IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

STATE OF OHIO, *ex rel.* MIKE DEWINE, OHIO ATTORNEY GENERAL Charitable Law Section 150 East Gay Street, 23rd Floor Columbus, Ohio 43215 Plaintiff, vs. LUCKY SWEEPSTAKES 475 East Linfoot Street Wauseon, Ohio 43567 and JOHN DOES 1 to 15 Defendants.	CASE NO.: JUDGE

MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT

Now comes Plaintiff, State of Ohio, on relation of its Attorney General pursuant to Civ. R. 65 and Am. Sub. H.B. 386 ("H.B. 386"), Section 12(C)(3) respectfully moves this Court for a preliminary injunction ordering and enjoining Defendants, as well as their agents, representatives, and assigns, from conducting a sweepstakes through the use of a sweepstakes terminal device at any location that was not already conducting a sweepstakes through the use of a sweepstakes terminal device as of June 11, 2012 and submitted an affidavit certifying said existence of these locations by July 11, 2012, until the moratorium enacted pursuant H.B. 386 is

lifted. The reasons and authorities are more fully set forth in the attached Memorandum in Support, which is incorporated by reference.

Very Respectfully Submitted,

MIKE DEWINE
Ohio Attorney General

Meghan K. Fowler (0080775)
Associate Assistant Attorney General
Ohio Attorney General's Office
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Attorney for Plaintiff Ohio Attorney General

MEMORANDUM IN SUPPORT

I. INTRODUCTION

H.B. 386, Section 12(B) established a legislative moratorium on new sweepstakes parlors opening up after the effective date of June 11, 2012. Pursuant to this legislative moratorium, only those establishments which, as of June 11, 2012, already conducted sweepstakes through the use of a sweepstakes terminal device, were permitted to continue to conduct these types of sweepstakes. Further, any such existing establishment was required to file an affidavit, no later than July 11, 2012, with the Ohio Attorney General's Office certifying that the establishment was in existence and operating before June 11, 2012 under H.B. 386, Section 12(C). Based upon the Ohio Attorney General's review and investigation, Defendants failed to file an affidavit certifying the establishment was in existence and operating before June 11, 2012. (see affidavits of Damon Roberts, and Sean Hert, attached as Exhibits 1 and 2). As such, there exists a presumption that the locations were not in existence and operating prior to June 11, 2012. Defendants are operating in violation of, and have failed to comply with, H.B. 386 and a preliminary injunction should be issued to enforce the legislative moratorium currently in place.

II. LAW AND ARGUMENT

A. The Court Should Grant a Statutory Preliminary Injunction for Violations H.B. 386

The general rule for issuance of a preliminary injunction requires the plaintiff to establish that there will be irreparable injury if the Court does not enjoin the defendants' conduct. Civ. R. 65(A). Ohio Courts have considered four factors, as shown by clear and convincing evidence, to obtain a preliminary injunction, including (1) a substantial likelihood of success on the merits, (2) the plaintiff will suffer irreparable harm if an injunction is not issued, (3) that third-parties will not be unjustifiably harmed if an injunction is issued, and (4) that granting an injunction will

serve the public interest. *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267-68. In the instant case, the Attorney General satisfies all four factors of this test.

***1.* There Exists a Substantial Likelihood that the Attorney General Will Be Successful on the Merits.**

Whether or not a violation of H.B. 386, Section 12 occurred is a simple question of whether Defendants filed an affidavit certifying the establishment was in existence and operating prior to the moratorium going into effect on June 11, 2012, and that said affidavit was filed by July 11, 2012. If no such affidavit was timely filed, a violation of Am. Sub. H.B. 386, Section 12 has occurred.

Major Case Investigators for the Charitable Law Section of the Ohio Attorney General's Office, Damon Roberts and Jeffrey Duvall, visited Lucky Sweepstakes, located at 475 East Linfoot Street, Wauseon, Ohio 43567, on April 27, 2012. While there, the investigators witnessed the operation of numerous sweepstakes terminal devices. (see Affidavit of Damon Roberts attached) As a result, the Attorney General is able to establish through clear and convincing evidence that sweepstakes terminal devices are being used to conduct sweepstakes at Lucky Sweepstakes.

A review of the affidavits filed with the Ohio Attorney General's Office established that no affidavit has yet to be filed on behalf of Lucky Sweepstakes. (see Affidavit of Sean Hert attached). Thus, the Attorney General will be also be able to prove, through clear and convincing evidence, that Lucky Sweepstakes violated H.B. 386, Section 12 by failing to timely submit an affidavit of existence.

Finally, the failure to submit a timely affidavit creates a presumption that Lucky Sweepstakes was not in existence prior to the moratorium going into effect. Thus, the Attorney General will also be able to prove, through clear and convincing evidence, that the use of sweepstakes

terminal devices to conduct sweepstakes at Lucky Sweepstakes occurred after the June 11, 2012, effective date of the legislative moratorium and Defendants are in violation of H.B. 386, Section 12.

***2.* The State of Ohio Will Be Irreparably Harmed if the Injunction is Not Granted.**

The State of Ohio has a vested interest in ensuring that the laws enacted by its legislature are complied with by the public. In the instant case, the General Assembly specifically tasked the Attorney General or the appropriate county prosecuting attorney with ensuring that the moratorium on new establishments conducting sweepstakes through the use of a sweepstakes terminal device is complied with by granting them the authority to seek an injunction against an individual who does not comply with the moratorium. H.B. 386,Section 12(C)(3). If the injunction is not granted, Defendants would be permitted to continue operating their sweepstakes in violation of the legislative moratorium, thereby preventing the Attorney General from fulfilling the role assigned to him by the General Assembly.

***3.* Third-Parties Will Not Be Irreparably Harmed if the Injunction is Granted.**

An order to enjoin Defendants from conducting a sweepstakes through the use of a sweepstakes terminal device at a location where such sweepstakes were not conducted prior to the legislative moratorium which went into effect on June 11, 2012, and who failed to file a timely affidavit certifying their existence, will not cause harm to any third party. Rather, the enforcement of H.B. 386, Section 12 is necessary in order to prevent irreparable harm to third parties. The General Assembly adopted H.B. 386, Section 12 in order to halt the growth of establishments using sweepstakes terminal devices throughout the State of Ohio until such time as the legislature was able to consider how to ensure this industry is consistently and uniformly regulated. H. B. 386, Section 12(C). Maintaining the status quo by ensuring that no additional

unregulated sweepstakes establishments open in the State of Ohio would not irreparably harm any third parties. Similarly, using the affidavits to create a registry of all sweepstakes establishments in existence prior to the moratorium going into effect will not irreparably harm any third parties. In fact, the public interest will be served by the injunctive relief.

***4.* Granting of the Injunction Will Serve the Public Interest.**

The very basis of the legislative moratorium established by H.B. 386 is to protect the public interest. The legislation itself indicates that the General Assembly recognizes that Ohio has seen an increase in establishments using sweepstakes to facilitate sales. Am. Sub. H.B. 386, Section 12(C)(1). In particular, the General Assembly noted that "these establishments utilize computer terminals or stand alone machines, which currently are not consistently and uniformly regulated statewide and have created a window of opportunity for rogue operators to open in cities across the state." *Id.* Thus, while the General Assembly considered legislation for ensuring that these facilities are consistently and uniformly regulated, the General Assembly called for a moratorium on new retail sweepstakes establishments. H.B. 386, Section 12(C)(3).

III. CONCLUSION

Since there is a substantial likelihood that the Ohio Attorney General will prevail on the merits; the State of Ohio will suffer irreparable injury if injunctive relief is not granted; no third parties would be unjustifiably harmed if injunctive relief were granted; and the public interest would be served through injunctive relief, the Ohio Attorney General respectfully requests this Honorable Court issue a Preliminary Injunction ordering and enjoining Defendants from conducting sweepstakes through the use of a sweepstakes terminal device at any location which was not already conducting such sweepstakes prior to June 11, 2012, and which failed to submit an affidavit certifying the existence of such an establishment by July 11, 2012, including, but not

limited to, the facility known as Lucky Sweepstakes located at 415 East Linfoot Street, Wauseon, Ohio 43567, until this matter is decided on the merits.

Very Respectfully Submitted,

MIKE DEWINE
Ohio Attorney General

Meghan K. Fowler (0080775)
Associate Assistant Attorney General
Ohio Attorney General's Office
Charitable Law Section
150 E. Gay St., 23rd Floor
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meghan.fowler@ohioattorneygeneral.gov

Attorney for Plaintiff Ohio Attorney General

CERTIFICATE OF SERVICE

A copy of the Motion was sent by regular U.S. mail this 30th day of April, 2013 to:

Lucky Sweepstakes
475 East Linfoot Street
Wauseon, Ohio 43567

Meghan K. Fowler (0080775)
Associate Assistant Attorney General

Affidavit of Major Case Investigator Damon Roberts

State of Ohio)
) SS
County of Franklin)

NOW COMES Damon Roberts, being first duly sworn, deposes and states as follows:

1. I am of lawful age and suffer no disability at law.

2. I make this Affidavit upon personal information, knowledge, and belief.

3. I am employed by the Office of the Attorney General of the State of Ohio, Charitable Law Section, as a Major Case Investigator, and have held this position since May 1, 2006. As a Major Case Investigator, I investigate issues concerning charitable gaming, including investigations relating to the conduct of bingo and its applicable laws pursuant to Ohio Revised Code Chapter 2915.

4. As part of my job responsibilities, I have investigated internet sweepstakes establishments and have been trained to identify sweepstakes terminal devices.

5. As part of an ongoing investigation of Lucky Sweepstakes, and their use of sweepstakes terminal devices to conduct sweepstakes in Ohio, I travelled to 475 East Linfoot Street, Wauseon, Ohio 43567 on April 27, 2013 at approximately 4:00 pm with Major Case Investigator Jeffery D. Duvall.

6. While present at 475 East Linfoot Street, Wauseon, Ohio 43567, I witnessed a gaming room with approximately 30 sweepstakes terminal devices in operation.

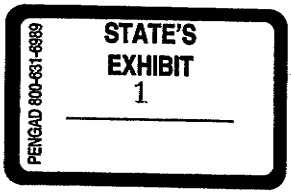
7. Upon entering the premises, I gave the cashier $20 in cash, which the cashier added to a card to be used for internet time. This $20 provided me with an equal number of "sweepstakes points" to be used on the games offered on the computer terminal.

8. I then proceeded to a computer terminal and swiped my card to get access to the computer. I was then presented with a disclaimer of rules which reference internet sweepstakes games. All of the advertisement in the location reference internet sweepstakes games.

9. These games were all games that I had previously played in investigating internet sweepstakes terminal devices.

10. In order to play the games, I used sweepstakes points. Sweepstakes points were transferred to be win points as I was successful in the games. Once the sweepstakes points were fully used, I was able to either cash the win points out or roll them over to be additional sweepstakes points which could be used to continue playing the games. Again, this is a trait of internet sweepstakes games.

11. Major Case Investigator Duvall and I departed 475 East Linfoot Street, Wauseon, Ohio 43567 at approximately 4:30pm.



12. As an employee of the Ohio Attorney General's Office, Charitable Law Section, I consulted the records of this Office and confirmed that Lucky Sweepstakes, located at 475 East Linfoot Street, Wauseon, Ohio 43567, has not submitted an affidavit certifying that the Lucky Sweepstakes was in existence and operating before the effective date of the moratorium on new retail establishments conducting sweepstakes through the use of a sweepstakes terminal device.

FURTHER AFFIANT SAITH NAUGHT.

Damon Roberts

SWORN TO AND SUBSCRIBED in my presence, this 30 day of APRIL, 2013.

Notary Public

ANDREW M. HOWARD
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES FEB 2, 2014

Affidavit of Account Clerk Sean Hert

State of Ohio)
) SS
County of Franklin)

NOW COMES Sean Hert, being first duly sworn, deposes and states as follows:

1. I am of lawful age and suffer no disability at law.

2. I make this Affidavit upon personal information, knowledge, and belief.

3. I am employed by the Office of the Attorney General of the State of Ohio, Charitable Law Section, as an Account Clerk, and have held this position since August 30, 2010. As an Account Clerk, I process registration of charitable trusts, charitable solicitations, and internet sweepstakes establishments and maintain the databases of these registrations.

4. As an employee of the Ohio Attorney General's Office, Charitable Law Section, I consulted the records of this Office and confirmed that Lucky Sweepstakes located at 475 East Linfoot Street, Wauseon, Ohio 43567 has not submitted an affidavit certifying that the Lucky Sweepstakes was in existence and operating before the effective date of the moratorium on new retail establishments conducting sweepstakes through the use of a sweepstakes terminal device.

FURTHER AFFIANT SAITH NAUGHT.

Sean Hert

SWORN TO AND SUBSCRIBED in my presence, this 29 day of April, 2013.

Notary Public, STATE OF OHIO
ANDREW M. HOWARD
MY COMMISSION EXPIRES FEB 2, 2014

PENGAD 800-631-6989

STATE'S EXHIBIT 2