

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.:

INCREDIBLE INVESTMENTS, LLC,

Plaintiff,

vs.

KATHERINE FERNANDEZ-RUNDLE,
State Attorney for Miami-Dade County, Florida,

Defendant.

_____ /

COMPLAINT

Plaintiff, INCREDIBLE INVESTMENTS, LLC (the “**Plaintiff**”), through undersigned counsel, sues Defendant, KATHERINE FERNANDEZ RUNDLE, in her capacity as State Attorney (the “**Defendant**”), and alleges:

INTRODUCTION

1. The Florida Legislature rushed to pass broad-sweeping amendments to existing statutes that violate the United States Constitution in a frenzy fueled by distorted judgment in the wake of a scandal that included the Lieutenant Governor’s resignation.

2. As the bulwark of a limited constitution against legislative encroachments, this Court must declare the 2013 amendments to sections 849.094 and 849.16, Florida Statutes, to be unconstitutional and therefore unenforceable.

PARTIES, JURISDICTION, AND VENUE

3. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 to determine the constitutionality of the 2013 amendments to sections 849.094 and 849.16, Florida Statutes

(collectively, the “**Amended Statutes**”), enacted by Chapter 2013-2, C.H.S.B. No. 155, GAMBLING-NONPROFIT ORGANIZATIONS-RULES AND REGULATIONS, 2013 Fla. Sess. Law Serv. Ch. 2013-2, attached hereto as Exhibit “A.”

4. This Complaint seeks redress to prevent imminent violations of the Plaintiff’s rights, privileges, and immunities under the Constitution of the United States and 42 U.S.C. § 1983; and specifically seeks redress for the imminent deprivation under color of state statute, ordinance, regulation, custom or usage of rights, privileges, as well as immunities secured by the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.

5. The Plaintiff has suffered injury-in-fact that is concrete and actual or imminent because the Amended Statutes have rendered the Plaintiff’s business practices arguably unlawful thereby depriving the Plaintiff of its property rights in a fashion that violates the fundamental rights afforded under the United States Constitution.

6. This Court has jurisdiction pursuant to Fla. Stat. § 86.021.

7. The Plaintiff requests a speedy hearing and advance on the Court’s trial calendar pursuant to Fla. Stat. § 86.111.

8. The Plaintiff is a limited liability company organized and existing under the laws of the State of Florida, with its principal place of business located in Miami-Dade County, Florida.

9. The Defendant is the State Attorney for Miami-Dade County, Florida, and is therefore charged with carrying out and enforcing the State of Florida’s laws in Miami-Dade County.

10. Venue is proper in Miami-Dade County, because the Amended Statutes have been or will be enforced in Miami-Dade County, and which infringe upon the Plaintiff's rights, privileges, or immunities in Miami-Dade County.

FACTS COMMON TO ALL CLAIMS

I. The Plaintiff's Business

11. Before the age of cellular telephones, companies such as AT&T would provide to consumers the hardware (telephones) necessary to make telephone calls and sell time (usually in twenty-five (25) cent increments) to the consumer for access to open telephone lines in order to make those calls.

12. With the proliferation of cellular telephones, the public phone is rarely seen anymore; but the business model remains in use by what is commonly known as "Internet Cafés."

13. Internet Cafés are primarily in the business of delivering customers a conduit to the internet by providing internet-capable terminals (computers) and selling consumers access to those terminals on a time-basis at competitive rates—similar to how phone companies formerly provided public telephones and sold the time to use same.

14. Internet Cafés provide consumers who lack computers or an internet service provider the opportunity to send and receive electronic communications such as email, as well as browse the World Wide Web.

15. The Plaintiff owns or operates one or more of these Internet Cafés in Miami-Dade County, Florida.

16. The Plaintiff's provision of goods and services occurs as follows: (a) A consumer purchases access time for use of a computer with internet capabilities made available at the

Internet Café; (b) the consumer pays a cashier for the amount of time he or she wishes to spend on the Internet; (c) the cashier then “unlocks” a specific computer inside the Internet Café (similar to how a pay phone’s line would become “open” after payment of a quarter), and directs the consumer to that computer, (d) the consumer is then free to utilize the internet for the amount of time purchased.

II. Game Promotions

17. The State of Florida expressly permits businesses such as the Plaintiff to engage in “game promotions” to stimulate consumer interest in its goods or services (in this case, internet usage).

18. By virtue of their express permissibility under Florida law, “game promotions” are not considered illegal gambling.

19. A “game promotion” is defined by section 849.094(1)(a), Florida Statutes, as “a contest, game of chance, or gift enterprise, conducted. . . within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance are prize are present.”

20. Game promotions are commonly known as “sweepstakes drawings.” Some well-known game promotions are McDonald’s “Monopoly Game,” “My Coke Rewards,” and a myriad of other offers from retailers where “no purchase is necessary.”

21. Like those well-known examples, to stimulate interest in their consumer products (internet time) and services (internet-capable computers), as well as promote the sale thereof, the Plaintiff—as well as approximately 6,700 other businesses in Florida—provides sweepstakes games entries that entitle the consumer to win prizes (the “**Game Promotions**”).

22. Provision of such Game Promotions is incidental to and in furtherance of the sale of the Plaintiff's consumer goods and services.

23. Customers can obtain free chances to win without any purchase of products or services; however, purchasers of internet time have the option to receive additional sweepstakes entries based upon the amount of internet time purchased.

24. When the consumer is permitted access to one of the Plaintiff's computers, the consumer may connect to the internet with unrestricted access (except for some filtering of pornography in which the Plaintiff engages).

25. The results of sweepstakes are revealed one of three ways.

26. First, the customer can ask one of the Plaintiff's employees to reveal, without the use of computers, whether his or her sweepstakes entry is a winner.

27. Second, the customer can choose "Quick Reveal" or "Instant Reveal" on his or her computer, which simply displays by alphanumeric text the results of each entry, without fanfare.

28. Third, the customer can choose "Game Display" on his or her computer, which utilizes creative videogames to communicate the results of each entry through the use of interactive artwork, storylines, symbols, and text, all meant to instill in the patron a sense of excitement and entertainment.

29. While many companies' game promotions use paper entries revealed through scratch-offs and pull-tabs (like McDonald's "Monopoly" game), or other anticipatory revelation methods (like Coca-Cola's "look under the cap" game) to create excitement, the Plaintiff's Game Promotions sometimes use video displays to reveal results.

30. “Game Display” is simply an entertaining method by which the Plaintiff communicates the results of its Game Promotions; and the Plaintiff provides the consumer the choice regarding how he or she desires the results of a Game Promotion to be communicated to him or her.

31. Whether a consumer’s entry into the Game Promotion is a “winner” is not dependent upon whether the consumer selects the Instant Reveal or Game Display as the vehicle by which sweepstakes results are communicated.

32. Each time the consumer engages sweepstakes play, one of his or her “entries” is selected, and deducted, from a predetermined unrevealed pool of available “outcomes.”

33. A central server electronically “checks” whether the “entry” or any of the “entries” of Game Promotion entries are “winners” from a finite pool of available entries and then communicates the results to the computer the consumer has accessed.

34. A software program installed on that computer then communicates the results to the consumer either through “Instant Reveal” or “Game Display.”

35. This is no different than if a human was presented with an sweepstakes entry card and asked a clerk to check and advise whether that entry card was a “winner,” except that such “checking” is done electronically.

36. The messages the Game Display graphics communicate are distinct from and independent of the Game Promotion results, which are not influenced by the communication of those results.

37. Whatever interaction the customer may have with the computer or the Game Display does not affect the results.

38. The participant interaction with any game has no effect on the prize to be awarded (if any) from the predetermined sweepstakes entries.

39. All sweepstakes entries are drawn from a finite pool of entries and accordingly have the same chances of winning a prize as any other entry in that pool, regardless of whether the results were revealed using Instant Reveal or Game Promotion.

40. The operation of the computer terminal does not entitle the user to receive anything of value; nor does the computer dispense anything of value.

41. The computer terminal does not determine the game outcome, but merely contains software that communicates to the individual whether he or she has won a Game Promotion prize.

42. Each computer on which the Game Promotion may be played is thus merely a conduit for the communication of the results of a Game Promotion.

43. The computers at Internet Cafés do not block any websites (except for pornography), or direct consumers to any particular websites.

44. Consumers have the ability to bypass playing the Game Promotion and solely utilize the computer terminals to access the internet at their discretion.

45. Purchasers of internet time are not obligated to participate in the Game Promotions, and may decline to play at their option.

46. Additionally, the customer's available internet time is completely unaffected by the Game Promotion—If the customer purchases 60 minutes of internet time, he or she is entitled to utilize the internet for 60 minutes, regardless of whether he or she participates in the sweepstakes.

47. Section 849.094(8)(a), Florida Statutes, states: “The Department of Agriculture and Consumer Services shall have the power to promulgate such rules and regulations respecting the operation of game promotions as it may deem advisable.”

48. The Department of Agriculture and Consumer Services has at all times material been aware of the Plaintiff’s and others similarly situated’s use of Game Display-type methods of communicating the results of game promotions.

49. The Department of Agriculture and Consumer Services has never promulgated any rules or regulations preventing any operator of a Game Promotion from communicating the results of same using Game Display, much as it has never promulgated any rules or regulations prohibiting McDonalds or Coca-Cola from communicating the results of their game promotions as they do.

50. Therefore, *sub silentio*, the body charged with regulating Game Promotions has traditionally not prohibited the use of the Game Display method for communicating the results of a Game Promotion.

III. The Amendments

51. In 2013, the Florida Legislature hastily passed the Amended Statutes which became effective immediately upon execution by the Governor.

52. The Plaintiff has a reasonable fear of imminent enforcement of the Amended Statutes against it as a result, because its business practices are among those targeted by the Amended Statutes. As a result of such imminent fear, the Plaintiff has been forced to cease promoting its goods and services using Game Promotions.

53. First, the Florida Legislature amended the statute permitting Game Promotions (Fla. Stat. § 849.094) to permit only retailers that conduct “a nationally advertised game promotion” to conduct same.

54. Second, the Florida Legislature further amended the statute to include the following: “8(a)(b) Compliance with the rules of the Department of Agriculture and Consumer Services does not authorize and is not a defense to a charge of possession of a slot machine or device or any other device or a violation of any other law.”

55. It amended the definition of a “slot machine” to include:

any machine or device *or system or network of devices* that is adapted for use in such a way that, *upon activation, which may be achieved by, but is not limited to,* the insertion of any piece of money, coin, *account number, code,* or other object *or information,* such device *or system* is *directly or indirectly* caused to operate or may be operated and if the user, *whether by application of skill or* by reason of any element of chance or any other outcome unpredictable by the user, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, 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; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though *the device or system may be available for free play or,* in addition to any element of chance or unpredictable outcome of such operation, *may also sell,* deliver, or present some merchandise, indication of weight, entertainment, or other thing of value. *The term “slot machine or device” includes, but is not limited to, devices regulated as slot machines pursuant to chapter 551.*

(emphasis on new language).

56. The Florida Legislature made further amendments to include a rebuttable presumption that provides: “There is a rebuttable presumption that a device, system, or network is a prohibited slot machine or device *if it is used to display images of games of chance* and is

part of a scheme involving any payment or donation of money or its equivalent and awarding anything of value.” (emphasis added)

57. The State of Florida, through the Defendant, has or will imminently act under the color of state law and authority when it enforces the Amended Statutes.

58. The State of Florida has the present ability and intention to enforce the Amended Statutes against the Plaintiff.

59. Enforcement of the Amended Statutes will prevent the Plaintiff from engaging in lawful communicative or expressive activity.

60. The Plaintiff has retained the law firm of Kluger, Kaplan, Silverman, Katzen & Levine, P.L., to represent it in this action and has agreed to pay it a reasonable fee for the services rendered in connection herewith.

61. All conditions precedent to the maintenance of this action have occurred, been performed, or have been waived.

COUNT I
DECLARATORY RELIEF

(Fla. Stat. 849.094 Violates Federal Equal Protection Guarantees)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

62. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. § 1983.

63. The Florida Legislature amended section 849.094, Florida Statutes, to permit only retailers that promote, operate, or conduct a nationally advertised game promotion to employ a “game promotion,” as defined therein.

64. The aforementioned amendment is based upon an unreasonable and arbitrary classification, and establishes invidious discrimination based solely on the geographical reach of the Plaintiff's advertising of its Game Promotions.

65. Fla. Stat. § 849.094, as amended, accordingly violates the Plaintiff's right to equal protection under the law because similarly situated businesses that happen to advertise game promotions nationally rather than locally are expressly permitted to employ the use of game promotions, but the Plaintiff is prevented from doing so unless it opts to advertise same nationally.

66. Advertisements and promotions involve constitutionally protected commercial speech.

67. The legislative classification distinguishes between businesses depending on whether the commercial speech is disseminated nationally or more geographically confined.

68. The State of Florida lacks even a rational basis for singling out the Plaintiff and similarly situated business for such purposeful discrimination.

69. The disparate treatment of the Plaintiff was motivated by an invidious purpose.

70. There is accordingly a bona-fide, actual, present practical need for a declaration that Stat. § 849.094, as amended, is unenforceable under the Fourteenth Amendment to the United States Constitution.

71. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

72. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

73. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

74. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

75. This Court may enter an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.094, as amended, is unenforceable, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

COUNT II
DECLARATORY RELIEF

(Fla. Stat. 849.094 Violates Florida Equal Protection Guarantees)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

76. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021.

77. The Florida Legislature amended section 849.094, Florida Statutes, to permit only retailers that promote, operate, or conduct a *nationally advertised* game promotion to employ a "game promotion," as defined therein.

78. The aforementioned amendment is based upon an unreasonable and arbitrary classification, and establishes invidious discrimination based solely on the geographical reach of the Plaintiff's advertising of its Game Promotions.

79. Fla. Stat. § 849.094, as amended, accordingly violates the Plaintiff's right to equal protection under the law because similarly situated businesses that happen to advertise game

promotions nationally rather than locally are expressly permitted to employ the use of game promotions, but the Plaintiff is prevented from doing so unless it opts to advertise same nationally.

80. Advertisements and promotions involve constitutionally protected commercial speech.

81. The legislative classification distinguishes between businesses depending on whether the commercial speech is disseminated nationally or more geographically confined.

82. The State of Florida lacks even a rational basis for singling out the Plaintiff and similarly situated business for such purposeful discrimination.

83. The disparate treatment of the Plaintiff was motivated by an invidious purpose.

84. There is accordingly a bona-fide, actual, present practical need for a declaration that Stat. § 849.094, as amended, is unenforceable under Article I, Section 2 of the Florida Constitution.

85. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

86. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

87. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

88. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.094, as amended, is

unenforceable, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable costs, and grant such other relief as this Court deems just and proper.

COUNT III
DECLARATORY RELIEF

(Fla. Stat. 849.094 Prohibits Federally Protected Commercial Speech)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

89. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. § 1983.

90. The Plaintiff's Game Promotions constitute commercial speech in that they promote the sale of a product or service.

91. The Plaintiff's Game Promotions disseminate truthful, non-misleading commercial messages concerning lawful activity.

92. The Florida Legislature amended section 849.094, Florida Statutes, to permit only retailers that promote, operate, or conduct a *nationally advertised* game promotion to utilize a "game promotion," as defined therein.

93. Section 849.094, Florida Statutes, as amended, completely bans the Plaintiff from utilizing Game Promotions as a method by which to market and promote the sale of the goods and services it provides to consumers unless it nationally advertises its Game Promotions.

94. This ban unconstitutionally infringes on protected commercial speech.

95. In so doing, it does not advance a substantial government interest, and is more extensive than necessary.

96. There is accordingly a bona-fide, actual, present practical need for a declaration that Stat. § 849.094, as amended, unconstitutionally prohibits speech protected by the First Amendment to the United States Constitution.

97. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

98. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

99. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

100. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

101. This Court may enter an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.094, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

COUNT IV
DECLARATORY RELIEF

(Fla. Stat. 849.094 Prohibits Commercial Speech Protected by the Florida Constitution)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

102. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021.

103. The Plaintiff's Game Promotions constitute commercial speech in that they promote the sale of a product or service.

104. The Plaintiff's Game Promotions disseminate truthful, non-misleading commercial messages concerning lawful activity.

105. The Florida Legislature amended section 849.094, Florida Statutes, to permit only retailers that promote, operate, or conduct a nationally advertised game promotion to utilize a "game promotion," as defined therein.

106. Section 849.094, Florida Statutes, as amended, completely bans the Plaintiff from utilizing Game Promotions as a method by which to market and promote the sale of the goods and services it provides to consumers unless it nationally advertises its Game Promotions.

107. This ban unconstitutionally infringes on protected commercial speech.

108. In so doing, it does not advance a substantial government interest, and is more extensive than necessary.

109. There is accordingly a bona-fide, actual, present practical need for a declaration that Stat. § 849.094, as amended, unconstitutionally prohibits speech protected by Article I, Section 4 of the Florida Constitution.

110. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

111. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

112. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

113. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.094, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable costs, and grant such other relief as this Court deems just and proper.

COUNT V
DECLARATORY RELIEF

(Fla. Stat. § 849.16 Proscribes Federally Protected Commercial Speech)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

114. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. 1983.

115. The Plaintiff's Game Promotions constitute commercial speech in that they promote the sale of a product or service.

116. The Plaintiff's Game Promotions disseminate truthful, non-misleading commercial messages concerning lawful activity.

117. Fla. Stat. § 849.16, as amended, unconstitutionally proscribes the methods by which the Plaintiff may engage in such commercial speech, and therefore infringes on protected commercial speech.

118. In so doing, it does not advance a substantial government interest, and is more extensive than necessary.

119. There is accordingly a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits speech protected by the First Amendment to the United States Constitution.

120. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

121. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

122. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

123. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

124. This Court may enter an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

COUNT VI
DECLARATORY RELIEF

(Fla. Stat. § 849.16 Proscribes Commercial Speech Protected by the Florida Constitution)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

125. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021.

126. The Plaintiff's Game Promotions constitute commercial speech in that they promote the sale of a product or service.

127. The Plaintiff's Game Promotions disseminate truthful, non-misleading commercial messages concerning lawful activity.

128. Fla. Stat. § 849.16, as amended, unconstitutionally proscribes the methods by which the Plaintiff may engage in such commercial speech, and therefore infringes on protected commercial speech.

129. In so doing, it does not advance a substantial government interest, and is more extensive than necessary.

130. There is accordingly a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits speech protected by Article I, Section 4 of the Florida Constitution.

131. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

132. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

133. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

134. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is

unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable costs, and grant such other relief as this Court deems just and proper.

COUNT VII
DECLARATORY RELIEF

(Fla. Stat. § 849.16 Improperly Proscribes Federally Protected Expressive Conduct)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

135. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. § 1983.

136. As amended, Section 849.16, Florida Statutes unconstitutionally proscribes expressive conduct in that it proscribes the Plaintiff's promotion of its lawful sale of a good or service.

137. The Plaintiff's "Game Display" methods of communicating the results of its Game Promotions, which the amendments to Fla. Stat. § 849.16 ban, are not misleading or deceptive, and concern lawful commercial speech.

138. In preventing the Plaintiff's "Game Display" methods of communicating the results of its Game Promotions, the State of Florida does not advance any legitimate government interest.

139. To the extent the State of Florida does further a legitimate government interest, such interest is not unrelated to the suppression of free expression.

140. Further, any incidental restriction of the Plaintiff's First Amendment freedoms as a result of the amendments to Fla. Stat. § 849.16 are greater than is essential to the furtherance of any government interest.

141. There is a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits expressive conduct protected by the First Amendment to the United States Constitution.

142. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

143. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

144. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

145. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

146. This Court may enter an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

COUNT VIII
DECLARATORY RELIEF

(Fla. Stat. § 849.16 Proscribes Expressive Conduct Protected by the Florida Constitution)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

147. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021.

148. As amended, Section 849.16, Florida Statutes unconstitutionally proscribes expressive conduct in that it proscribes the Plaintiff's promotion of its lawful sale of a good or service.

149. The Plaintiff's "Game Display" methods of communicating the results of its Game Promotions, which the amendments to Fla. Stat. § 849.16 ban, are not misleading or deceptive, and concern lawful commercial speech.

150. In preventing the Plaintiff's "Game Display" methods of communicating the results of its Game Promotions, the State of Florida does not advance a legitimate government interest.

151. To the extent the State of Florida does further a legitimate government interest, such interest is not unrelated to the suppression of free expression.

152. Further, any incidental restriction of the Plaintiff's First Amendment freedoms as a result of the amendments to Fla. Stat. § 849.16 are greater than is essential to the furtherance of any government interest.

153. There is a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits expressive conduct protected by Article I, Section 4 of the Florida Constitution.

154. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

155. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

156. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

157. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable costs, and grant such other relief as this Court deems just and proper.

COUNT IX
DECLARATORY RELIEF

(Fla. Stat. § 849.16 Proscribes Promotion of a
Product Used to Communicate Information and Ideas)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

158. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. § 1983.

159. Fla. Stat. § 849.16, as amended, unconstitutionally proscribes expressive conduct in that it proscribes the Plaintiff’s promotion of its lawful sale of a good or service.

160. In so doing, it violates the First Amendment by interfering with the promotion of goods and services—computers with internet access—that are used for the communication of information and ideas.

161. The Plaintiff’s “Game Display” methods of communicating the results of its Game Promotions, which the amendments to Fla. Stat. § 849.16 ban, are not misleading or deceptive, and concern lawful commercial speech.

162. In preventing the Plaintiff’s “Game Display” methods of communicating the results of its Game Promotions, the State of Florida does not advance an important or substantial government interest.

163. To the extent the State of Florida does further an important or substantial government interest, such interest is not unrelated to the suppression of free expression.

164. Further, any incidental restriction of the Plaintiff's First Amendment freedoms as a result of the amendments to Fla. Stat. § 849.16 are greater than is essential to the furtherance of any government interest.

165. There is a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits expressive conduct protected by the First Amendment to the United States Constitution.

166. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

167. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

168. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

169. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

170. This Court may enter an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

COUNT X
DECLARATORY RELIEF

(Fla. Stat. § 849.16 Proscribes Promotion of a
Product Used to Communicate Information and Ideas)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

171. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021.

172. Fla. Stat. § 849.16, as amended, unconstitutionally proscribes expressive conduct in that it proscribes the Plaintiff's promotion of its lawful sale of a good or service.

173. In so doing, it violates the Florida Constitution by interfering with the promotion of goods and services—computers with internet access—that are used for the communication of information and ideas.

174. The Plaintiff's "Game Display" methods of communicating the results of its Game Promotions, which the amendments to Fla. Stat. § 849.16 ban, are not misleading or deceptive, and concern lawful commercial speech.

175. In preventing the Plaintiff's "Game Display" methods of communicating the results of its Game Promotions, the State of Florida does not advance an important or substantial government interest.

176. To the extent the State of Florida does further an important or substantial government interest, such interest is not unrelated to the suppression of free expression.

177. Further, any incidental restriction of the Plaintiff's freedoms of speech as a result of the amendments to Fla. Stat. § 849.16 are greater than is essential to the furtherance of any government interest.

178. There is a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits expressive conduct protected by Article I, Section 4 of the Florida Constitution.

179. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

180. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

181. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

182. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable costs, and grant such other relief as this Court deems just and proper.

COUNT XI
DECLARATORY RELIEF
(Fla. Stat. § 849.16 Imposes a Prior Restraint)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

183. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. § 1983.

184. As amended, Section 849.16, Florida Statutes includes a presumption that any device, system, or network like the Plaintiff's computers that displays *images* of games of chance is an illegal slot machine.

185. In so doing, it unconstitutionally infringes on protected speech.

186. The amendments to Fla. Stat. § 849.16 have been tailor made for the Plaintiff and others similarly situated; and they attempt to proscribe speech before it occurs.

187. The amendments to Fla. Stat. § 849.16 permit the State of Florida to engage in prohibited content-based discrimination.

188. The amendments to Fla. Stat. § 849.16 impose a prior restraint on protected expression, resulting in an unconstitutional effect on speech.

189. There is accordingly a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits expressive conduct protected by the First Amendment to the United States Constitution.

190. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

191. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

192. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

193. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

194. This Court may enter an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

COUNT XII
DECLARATORY RELIEF
(Fla. Stat. § 849.16 Imposes a Prior Restraint)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

195. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021.

196. As amended, Section 849.16, Florida Statutes includes a presumption that any device, system, or network like the Plaintiff's computers that displays *images* of games of chance is an illegal slot machine.

197. In so doing, it unconstitutionally infringes on protected speech.

198. The amendments to Fla. Stat. § 849.16 have been tailor made for the Plaintiff and others similarly situated; and they attempt to proscribe speech before it occurs.

199. The amendments to Fla. Stat. § 849.16 permit the State of Florida to engage in prohibited content-based discrimination.

200. The amendments to Fla. Stat. § 849.16 impose a prior restraint on protected expression, resulting in an unconstitutional effect on speech.

201. There is accordingly a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits expressive conduct protected by Article I, Section 4 of the Florida Constitution.

202. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

203. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

204. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

205. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable costs, and grant such other relief as this Court deems just and proper.

COUNT XIII
DECLARATORY RELIEF

(Fla. Stat. § 849.16 is Void for Vagueness under Federal due Process)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

206. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. § 1983.

207. The definition of “slot machine or device” now contained in Fla. Stat. § 849.16, as amended, fails to adequately describe the prohibited machine or device such that a person of common understanding cannot know what is forbidden.

208. The definition of a “slot machine or device” now contained in Fla. Stat. § 849.16, provides the opportunity for arbitrary and discriminatory enforcement by law enforcement in all its applications, in violation of fundamental notions of due process.

209. There is accordingly a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits expressive conduct protected by the Fifth Amendment to the United States Constitution.

210. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

211. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

212. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

213. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

214. This Court may enter an award of attorneys’ fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys’ fees and costs, and grant such other relief as this Court deems just and proper.

COUNT XIV
DECLARATORY RELIEF

(Fla. Stat. § 849.16 is Void for Vagueness under the Florida Constitution)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

215. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021.

216. The definition of “slot machine or device” now contained in Fla. Stat. § 849.16, as amended, fails to adequately describe the prohibited machine or device such that a person of common understanding cannot know what is forbidden.

217. There is accordingly a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, unconstitutionally prohibits expressive conduct protected by Article I, Section 9 of the Florida Constitution.

218. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

219. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

220. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

221. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable costs, and grant such other relief as this Court deems just and proper.

COUNT XV
DECLARATORY RELIEF
(Fla. Stat. § 849.16(3) Violates Due Process)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

222. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. § 1983.

223. As amended, Section 849.16, Florida Statutes includes a presumption that any device, system, or network like the Plaintiff's computers that displays *images* of games of chance is an illegal slot machine.

224. The newly-enacted section 849.16(3), Florida Statutes, creates an evidentiary presumption that relieves the State of Florida of its burden of persuasion beyond a reasonable doubt of every essential element of a crime.

225. Fla. Stat. § 849.16(3) therefore violates the Due Process Clause.

226. The State of Florida has the present ability and intention to enforce the Amended Statutes against the Plaintiff in criminal prosecutions.

227. The Plaintiff has a reasonable fear of imminent enforcement of the Amended Statutes against it as a result, because its business is among those targeted by the Amended Statutes.

228. There is accordingly a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

229. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

230. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

231. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

232. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

233. This Court may enter an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

COUNT XVI
DECLARATORY RELIEF
(Fla. Stat. § 849.16(3) Violates Due Process)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

234. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021.

235. As amended, Section 849.16, Florida Statutes includes a presumption that any device, system, or network like the Plaintiff's computers that displays *images* of games of chance is an illegal slot machine.

236. The newly-enacted section 849.16(3), Florida Statutes, creates an evidentiary presumption that relieves the State of Florida of its burden of persuasion beyond a reasonable doubt of every essential element of a crime.

237. Fla. Stat. § 849.16(3) therefore violates the due process protections of Article I, Section 9 of the Florida Constitution.

238. The State of Florida has the present ability and intention to enforce the Amended Statutes against the Plaintiff in criminal prosecutions.

239. The Plaintiff has a reasonable fear of imminent enforcement of the Amended Statutes against it as a result, because its business is among those targeted by the Amended Statutes.

240. There is accordingly a bona-fide, actual, present practical need for a declaration that section 849.16, Florida Statutes, as amended, violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

241. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

242. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

243. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

244. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable costs, and grant such other relief as this Court deems just and proper.

COUNT XVII
DECLARATORY RELIEF
(Fla. Stat. § 849.16 is Overbroad)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

245. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. § 1983.

246. It is unlawful pursuant to Fla. Stat. § 849.15 to “own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used in any room, space, or building owned, leased or occupied by the person or under the person’s management or control, any slot machine or device or any part thereof. . .”

247. As amended, Fla. Stat. § 849.16 now defines the term “slot machine or device” to include:

[a]ny machine or device or system or network of devices that is adapted for use in such a way that, upon activation, which may be achieved by, but is not limited to, the insertion of any piece of money, coin, account number, code, or other object or information, such device or system is directly or indirectly caused to operate or may be operated and if the user, whether by application of skill or by reason of any element of chance or any other outcome unpredictable by the user, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, 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; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though the device or system may be available for free play or, in addition to any element of chance or unpredictable outcome of such operation, may also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value. The term “slot machine or device” includes, but is not limited to, devices regulated as slot machines pursuant to chapter 551.

248. As amended, Fla. Stat. § 849.16 is overbroad in that it covers both constitutional and unconstitutional applications, and prohibits speech and expressive conduct that is otherwise protected by the United States Constitution, including the speech engaged in by Plaintiff in the form of the sweepstakes games.

249. The State of Florida enacted the Amended Statutes with the intent that their constitutional applications would not be severable from the constitutional ones.

250. There is accordingly a bona-fide, actual, present practical need for a declaration that Fla. Stat. § 849.16 is unconstitutionally overbroad.

251. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

252. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

253. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

254. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

255. This Court may enter an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

COUNT XVIII
DECLARATORY RELIEF

(Fla. Stat. § 849.16 is Overbroad under the Florida Constitution)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

256. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021.

257. It is unlawful pursuant to Fla. Stat. § 849.15 to “own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used in any room, space, or building owned, leased or occupied by the person or under the person’s management or control, any slot machine or device or any part thereof. . .”

258. As amended, Fla. Stat. § 849.16 now defines the term “slot machine or device” to include:

[a]ny machine or device or system or network of devices that is adapted for use in such a way that, upon activation, which may be achieved by, but is not limited to, the insertion of any piece of money, coin, account number, code, or other object or information, such device or system is directly or indirectly caused to operate or may be operated and if the user, whether by application of skill or by reason of any element of chance or any other outcome unpredictable by the user, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, 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; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though the device or system may be available for free play or, in addition to any element of chance or unpredictable outcome of such operation, may also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value. The term “slot machine or device” includes, but is not limited to, devices regulated as slot machines pursuant to chapter 551.

259. As amended, Fla. Stat. § 849.16 is overbroad in that it covers both constitutional and unconstitutional applications, and prohibits speech and expressive conduct that is otherwise protected by the Florida Constitution, including the speech engaged in by Plaintiff in the form of the sweepstakes games.

260. The State of Florida enacted the Amended Statutes with the intent that their constitutional applications would not be severable from the constitutional ones.

261. There is accordingly a bona-fide, actual, present practical need for a declaration that Fla. Stat. § 849.16 is unconstitutionally overbroad.

262. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

263. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

264. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

265. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable costs, and grant such other relief as this Court deems just and proper.

COUNT XIX
DECLARATORY RELIEF
(Violation of the Dormant Commerce Clause)

The Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 61 as if set forth fully herein.

266. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 and 42 U.S. § 1983.

267. Given their breadth, the Amended Statutes regulate or proscribe conduct that the State of Florida is powerless to regulate or proscribe such as, for example, on-line auctions, “march madness pools,” or library book reservation systems.

268. The Amended Statutes accordingly impermissibly and excessively regulate interstate commerce.

269. The burden imposed on such commerce is excessive in relation to the putative local benefits.

270. There is accordingly a bona-fide, actual, present practical need for a declaration that Fla. Stat. § 849.16 is unconstitutionally overbroad, violates the Dormant Commerce Clause, and is therefore invalid.

271. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

272. An immunity, power, privilege, or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

273. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

274. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

275. This Court may enter an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff, INCREDIBLE INVESTMENTS, LLC, respectfully requests that this Court enter a declaratory judgment that Fla. Stat. § 849.16, as amended, is unconstitutional, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

Dated: this 28th day of June, 2013.

Respectfully submitted,
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