a sales terminal and receiving a coded card linked to the customer's game entries that could be revealed on a player terminal by swiping the card in the card reader. [Citation.]
>
> Plaintiffs argue that there could be no loss of money or other valuable thing attributable to the sweepstakes operation on the computer system because customers did not deposit

---

[11] A detailed review of the facts of each case reflects that the two systems were remarkably similar. Appellants *Grewal* and *Walker* have attempted to distinguish *Lucky Bob's* from this case by alleging that the system at issue in *Lucky Bob's* had "random number generators." (*Grewal* AOB, p. 42-43, fn. 37.) The reference is misleading because there was no statement that there was a "random number generator" in *Lucky Bob's.* Although that system, like the Systems at issue here, randomly generated and arranged sweepstakes entries, that is significantly different than having a "random number generator" which is responsible for contemporaneously injecting chance into traditional slot machines at the time of play.

[12] Although not binding, unpublished federal district court cases are citable as persuasive authority. (*Olinick v. BMG Entertainment* (2006) 138 Cal.App.4th 1286, 1301, fn. 11; see also Fed. Rules App. Proc., rule 32.1.)

any money or other consideration into the machines. As explained above, however, a customer swiped the pre-paid coded card loaded with the purchased internet time into a computer terminal to operate the machine. This constituted "the insertion of money or other object which causes the machine to operate."

Moreover, the fact that sweepstakes entries were free with the purchase of internet time does not change this result. The consideration element is satisfied when some customers by chance receive more than what they paid for. *[People ex rel.] Lockyer [v. Pacific Gaming Technologies* (2000)] 82 Cal. App. 4th [699,] at 707. Once the elements of chance and prizes are added, the consideration paid is no longer solely for internet time. Paying for the chance to win money, rather than the use of internet time, may be the customer's main focus. (See *Trinkle v. Stroh*, 60 Cal. App. 4th 771, 785-86 (3d Dist. 1997).

Second, the operation of the machines is unpredictable and governed by chance. The World Touch Gaming system provided customers with opportunities to win cash prizes in a manner that was unpredictable to the player. [Citation.] The customers could not control or predict the distribution of cash prizes. [Citation.]

Plaintiffs argue that the operation of the machines was predictable because the sweepstakes entry results are sequenced in a pre-determined order, block loaded to the customer's account, and revealed to the customer sequentially. Plaintiffs compare the machines at issue here with the vending machine at issue in *Trinkle*. In *Trinkle*, a vending machine dispensed lottery tickets sequentially, which the court held made its operation predictable. [Citation.] There, however, the vending machine simply delivered the finished product--the lottery ticket. Plaintiffs' operating system can be distinguished from the vending machine in Trinkle by the integrative nature of its components. Here, the sweepstakes winnings necessarily involved the "value added" of each component of Plaintiffs' integrative system--from the computers that read the magnetic strip card; the database server controlling the games; and the point of sale computer that allowed the employee to create the accounts, add internet time and sweepstakes entries and play out redeemed entries.

> The 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.]
>
> In addition, Plaintiffs argue that the casino-style games did not create an element of chance because the games had no impact on whether a customer received a sweepstakes prize. Even if the machines did not display the casino-style games before revealing whether the customer had won, the operation of the machine was still "unpredictable and governed by chance," as explained above.
>
> Third, customers became entitled to receive a thing of value by reason of the chance operation of the machine. Because customers could receive cash prizes of up to $3,000, the World Touch Gaming system provided them with the opportunity to win a "thing of value."
>
> Plaintiffs argue that even if the element of chance were present, the World Touch Gaming system is lawful because it is missing the element of consideration. While lack of consideration is a possible defense in lottery cases under California Penal Code § 319, it is not a defense in gambling device actions brought under Section 330b. (*Trinkle*, 60 Cal. App. 4th at 780-81).
>
> Plaintiffs' network of machines qualify as slot machines under Section 330b. . . . (*Id.* at pp. *7-*10, fn. omitted.)

It would be difficult to find a case more factually and legally on point as to each and all of Appellants' arguments than *Lucky Bob's*. If anything, the growing number of precedents striking down these computerized sweepstakes gaming systems throughout the United States, and now in California, illustrate the spread of these gambling schemes and the opportunistic criminals seeking to exploit perceived loopholes in state

gambling laws. Taken together, *Barber*, *Moore*, *Davis, Butler*, and *Lucky Bob's* persuasively demonstrate how this Court should apply California law to affirm the Court of Appeal's decision.

In spite of Appellants' prodigious efforts to the contrary, "the justice system is not some lumbering oaf who must ignore the patently obvious gambling scheme apparent here. . . ." (*Cleveland v. Thorne* (Ohio 2013) 987 N.E.2d 731, 744.) Appellants' Sweepstakes Gaming Systems intentionally mimic casino-style games and adds the elements of chance to win cash prizes on devices that purportedly promote products. While Appellants may sell internet time or office tools in their own right, as the Trial Court's orders allow, the sweepstakes component that promotes the play of casino-style gambling for high-stakes violates California Penal Code sections 330a, 330b and 330.1 and was appropriately enjoined.

IV. *TRINKLE II* DOES NOT AUTHORIZE APPELLANTS' SWEEPSTAKES GAMING SYSTEMS

Against the foregoing tide of applicable precedent, Appellants rely almost totally on a breathtakingly expansive reading of *Trinkle II*. However, Appellants' reliance is misplaced because the Systems at issue in this case have almost no resemblance to the machines that were at issue in that case. In *Trinkle II*, the machines were called Scratcher Vending Machines (SVM's) and were classic, old-style "electromechanical" vending machines that dispensed legal California lottery tickets. (*Trinkle II*, *supra*, 105 Cal.App.4th at p. 1403-1404.) The SVM's did no more than replace the live sale of the legal lottery tickets by ordinary vending machine sales as authorized by the State Legislature. (Gov. Code, § 8880.335, subds. (a)(1) & (b); see *Trinkle II*, *supra*, 105 Cal.App.4th at p. 1411, fn. 8.) Also unlike the Sweepstakes Gaming Systems, "[n]o [California State Lottery] game may use the theme of roulette, dice, baccarat, blackjack, Lucky 7s,

draw poker, slot machines, or dog racing." (Gov. Code, § 8880.28, subd. (a)(1).)

Unlike the Sweepstakes Gaming Systems, the SVM's were not connected to any other machines but consisted of an isolated "stand-alone cabinet" that needed to have the lottery tickets manually loaded. (*Trinkle II*, *supra*, 105 Cal.App.4th at p. 1403-1404.) The lottery tickets would also have to be manually revealed by "'scratching' off the substance covering the symbol on the ticket(s)." (*Ibid.*) Furthermore, the machines were *not* unpredictable. In fact, they were completely predictable. For example, a customer that purchased one item, received one item. A customer that purchased two items, received two items. Absent some sort of mechanical failure, there was no chance that a customer who purchased one item would receive two items, or that a customer who purchased two items would receive three, four, or five. A customer using the vending machines paid money in consideration, and in return got exactly what they expected, a legal lottery ticket, and nothing more from the machines. In the end, the vending machines in *Trinkle II* worked exactly like other vending machines that dispensed potato chips, candy bars, and other similar items. Therefore, the Court in *Trinkle II* reached the correct conclusion that the machines were not gambling devices because the only "chance" that was involved came from the lottery tickets, not the machines.

The Sweepstakes Gaming Systems here were dramatically different than the ordinary vending machines in *Trinkle II* because the Sweepstakes Gaming Systems consisted of a private, integrated network of computers and servers that electronically incorporated the entire gaming process from the beginning to the end. In the Sweepstakes Gaming Systems, the process of randomly arranging the entries, loading them on to the servers and computers in the businesses, and revealing the results were all part of the

automated, electronic process inherent in the Systems. Therefore, if the Sweepstakes Gaming Systems are viewed as a whole, it becomes very clear that the components of "chance" and "unpredictability" are built into the automation of the Systems themselves.

Appellants attempt to employ a "parade of horribles," by implying that SVM's would be made illegal if *Grewal* is affirmed here. They are wrong. The California State Lottery's SVM's are not before this Court - Appellants' sophisticated efforts to subvert California gambling device prohibitions with their Sweepstakes Gaming Systems are the only matter at issue here. Moreover, Appellants' claim that SVM's could be made illegal here is patently incorrect based upon the material factual distinctions between the two systems discussed above. Indeed, the Court of Appeal expressed this same sentiment, stating that it was "unsurprising" *Trinkle II* concluded that SVM's were legal. (*Grewal*, supra, 224 Cal.App.4th at p. 544.)

V. THE RULE OF LENITY DOES NOT APPLY TO APPELLANTS' DELIBERATE CONDUCT HERE

Appellants attempt to bootstrap their misplaced reliance on *Trinkle II* by arguing that the so-called "rule of lenity" should absolve them from their wrongdoing in operating their Sweepstakes Gaming Systems because *Trinkle II* created an ambiguity in Penal Code section 330b, and by implication Penal Code sections 330a and 330.1. Put simply, under the rule of lenity, "when a statute defining a crime or punishment is susceptible of two reasonable interpretations, the appellate court should ordinarily adopt that interpretation more favorable to the defendant." (*People v. Wagner* (2009) 170 Cal.App.4th 499, 509.) But this rule does not require a construction of a statute that is contrary to its clear language. (*Jaugui v. Sup. Ct. (The People)* (1999) 72 Cal.App.4th 931, 943.)

Appellants would have this Court go well beyond the limited scope of the rule of lenity and completely re-write Penal Code section 330b, subdivision (d), to change the word "or" in the phrase "by reason of any element of hazard or chance or of other outcome of operation unpredictable by him or her," to "and." With regard to an almost identical proposed application of the rule lenity, this Court stated: "The lenity policy is of little help here, however, because the language of [the statute] does *not* reasonably permit us to interpret the first 'or' . . . as meaning 'and.' Such a construction can only be reached by rewriting the statute's language." (*Garcia, supra,* 21 Cal.4th at p. 10-11, italics in original.) This Court should not now rewrite section 330b to accommodate Appellants' unlawful gambling schemes.

Importantly, the rule of lenity has its roots in Constitutional due process. "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.) Indeed, as California has done away with "[t]he rule of the common law, that penal statutes are to be strictly construed," the rule of lenity in California is arguably completely circumscribed by notions of due process. (Penal Code, § 4.) Appellants are not the unwary, inadvertently falling within the scope of an ambiguous statute. Rather, they are very sophisticated gambling promoters who deliberately attempted to circumvent the express terms of California's gambling statutes by reliance upon a single inapplicable case, in the face of on-point in-state and out-of-state precedent to the contrary. Accordingly, the application of the rule of lenity to Appellants would be particularly inappropriate.

VI. THE SO-CALLED DOCTRINE OF LEGISLATIVE ADOPTION HAS NO APPLICATION TO *TRINKLE II*'S INTERPRETATION OF PENAL CODE SECTION 330b.

Appellants, for the very first time in the history of these cases, argue before this Court that the Legislature implicitly adopted *Trinkle II*'s holding as to Penal Code 330b, by not subsequently amending that statute after the opinion was issued.[13] (See Cal. Rules of Court, rule 8.500(c)(1) ["As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal"].) However, here, it is almost inconceivable that the Legislature would have believed it was necessary to amend Penal Code section 330b, when *Trinkle II* did no more than affirm the Legislature's authorization for the California State Lottery to use vending machines. (Gov. Code, § 8880.335.) Moreover, with *Pacific Gaming Technologies, supra*, 82 Cal.App.4th 699, being right on point as to Appellants' sweepstakes schemes, the Legislature had no reason to predict that Appellants would think they could get away with an almost identical sweepstakes gambling scheme.

VII. STARE DECISIS DOES NOT PRECLUDE A COURT FROM DISTINGUISHING *TRINKLE II* AS INAPPOSITE

Appellants' stare decisis argument is, at best, tautological: the Court must accept Appellants' premise that *Trinkle II* is controlling and cannot be distinguished for purposes of determining the lawfulness of Appellants' Sweepstakes Gaming Systems. However, both the Court of Appeal and a federal district court in California distinguished *Trinkle II,* and instead found *Pacific Gaming Technologies* to be the appropriate legal precedent to follow with respect to Appellants' schemes. (*Lucky Bob's*, supra, No. 11-CV-148 BEN; 2013 U.S.Dist. Lexis 62470.) Given the dramatic factual

---

[13] The State Legislature very recently foreclosed the ability of sweepstakes café operators, such as Appellants, to defend Unfair Competition Law claims by arguing that they are lawful sweepstakes. (Assem. Bill No. 1439, approved by governor, Sept. 25, 2014 (2013-2014 Reg. Sess.).)

differences between these cases and *Trinkle II*, there is no reason why the Trial Court was not also free to distinguish *Trinkle II*.[14] Appellants' stare decisis argument is therefore, no more than another statement of their misplaced reliance upon *Trinkle II*.

VIII. NONE OF THE ADDITIONAL ISSUES RAISED BY APPELLANTS IN ANY WAY DETRACT FROM THE ILLEGALITY OF THEIR SWEEPSTAKES GAMING SYSTEMS

Appellants' argument that their Sweepstakes Gaming Systems are just like the promotional sweepstakes offered by legitimate retailers such as McDonald's and Coca-Cola is the pre-textual rationale for the Sweepstakes Gaming Systems, but it is no more than another red herring. (Stidman AOB, p. 7, 36; Stidman CT, p. 45; Grewal AOB, p. 35; Grewal CT, pp. 94-102; Walker CT, pp. 99-107.) Appellants do not expound on their argument beyond making allusions of factual similarities, and hyperbolic statements that nearly all electronic devices would be illegal under the line of cases finding that sweepstakes cafes are unlawful. This is not surprising, because the only relevant legal basis for raising such comparisons would be under a disparate treatment claim. (See *People v. Toomey* (1984) 157 Cal.App.3d 1, 12-13 [discussing the requisites for a showing of discriminatory prosecution in the context of an action under Business & Professions Code section 17200].)

As a threshold showing for a disparate treatment claim, Appellants "'must demonstrate that he has been deliberately singled out for

---

[14] Appellants appear to contend that the trial court mandated closure of their businesses. It did not. The trial court only prohibited the use of the purported promotional sweepstakes, and otherwise allowed Appellants' businesses to operate. Assuming Appellants' businesses had any economic viability absent their sweepstakes games, Appellants' closure of their businesses was volitional.

prosecution on the basis of some invidious criterion.' [Citations.]" (*People v. Toomey, supra*, 157 Cal.App.3d at p. 13, quoting *Murgia v. Municipal Court* (1975) 15 Cal.3d 286.) In almost the identical context of this case, a sweepstakes café was precluded from making a disparate treatment argument *vis-à-vis* McDonalds and Coca Cola sweepstakes because it had made no threshold showing to support the argument. (*State of New Mexico v. Vento* (2012) 286 P.2d 627, 634-635.) Here, too, Appellants have not shown any kind of invidious discrimination or intentional discriminatory prosecution by the People.

Similarly, in *Shira*, 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." (*Shira, supra*, 62 Cal.App.3d at p. 464, fn. 15.) For the same reasons, this Court should decline Appellants' invitations to compare their Sweepstakes Gaming Systems with other sweepstakes promotions not before this Court.

IX. THE HARM TO THE PUBLIC WILL BE GREAT IF THE COURT OF APPEAL'S DECISION UPHOLDING THE PRELIMINARY INJUNCTIONS IS NOT AFFIRMED

In this case, there is no mystery about Appellants' goal: duplicate the experience of casino gambling that illegal slot machines and gambling devices provide, and give patrons the thrill of wagering money to win cash by random luck, all without violating the laws prohibiting that activity. Appellants' businesses are little more than illegal gambling operations preying upon the public with the thrill of winning cash based upon chance at the blink of an eye.

The danger to the public is probably best reflected by the exchange between Appellant Stidman's investigator and his wife when they were playing the games at the I Zone. (Stidman CT, pp. 82-84.) Even though they were ostensibly on a mission to support Appellant Stidman's case, they simply could not contain themselves, playing the gambling-themed games, betting, winning and losing what they clearly knew was money. (*Ibid.*) The avarice associated with illegal gambling, as unabashedly exhibited by Appellant Stidman's investigator and his wife, reflect precisely the types of danger that wholly unregulated and illegal gambling pose to the public.

In a Mississippi Law Journal article, entitled "From Mad Joy to Misfortune," the author described the addictive quality of gambling in relation to video poker machines:

> The illusion of skill. A belief that they exert some control over the outcome of a risk-taking venture is perhaps the single most important factor in promoting persistent and prolonged gambling. Although the only skill involved in playing video poker against a machine with a random number generator is the ability to read, players are often adamant in their belief that their skill made them more likely to win. Logically, if an individual thinks they have no control over the outcome and that the house has even a small advantage they are less likely to continue to play, because it is easy to demonstrate that over time this small advantage is all that is needed to wipe them out. Therefore, continued play requires a belief that promotes the illusion of control through a system or skill. In turn this irrational belief system supports irrational gambling behavior. (72 Miss.L.J. 565, 712-715, footnotes omitted.)

This is precisely the gambling experience that Appellants are trying to achieve with the play of the gambling-themed games. Conversely, it is the concern for public protection that has caused gambling to be prohibited or highly regulated in California. (Pen. Code § 319, et seq.; Pen. Code

§330, et seq.; Bus. & Prof. Code § 19800, et seq.) It is also the concern for public protection that caused the People to seek relief under the Unfair Competition Law to enjoin Appellants' Sweepstakes Gaming Systems.

CONCLUSION

For all of the foregoing reasons, the People respectfully request that this Court affirm the Court of Appeal's well-founded decision upholding the preliminary injunctions against Appellants' gambling operations.

Respectfully submitted,

Dated: December 22, 2014

LISA S. GREEN
District Attorney, County of Kern

By Gregory A. Pulskamp
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 8.520(c)(1), the foregoing **RESPONDENT'S ANSWER TO APPELLANTS' OPENING BRIEFS** is produced using 13-point Times New Roman type and contains Approximately 13,378 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: December 22, 2014

GREGORY A. PULSKAMP
Supervising Deputy District Attorney

PROOF OF SERVICE BY US MAIL AND ELECTRONIC SERVICE
[Pursuant to CCP § 1013(a) and CA Rules of Court, rule 8.212(c)(1)&(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.

I served a copy of the attached **RESPONDENT'S ANSWER TO APPELLANTS' OPENING BRIEFS** on all parties as follows, and in the manner described below, marked ☒: **SEE SERVICE LIST**

☒ U.S. MAIL –
(1) ☐ Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
(2) ☒ Pursuant to C.C.P. section 1013(a), placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with this business's practice of collecting and processing documents for mailing. On the same day that document is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☒ OVERNIGHT MAIL – on the date shown below, in satisfaction of the requirements for service of Appellate Briefs in the State of California, an original of the foregoing document and eight copies have been sent to the Supreme Court of California for filing via Federal Express Mail.

☒ ELECTRONIC MAIL – on the date shown below, in satisfaction of the requirements for service of Appellate Briefs in the State of California, a true copy of the foregoing document has been served on the Supreme Court of California via its California government website, in an area specifically designated for Electronic Service of Civil Appellate Briefs.

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

Executed on December 23, 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.