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

ILLINOIS GAMING MACHINE
OPERATORS ASSOCIATION, ACCEL
ENTERTAINMENT GAMING, LLC, J&J
VENTURES GAMING, LLC, EUREKA
ENTERTAINMENT, LLC d/b/a
UNIVERSAL GAMING GROUP, T’S
GAMING, LLC, VELASQUEZ GAMING,
LLC, ILLINOIS OPERATORS, INC.;
GAMING AND ENTERTAINMENT
MANAGEMENT – ILLINOIS, LLC, G.F.M.
GAMING, LLC, AND ILLINOIS GAMING
SYSTEMS, LLC,

8811653

Case No. 2020CH02928

Plaintiffs,

vs.

THE VILLAGE OF OAK LAWN,

Defendant.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs the Illinois Gaming Machine Operators Association (the “IGMOA”), Accel Entertainment Gaming, LLC (“Accel”), J&J Ventures Gaming, LLC (“J&J”), Eureka Entertainment, LLC d/b/a Universal Gaming Group (“UGG”), T’s Gaming, LLC (“T’s Gaming”), Velasquez Gaming, LLC (“Velasquez”), Illinois Operators, Inc. (“Illinois Operators”), Gaming and Entertainment Management – Illinois, LLC (“GEM”), G.F.M. Gaming, LLC, (“GFM”), and Illinois Gaming Systems, LLC (“IGS”) (collectively, the “Plaintiffs”), hereby seek, pursuant to 735 ILCS 5/2-701, a declaratory judgment and injunctive relief in furtherance of the declaration against Defendant the Village of Oak Lawn (the “Village”) relating to the enforcement of Ordinance No. 19–25–87 which became effective January 1, 2020, and, in support thereof, state:

NATURE OF THE ACTION

1. The IGMOA is a trade association comprised of businesses that share the common goal of promoting the video gaming industry in the State of Illinois. Relevant to this Complaint, the IGMOA has members, such as Accel, J&J, T's Gaming, Velasquez, and GEM, who, in their capacity as terminal operators licensed by the Illinois Gaming Board ("IGB"), own and display video gaming terminals ("VGTs") for play or operation by the public within the boundaries of the Village. Separately, UGG and Illinois Operators, though not members of the IGMOA, also own and display VGTs for play or operation by the public in the Village as licensed terminal operators. Therefore, these terminal operator plaintiffs are subject to the Village's Ordinance No. 19-25-87 (the "Tax Ordinance"), which amended Title 3, Chapter 4 of the Village's Official Village Code, to impose a tax on each play of a VGT by a player and related penalties, effective January 1, 2020 (the "Push Tax"). A true and accurate copy of the Tax Ordinance is attached hereto as **Exhibit A**.

2. By this action, Plaintiffs seek a judgment declaring the Push Tax is void, and an injunction barring the application and enforcement of the Push Tax. Specifically, the Village does not have the authority to impose the Push Tax because: (1) the Push Tax is an unauthorized "occupation tax" on the terminal operator because collecting and remitting the tax to the Village is both a violation of the Illinois Video Gaming Act, 230 ILCS 40/1, *et seq* ("VGA") and the IGB's promulgated rules, and a technical impossibility; (2) the Push Tax is an impermissible "license for revenue"; (3) the Push Tax fails to provide a refund or credit process for video gaming terminal operators, in violation of the procedural guarantees of the Due Process Clauses of the United States and Illinois constitutions and the Illinois and the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1, *et seq.*; (4) the Push Tax is impermissibly vague, in violation of the guarantees of the Due Process Clauses of the United States and Illinois Constitutions; (5) the Push Tax treats video gaming terminal operators and amusement operators differently, in violation of the Equal

Protection Clauses of the United States and Illinois Constitutions; and (6) the Push Tax treats video gaming terminal operators and amusement operators differently, in violation of the Uniformity Clause of the Illinois Constitution.

THE PARTIES

3. IGMOA is an association comprised of Illinois terminal operators, manufacturers, distributors, suppliers, owners of licensed beverage establishments, and other parties with vested interests in the future of video gaming in Illinois who are either licensed by the IGB, or are in the process of becoming licensed. IGMOA is dedicated to educating legislators and the public regarding responsible video gaming, and the significant benefits video gaming brings to communities throughout Illinois.

4. Accel is an Illinois limited liability company in the business of owning, placing, and operating VGTs for use by the public, and is a member of the IGMOA. Accel is a licensed terminal operator and currently operates a total of one hundred and twenty-five (125) VGTs at twenty-four (24) licensed establishments in the Village.

5. J&J is an Illinois limited liability company in the business of owning, placing, and operating VGTs for use by the public, and is a member of the IGMOA. J&J is a licensed terminal operator and currently operates a total of ten (10) VGTs at two (2) licensed establishments in the Village.

6. IGS is an Illinois limited liability company in the business of owning, placing, and operating VGTs for use by the public, and is a member of the IGMOA. IGS is a licensed terminal operator and currently operates a total of fifteen (15) VGTs at three licensed establishments in the Village.

7. T's Gaming is an Illinois limited liability company in the business of owning, placing, and operating VGTs for use by the public, and is a member of the IGMOA. T's Gaming

is a licensed terminal operator and currently operates a total of five (5) VGTs at one (1) licensed establishment in the Village.

8. Velasquez is an Illinois limited liability company in the business of owning, placing, and operating VGTs for use by the public, and is a member of the IGMOA. Velasquez is a licensed terminal operator and currently operates a total of six (6) VGTs at one (1) licensed establishment in the Village.

9. GEM is an Illinois limited liability company in the business of owning, placing, and operating VGTs for use by the public, and is a member of the IGMOA. GEM is a licensed terminal operator and currently operates a total of fifteen (15) VGTs at three (3) licensed establishments in the Village.

10. The IGMOA has associational standing to initiate this action on behalf of its members because: (1) the IGMOA has at least seven members who are subject to the Push Tax and who have individual standing to challenge the ordinance; (2) the interests the IGMOA seeks to protect in this action are germane to its purpose, which is to advocate for and promote the business opportunities of its members; and (3) the injunctive and declaratory relief requested in the action does not require the participation of individual members in the lawsuit. *See Int'l Union of Operating Eng'rs, Local 148 v. Ill. Dep't of Emp't Sec.*, 215 Ill. 2d 37 (2004).

11. UGG is a Delaware limited liability company in the business of owning, placing, and operating VGTs for use by the public. Although UGG is not currently a member of the IGMOA, UGG is a licensed terminal operator and currently operates a total of ten (10) VGTs at two (2) licensed establishments in the Village and is therefore subject to the Push Tax.

12. Illinois Operators is an Illinois corporation in the business of owning, placing, and operating VGTs for use by the public. Although Illinois Operators is not currently a member of

the IGMOA, Illinois Operators is a licensed terminal operator and currently operates a total of five (5) VGTs at one (1) licensed establishment in the Village and is therefore subject to the Push Tax.

13. GFM is an Illinois limited liability company in the business of owning, placing, and operating VGTs for use by the public. Although GFM is not currently a member of IGMOA, GFM is a licensed terminal operator and currently operates a total of three (3) VGTs at one (1) licensed establishment in the Village and is therefore subject to the Push Tax.

14. The Village is, and at all relevant times was, a municipal corporation and home rule unit of local government organized and existing under the laws of the State of Illinois and located in Cook County, Illinois.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to 735 ILCS 5/2–209(b)(3) because it arises within the State of Illinois against a municipal corporation organized under the laws of the State.

16. This Court also has jurisdiction pursuant to 735 ILCS 5/2–701 because this action presents an actual controversy and claims arising under Illinois law as to which Plaintiffs are entitled to a declaration of their rights.

17. Venue is proper in Cook County, Illinois pursuant to 735 ILCS 5/2–103 because the Village’s principal office is located within Cook County and all or part of the transaction out of which this cause of action arose occurred in Cook County.

FACTUAL ALLEGATIONS

Video Gaming Under Illinois Law

18. In Illinois, there is no common-law right to gamble, and, unless expressly legalized by the General Assembly, gambling is illegal. *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 26.

19. The General Assembly has legalized some forms of gambling, which are subject to extensive regulation. *Dotty's Cafe v. Ill. Gaming Bd.*, 2019 IL App (1st) 173207, ¶ 21.

20. The State of Illinois expanded its state-wide comprehensive gambling regulation and taxation framework by enacting the Riverboat Gambling ("RGA"), codified at 230 ILCS 10/1-10/24, on January 11, 1990 and then the VGA, codified at 230 ILCS 40/1-40/85, on May 21, 2009. The RGA authorized riverboat-based casinos and levied an admissions tax and wagering tax based upon the annual adjusted gross receipts from gambling conducted therein. 230 ILCS 10/12 and 230 ILCS 10/13. As part of the RGA, the Illinois General Assembly established the IGB, which has "jurisdiction over and shall supervise all gambling operations governed by" the RGA. 230 ILCS 10/5(c).

21. The VGA was a further expansion by the State of a state-wide comprehensive gambling regulatory and taxation scheme. Passed by the Illinois General Assembly on May 21, 2009, and effective as of July 13, 2009, the VGA legalized the use of VGTs in the State of Illinois, subject to the regulatory authority of the IGB, which has "jurisdiction over" and authority to "supervise all gaming operations governed by [the] Act," including the power to issue regulations regarding the operation of video gaming and the licensing of video gaming. *See* 230 ILCS 40/78.

22. The VGA defines a VGT as:

Any electronic video game machine that, upon insertion of cash, electronic cards or vouchers, or any combination thereof, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, as authorized by the Board utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. ***The term does not include a machine that directly dispenses coins, cash, or tokens or is for amusement purposes only.***

230 ILCS 40/5 (emphasis added).

23. Under the VGA, several types of establishments, such as bars, restaurants, fraternal and veterans' organizations and other establishments with liquor pouring licenses, are permitted

to have VGTs placed and operated at their businesses after they become “licensed establishments” pursuant to a rigorous licensing process with the IGB. *See* 230 ILCS 40/5. Furthermore, under the VGA, individuals or companies are permitted to “own, service[], and maintain[] video gaming terminals for placement in licensed establishments” after they became licensed “terminal operators,” also pursuant to a rigorous licensing process with the IGB.

24. Under the VGA, a tax of 30% was levied upon the “net terminal income” of VGTs, which is defined as “money put into a video gaming terminal minus credits paid out to players.” 230 ILCS 40/5 and 230 ILCS 40/60. The tax is to be collected by the IGB and distributed with five-sixths (i.e., 25%) of the tax allocated to the State Capital Projects Fund and one-sixth (i.e., 5%) allocated to the Local Government Video Gaming Distributive Fund. *See* 230 ILCS 40/60.

25. Furthermore, the monies deposited in the Local Government Video Gaming Fund are to be allocated among those municipalities and counties of the State that have not prohibited video gaming, in proportion to the tax revenue generated from video gaming within each eligible municipality or county compared to the tax revenue generated from video gaming across Illinois. 230 ILCS 40/75(a).

26. Public Act 101-31, which was signed into law on June 28, 2019, later amended both the RGA and the VGA. Public Act 101-31 retitled the RGA as the “Illinois Gambling Act” (“IGA”) which amended the statute to, among many things, increase gaming positions at pre-existing riverboat casinos and authorize six new casinos throughout Illinois. Public Act 101-31 also amended the VGA to impose an additional tax of 3% on net terminal income beginning July 1, 2019 and an additional tax of 1% on net terminal income beginning July 1, 2020. 230 ILCS 40/6(b).

The Village's Push Tax

27. On November 26, 2019, the Village enacted the Push Tax, which went into effect on January 1, 2020.

28. The Push Tax was purportedly passed to “provide much needed revenue to promote the general health, safety, and welfare of the Village and its residents, and provide adequate funds to offset the adverse effects of gambling within the Village[.]” See Ex. A.

29. Under the Push Tax:

an amusement tax is imposed upon any person who participates in the Play of a Video Gaming Terminal that takes place within the jurisdictional boundaries of the Village of Oak Lawn. The rate of the tax shall be equal to one cent (\$0.01) per Play on a Video Gaming Terminal.

See Exh. A at § 3-4-3.1.

30. The Push Tax defines “person” as “[a]ny natural individual that participates in an amusement” (see Exh. A at § 3-4-2(C)) and a “Video Gaming Terminal” in terms identical to that of the VGA:

Any electronic video game machine that, upon insertion of cash, electronic cards or vouchers, or any combination thereof, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, as authorized by the Illinois Gaming Board utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. ***The term does not include a machine that*** directly dispenses coins, cash, or tokens ***or is for amusement purposes only.***

See Exh. A at § 3-4-2(E) (emphasis added).

31. A “play” is defined as:

[e]ach individual push of the Video Gaming Terminal which initiates the simulation provided by the Video Gaming Terminal. Play shall not include the push of individual wager amounts, selection of types of games on the Video Gaming Terminal or entry of any information or printing of winning receipts.

See Exh. A at § 3-4-2(D).

32. In the preamble for the Tax Ordinance, the Village cites to Section 6(a) and Section 6(j) of the Illinois Constitution and 65 ILCS 5/11-42-5 of the Illinois Municipal Code for the “authoriz[ation] to impose a tax upon amusements.” See Exh. A. However, in order to fit a VGT within the scope of “amusements” in order to tax it as an “amusement,” the Tax Ordinance amended the preexisting definition of “amusement” in the Village’s municipal code with the underlined language:

1. Any theatrical, dramatic, musical or spectacular performance, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibit for public entertainment, including, without being limited to, boxing, wrestling, skating dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling, billiard and pool games.

2. Any entertainment offered for public participation, including, without being limited to, dancing, carnival, amusement park rides and games, bowling, billiard and pool games, or any Video Gaming Terminal.

See Exh. A at § 3-4-2.

33. The Tax Ordinance defines “Terminal Operator” as “[a]ny individual, partnership, corporation, or limited liability company that is licensed under the Video Gaming Act . . . and that owns, services, and maintains Video Gaming Terminals for placement in licensed establishments” See Exh. A at § 3-4-2(B).

34. Under the Tax Ordinance, the Village imposes the collection and remittance of the Push Tax on video gaming terminal operators, both members of the IGMOA like Accel, J&J, IGS, and UGG, and non-members:

It shall be the joint and several duty of every Terminal Operator of a Video Gaming Terminal(s) to secure from each Person participating in the Play of a Video Gaming Terminal the Push Tax imposed by this Chapter. For the purposes of this Chapter, it shall be presumed that the amount of the Push Tax imposed on each Person, unless the taxpayer or tax collector provides otherwise with books, records, or other documentary evidence, has been collected from the Person by the Terminal Operator. Push Tax payments accompanied by tax returns prescribed by the Village

shall be remitted on or before the 20th day of the month following the month in which payment for the Push Tax is made.

See Exh. A at § 3-4-3.4.

35. According to the Tax Ordinance, “[t]he failure of the Operator to collect the tax shall not excuse or release the Person from the obligation to pay the tax. The ultimate incidence of the Push Tax shall remain on the Person and shall never be shifted to the Terminal Operator.”

See Exh. A at § 3-4-3.4.

36. The Tax Ordinance also provides that “no person shall be entitled to a refund of, or credit for, the Push Tax imposed by this Chapter unless the person files a claim for a refund or credit within one (1) year after the date on which the Push Tax was paid or remitted to the Village.”

See Exh. A at § 3-4-3.4. The Tax Ordinance, however, does not provide a refund or credit process for a video gaming terminal operator who may overpay the Village as a result of an error in the collection and remittance process.

37. Finally, the Tax Ordinance articulates only two types of conduct by a video gaming terminal operator that would constitute a violation of the ordinance:

It shall be a violation of this Chapter for a Terminal Operator to fail to file a report within the time prescribed in this Chapter.

A Terminal Operator who falsely reports or fails to report the amount of Push Tax due required by this Chapter shall be in violation of Chapter and is subject to suspension and/or revocation of their Terminal Operator License.

See Exh. A at § 3-4-3.7. The Tax Ordinance does not specify any other conduct by a video gaming terminal operator as a violation. See Exh. A at § 3-4-3.7. The Tax Ordinance also does not specify the failure to pay the Push Tax or any conduct by a “Person” playing the video gaming terminal and ultimately responsible for the Push Tax (other than “knowingly furnish[ing] false or inaccurate information to the Village”) as a violation of the Tax Ordinance. See Exh. A at § 3-4-3.7.

38. Finally, the Tax Ordinance imposes a range of penalties for the aforementioned violations:

- (a) A penalty equal to 1.5% of the unpaid balance of the Push Tax, imposed each month the Push Tax remains due and owing;
- (b) A \$500.00 fine for the first offense (in addition to the 1.5% penalty);
- (c) A \$750.00 fine for the second offense (in addition to the 1.5% penalty);
- (d) A \$1,000.00 fine for the third offense (in addition to the 1.5% penalty);
- (e) Suspension of the terminal operator's license for a period not to exceed thirty (30) days, or outright revocation of a video gaming license issued under the Village's Official Village Code; and
- (f) Seizure of the terminal operator's VGT, along with imposing related costs incurred in seizing and storing the VGT.

See Exh. A at § 3-4-3.7, 3.8.

Video Gaming Terminal Operators Cannot Pass the Push Tax onto the Players

39. Although the Tax Ordinance provides that “[t]he failure of the Operator to collect the tax shall not excuse or release the Person from the obligation to pay the tax” and the “ultimate incidence of the Push Tax shall remain on the Person and shall never be shifted to the Terminal Operator,” (see Exh. A at § 3-4-3.4), at present, the incidence of the Push Tax falls squarely on the video gaming terminal operators.

40. As a legal matter, video gaming terminal operators cannot pass the Push Tax onto the players because of the regulatory prohibitions on the distribution of net terminal income under the VGA. As a practical matter, video gaming terminal operators cannot pass the Push Tax onto the players because current VGT technology does not provide a mechanism for the terminal operator to collect the Push Tax from the player, and any modification to VGT technology requires the IGB, among others, to implement and approve.

**The VGA Prohibits the Terminal Operator's
Distribution of Net Terminal Income to the Village**

41. As stated above, the VGA defines “net terminal income” as “money put into a video gaming terminal minus credits paid out to players.” 230 ILCS 40/5. This broad definition is not limited to monies for a wager, but encompasses any monies that a player would put into the video gaming terminal for “[e]ach individual push of the Video Gaming Terminal which initiates the simulation provided by the Video Gaming Terminal.” See Exh. A at § 3-4-2(D).

42. The VGA specifically earmarks the “net terminal income” for distribution to only three parties: the IGB, the terminal operator, and the establishment. (1) 33% of the “net terminal income” is to be remitted to the IGB to satisfy the tax imposed by Section 60 of the VGA (230 ILCS 40/60) (tax to increase to 34% by July 1, 2020); (2) “[o]f the after-tax profits from a video gaming terminal, 50% shall be paid to the terminal operator” (230 ILCS 40/25(c)); and (3) “[o]f the after-tax profits from a video gaming terminal ... 50% shall be paid to the licensed establishment, licensed truck stop establishment, licensed large truck stop establishment, licensed fraternal establishment or licensed veterans establishment” (230 ILCS 40/25(c)).

43. A video gaming terminal operator who fails to report and remit the tax to the IGB within 15 days after the 15th day of each month and within 15 days after the end of each month commits a Class 4 felony and is subject to termination of its license. 230 ILCS 40/60(e). Moreover, a video gaming terminal operator that violates the payment and allocation of payment of the after-tax profits from a video gaming terminal also commits a Class 4 felony and is subject to termination of its license. 230 ILCS 40/25(c).

44. Thus, “net terminal income,” which by definition includes *any money* a player would put into a VGT to satisfy the Push Tax, cannot be remitted by the terminal operator to the Village under the plain language of the VGA.

VGT Technology Precludes the Terminal Operator from Collecting the Push Tax

45. Notwithstanding the statutory restrictions on the distribution of money put into a VGT under the VGA, the design and software of VGTs simply does not allow a player to pay an extra cent on top of his or her wager, whether in cash or via a deduction from an electronic card or voucher. Moreover, video gaming terminal operators do not have the ability or authority to reprogram the software or alter the design of the VGTs.

46. Terminal handlers, who are licensed by the IGB, can only access VGTs to perform “the installation of new video gaming terminal software and software upgrades *that have been approved by the Board.*” 230 ILCS 40/15(16) (emphasis added). Further, under the IGB’s promulgated Rule 1810, only the IGB “Administrator shall have the authority to direct and oversee the installation of technology into video gaming terminals, and the maintenance and improvement of that technology ...” 11 Ill. Admin. Code 1810. Therefore, video gaming terminal operators who are subject to the Tax Ordinance, can neither pass on the Push Tax to the person playing the VGT, nor implement a change in the software or design of the VGT in order to collect the Push Tax from the player.

47. The IGB also prohibits systems “that connect in any way to the VGT” to track players, which is necessary to determine the number of “plays” per person for purposes of calculating the appropriate amount of tax to be collected from the player and remitted to the Village, or the appropriate amount of any refund of the tax or credit due to a player.¹ Thus, part of the software change or design that is required in order to pass the Push Tax on to the person playing the VGT is prohibited by the IGB at this time.

¹ Frequently Asked Questions, the Illinois Gaming Board, *available at* <https://www.igb.illinois.gov/VideoFAQ.aspx> (last visited February 26, 2020) (“Tracking systems .. that connect in any way to the VGT may be authorized by the IGB in the future but are prohibited at this time”).

48. Finally, according to experts in the industry, the software engineering involved at both the machine and system levels would be so complicated and cost-prohibitive that there is not a single regulated machine company or manufacturer that would agree to undertake such an effort.

An Actual Controversy Exists between Plaintiffs and the Village regarding the Push Tax

49. Plaintiffs have on multiple occasions informed the Village, both through correspondence and in person meetings, that it is legally and technologically impossible for them to satisfy their purported obligations under the Push Tax.

50. Notwithstanding Plaintiffs' good faith efforts, the Village has failed and refused to repeal or suspend the Push Tax, and has instead declared its intent to fully enforce the Push Tax against the terminal operators, including assessing fines and penalties, such as the suspension or revocation of their gaming licenses.

51. There exists an actual controversy between Plaintiffs and the Village concerning enforcement of the Push Tax.

52. The Court's declaration as to the legality and constitutionality of the Push Tax will effectively terminate that controversy.

53. Plaintiffs have a "clear and ascertainable right" not to pay taxes which violate the Illinois Constitution or are otherwise unlawful. Section 6(e) of the Illinois Constitution explicitly establishes that a home rule unit may not impose an "occupation tax" unless allowed to do so by the General Assembly. Ill. Const. Art. VII(6)(e).

54. Plaintiffs will suffer irreparable injury in the absence of injunctive relief because they cannot pay the Push Tax to the Village without violating the VGA which will subject them to discipline by the IGB, which may include suspension or revocation of their video gaming licenses. Alternatively, if they do not pay the Push Tax to the Village, the Village will assess exorbitant fines and penalties, which may include the suspension or revocation of their video gaming licenses.

55. Plaintiffs have no adequate remedy at law. Due to the administrative burdens and potential statutory and regulatory violations associated with complying or failing to comply with the Push Tax, a monetary award will not remedy Plaintiffs' injury.

56. Plaintiffs have demonstrated a sufficient probability of success on the merits of the case to merit injunctive relief.

57. The balance of hardships weighs in favor of Plaintiffs because of the injuries it will suffer, while the Village will not be harmed by the absence of tax money it has not previously enjoyed and was not previously entitled to receive.

COUNT I

The Push Tax Violates Article VII, Section 6(e) of the Illinois Constitution because it is an Unauthorized Occupation Tax

58. Plaintiffs reassert and incorporate by reference all allegations contained in Paragraphs 1 through 57 above as if fully set forth herein.

59. An "occupation tax" has one of two missions: either to regulate and control a given business or occupation, or to impose a tax for the privilege of exercising, understanding, or operating a given occupation, trade, or profession.

60. In determining whether a tax is actually an occupation tax, the legal incidence of the tax, rather than the actual burden, controls.

61. Simply stating the burden of a tax is imposed upon the purchasers of services, as opposed to those providing the service, does not cure an otherwise unauthorized occupation tax.

62. Moreover, Article VII, Section 6(e) of the Illinois Constitution states that "[a] home rule unit shall have *only the power that the General Assembly may provide by law ... to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.*" Ill. Const. Art. VII(6)(e) (emphasis added).

63. The General Assembly has provided no such authorization for the Village to impose an occupation tax.

64. Here, the Push Tax levies a tax that specifically burdens the privilege of operating a gambling device, namely by assessing a \$0.01 tax per person, per play on VGTs located within the Village.

65. The Push Tax falls within the definition of “net terminal income,” which the VGA broadly defines as any “money put into a video gaming terminal minus credits paid out to players.” 230 ILCS 40/5.

66. The definition of “net terminal income” under the VGA is not limited to monies for a wager, but encompasses any monies that a player would put into the video gaming terminal for “[e]ach individual push of the Video Gaming Terminal which initiates the simulation provided by the Video Gaming Terminal.” See Exh. A at § 3-4-2(D).

67. By its express terms, the VGA requires “net terminal income” be distributed solely amongst three parties: (1) 33% of the “net terminal income” is to be remitted to the IGB to satisfy the tax imposed by Section 60 of the VGA (230 ILCS 40/60) (to increase to 34% by July 1, 2020); (2) “[o]f the after-tax profits from a video gaming terminal, 50% shall be paid to the terminal operator” (230 ILCS 40/25(c)); and (3) “[o]f the after-tax profits from a video gaming terminal ... 50% shall be paid to the licensed establishment, licensed truck stop establishment, licensed large truck stop establishment, licensed fraternal establishment or licensed veterans establishment” (230 ILCS 40/25(c)).

68. Thus any and all monies put into the VGT by the person playing the VGT cannot, under the plain language of the VGA, be diverted to the Village to satisfy the Push Tax, as 100% of the net terminal income must be distributed in proportionate shares to the IGB, the terminal

operator, and the establishment. Consequently, the terminal operator has no ability to collect the Push Tax from the player and remit it to the Village without violating the VGA.

69. Additionally, the design and software of VGTs does not allow a player to pay an extra cent on top of his or her wager, whether in cash or via a deduction from an electronic card or voucher. Moreover, the VGA and the IGB's promulgated rules require that any installation of technology or software upgrade in a VGT be approved by the IGB. 230 ILCS 40/15(16) and 11 Ill. Admin. Code 1810. Therefore, video gaming terminal operators who are subject to the Tax Ordinance, can neither pass on the Push Tax to the person playing the VGT nor implement a change in the software or design of the VGT in order to effectuate such a pass-through.

70. The IGB also prohibits systems "that connect in any way to the VGT" that track players, which would be necessary in order to determine the number of "plays" per person in order to determine the appropriate amount of tax to be collected from the player and remitted to the Village and allow a player to seek a refund or credit if necessary. Therefore, an essential part of the software change or design required in order to pass the Push Tax onto the person playing the VGT is strictly prohibited by the IGB.

71. Finally, creating and reconfiguring the software and design of the VGTs to be able to calculate the Push Tax on a-per person, per-play basis would be so technologically complicated and cost-prohibitive that no entity would undertake the project.

72. Consequently, for the above reasons, complying with the Push Tax and passing the legal incidence of the Push Tax onto the player is currently legally and technologically impossible.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter, pursuant to 735 ILCS 5/2-701, a judgment declaring that the Push Tax is an unauthorized occupation tax in violation of Article VII, Section 6(e) of the Illinois Constitution;
- b. Enter a temporary, preliminary and permanent injunction, enjoining the Village from applying and enforcing the Push Tax, and any amounts due and owing as a result of the Push Tax, including any fines and penalties; and
- c. Grant any further relief as justice may require.

COUNT II

The Push Tax Violates Article VII, Section 6(e) of the Illinois Constitution Because it is an Impermissible License for Revenue

73. Plaintiffs reassert and incorporate by reference all allegations contained in Paragraphs 1 through 57 above as if fully set forth herein.

74. Under Article VII, Section 6(e) of the Illinois Constitution, “[a] home rule unit shall have *only the power that the General Assembly may provide by law ... to license for revenue or impose taxes upon or measured by income or earnings or upon occupations[.]*” Ill. Const. Art. VII, § 6(e) (emphasis added).

75. A license for revenue is an attempt by a governmental unit, which does not have the power to tax, to use its police power to raise revenue.

76. As discussed earlier, the Village’s power to impose an occupation tax as a home rule unit has been proscribed by Section 6(e)’s limitation that such a tax must be expressly provided by law through the General Assembly. Here, the General Assembly has enacted no such grant of power authorizing the Push Tax.

77. Therefore, the Village necessarily relies only on its police power to raise revenue through the Push Tax, making the Push Tax an impermissible license for revenue.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter, pursuant to 735 ILCS 5/2-701, a judgment declaring that the Push Tax is an impermissible license for revenue in violation of Article VII, Section 6(e) of the Illinois Constitution;
- b. Enter a temporary, preliminary and permanent injunction, enjoining the Village from applying and enforcing the Push Tax, and any amounts due and owing as a result of the Push Tax, including any fines and penalties; and
- c. Grant any further relief as justice may require.

COUNT III

The Push Tax Deprives Video Gaming Terminal Operators of Procedural Due Process in Violation of the United States and Illinois Constitutions

78. Plaintiffs reassert and incorporate by reference all allegations contained in Paragraphs 1 through 57 above as if fully set forth herein.

79. The constitutions of the United States and Illinois guarantee procedural due process, which ensures sufficient procedural safeguards are enacted to protect persons from the mistaken or unjustified deprivation of life, liberty or property.

80. Section 65 of the Illinois Local Government Taxpayers' Bill of Rights Act requires that "[u]nits of local government shall provide a procedure for claiming a credit or refund of taxes, interests, or penalties paid in error." 50 ILCS 45/65. Furthermore, "[u]nits of local government must provide, by ordinance, a rate of interest for overpayment of tax." 50 ILCS 45/65.

81. Yet, under the Push Tax, only a "person," defined as someone who "participates in the amusement" has the right to file a claim for refund or credit with the Village. No similar right

is afforded to video gaming terminal operators, depriving a video gaming terminal operator who mistakenly overpays the Push Tax any recourse to recoup the amount of overpayment. Additionally, the Push Tax fails to provide the rate of interest applied to any overpaid Push Tax amount.

82. As such, the Village has failed to provide adequate procedural safeguards to protect video gaming terminal operators from the mistaken or unjustified deprivation of their property when attempting to comply with the Push Tax.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter, pursuant to 735 ILCS 5/2-701, a judgment declaring that the Push Tax violates the procedural due process guarantees of the United States and Illinois constitutions;
- b. Enter a temporary, preliminary and permanent injunction, enjoining the Village from applying and enforcing the Push Tax, and any amounts due and owing as a result of the Push Tax, including any fines and penalties; and
- c. Grant any further relief as justice may require.

COUNT IV

The Push Tax Violates the United States and Illinois Constitutions’ Due Process Clauses Because the Tax Ordinance is Unconstitutionally Vague

83. Plaintiffs reassert and incorporate by reference all allegations contained in Paragraphs 1 through 57 above as if fully set forth herein.

84. The Due Process Clauses of the United States and Illinois Constitutions require a statute to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.

85. The Village supposedly derives the authority to enact the Push Tax from its power to tax “amusements” under Section 6(a) and Section 6(j) of the Illinois Constitution and 65 ILCS 5/11-42-5 of the Illinois Municipal Code. *See* Exh. A.

86. In relevant part, Section 11-42-5 of the Illinois Municipal Code provides “[t]he corporate authorities of each municipality may license, tax, regulate, or prohibit ... *amusements*” 65 ILCS 5/11-42-5 (emphasis added).

87. However, to fit a VGT within the scope of “amusements” in order to tax it as an “amusement,” the Tax Ordinance amended the preexisting definition of “amusement” in the Village’s municipal code with the underlined language:

1. Any theatrical, dramatic, musical or spectacular performance, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibit for public entertainment, including, without being limited to, boxing, wrestling, skating dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling, billiard and pool games.
2. Any entertainment offered for public participation, including, without being limited to, dancing, carnival, amusement park rides and games, bowling, billiard and pool games, or any Video Gaming Terminal.

See Exh. A at § 3-4-2.

88. Yet, the definitions of VGT under both Section 5 of the VGA and the Tax Ordinance both expressly state that a VGT does not “include a machine that ... is for amusement purposes only.” 230 ILCS 40/5 and Exh. A at § 3-4-2(E).

89. The Village cannot draw its authority for the Push Tax from Section 11-42-5 of the Illinois Municipal Code which taxes “amusements” while at the same time define a VGT, consistent with the VGA, as a machine that is not “for amusement purposes only.” *Compare* 65 ILCS 5/11-42-5 and Exh. A at § 3-4-2 *with* 230 ILCS 40/5 and Exh. A at § 3-4-2(E). As such,

the Tax Ordinance is vague, misleading, and confusing. Without an understanding of what devices are covered by the Tax Ordinance, it is impossible for video gaming terminal operators to comply.

90. The Tax Ordinance is also impermissibly vague as to the duties of video gaming terminal operators as follows:

- (a) Although it is “the joint and several duty of every Terminal Operator of a Video Gaming Terminal(s) to secure from Each Person participating in the Play of a Video Gaming Terminal the Push Tax,” it is unclear *with whom* the video gaming terminal operator holds such duty. See Exh. A at § 3-4-3.4.
- (b) Although the “Push Tax payments accompanied by tax returns prescribed by the Village shall be remitted on or before the 20th day of the month following the month in which payment for the Push Tax is made,” it is unclear who remits the Push Tax to the Village. See Exh. A at § 3-4-3.4. As the Tax Ordinance states, a terminal operator’s failure to collect the tax “shall not excuse or release the Person from the obligation of paying the tax.” See Exh. A at § 3-4-3.4. Moreover, the only video gaming terminal operator conduct that constitutes violations of the Tax Ordinance as expressly stated therein is the timely failure to file a tax return or the false reporting of the amount of the Push Tax due, not the failure to remit the Push Tax. See Exh. A at § 3-4-3.7.
- (c) Although the “Push Tax payments accompanied by tax returns prescribed by the Village shall be remitted on or before the 20th day of the month following the month in which payment for the Push Tax is made,” it is unclear if such payment or tax return is due if “payment for the Push Tax” is never made by the person playing the VGT. As the Tax Ordinance states, a terminal operator’s failure to collect the tax “shall not excuse or release the Person from the obligation of paying the tax.” See Exh. A at § 3-4-3.4.

91. Based on the foregoing, video gaming terminal operators subject to the Push Tax cannot comprehend what conduct is prohibited, and what they must do to comply with the Tax Ordinance to avoid violations and the substantial fines, penalties, and potential suspension and/or revocation of their licenses that may accompany said violations.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter, pursuant to 735 ILCS 5/2-701, a judgment declaring that:
 1. The Tax Ordinance is unconstitutionally vague, in violation of both the United States and Illinois constitutions' guarantees to due process of law;
or
 2. In the alternative, if the Tax Ordinance is not unconstitutionally vague, that the Village's Tax Ordinance: (A) does not require a video gaming terminal operator to file a tax return or submit payments for the Push Tax should a person playing the VGT not pay to the video gaming terminal operator the appropriate amount under the Push Tax; and (2) does not impose as a violation a video gaming terminal operator's failure to remit payments for the Push Tax.
- b. Enter a temporary, preliminary and permanent injunction, enjoining the Village from applying and enforcing the Push Tax, and any amounts due and owing as a result of the Push Tax, including any fines and penalties; and
- c. Grant any further relief as justice may require.

COUNT V

**The Push Tax Violates the United States and
Illinois Constitutions' Equal Protection Clauses**

92. Plaintiffs reassert and incorporate by reference all allegations contained in Paragraphs 1 through 57 above as if fully set forth herein.

93. Equal protection ensures that if a governmental body treats similarly situated people dissimilarly, it must have a rational basis for doing so.

94. As detailed above, the Tax Ordinance imposes the Push Tax on persons playing VGTs within the jurisdictional boundaries of the Village and requires operators of VGTs to collect and remit said tax. *See* Exh. A at §§ 3-4-3.1 and 3-4-3.4.

95. In order to do so, the Village, through the Tax Ordinance, amended the preexisting definition of “amusement” in the Village’s municipal code to include VGTs, thereby presumably intending to treat VGTs as any other amusements. *See* Exh. A at § 3-4-2.

96. Yet, although the Village now classifies VGTs as “amusements,” the Village does not tax other similar devices that the Village also deems to be “amusements.” For instance, the Village does not impose any tax on patrons playing an “automatic amusement device” (“AAD”), which the Village’s municipal code defines as:

Any machine which upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score. It shall include, but not be limited to, such devices as jukeboxes, marble machines, pinball machines, movie and video booths or stands, games played with any number of balls, spheres or electrically operated devices upon a table or board having holes, pockets, cups or electrically activated devices that are actuated by said balls, or spheres or electrical contacts, electrical impulse and/or cathode tube games, and all games, operations or transactions similar thereto under whatever name by which they may be indicated. Said term shall not include a pool or billiard table licensed pursuant to article B of this chapter.

Oak Lawn, Ill., Vill. Code, Art. 3, Ch. 4A, Sec. 2–1.

97. As a result, the Village does not impose any requirements that the operators of AADs collect and remit any tax to the Village. Instead, the operators of AADs are only responsible for paying a yearly licensing fee. *See* Oak Lawn, Ill., Vill. Code, Art. 3, Ch. 4A, Sec. 2–5.

98. Consequently, despite deeming both VGTs and AADs to be “amusements,” the Village does not treat the operators of such devices similarly, imposing a tax on the play of the former and requiring the operator to collect and remit said tax while levying no taxes on the play of the latter and likewise imposing no collection and remittance obligations on the operator. The

Village thus treats similarly situated parties, i.e., terminal operators and AAD operators, dissimilarly.

99. Moreover, there is no rational basis for the wholly arbitrary distinction between the operators of VGTs on the one hand and the operators of AADs on the other.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter, pursuant to 735 ILCS 5/2-701, a judgment declaring that the Push Tax violates both the United States and Illinois constitutions' guarantees to equal protection under the law;
- b. Enter a temporary, preliminary and permanent injunction, enjoining the Village from applying and enforcing the Push Tax, and any amounts due and owing as a result of the Push Tax, including any fines and penalties; and
- c. Grant any further relief as justice may require.

COUNT VI

The Push Tax Violates the Illinois Constitution's Uniformity Clause

100. Plaintiffs reassert and incorporate by reference all allegations contained in Paragraphs 1 through 57 above as if fully set forth herein.

101. The Uniformity Clause of the Illinois Constitution provides, "[i]n any law classifying the subjects or objects of nonproperty taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. Art. IX, Sec. 2.

102. The Uniformity Clause is broader in limitation on legislative power to classify for non-property tax purposes than the limitation of the Equal Protection Clause.

103. As detailed above, the Tax Ordinance imposes the Push Tax on person playing VGTs within the jurisdictional boundaries of the Village and requires operators of VGTs to collect and remit said tax. *See* Exh. A at §§ 3-4-3.1 and 3-4-3.4.

104. In order to do so, the Village, through the Tax Ordinance, amended the preexisting definition of “amusement” in the Village’s municipal code to include VGTs, thereby presumably intending to treat VGTs as any other amusements. *See* Exh. A at § 3-4-2.

105. Yet, although the Village now classifies VGTs as “amusements,” the Village does not tax other similar devices that the Village also deems to be “amusements.” For instance, the Village does not impose any tax on patrons playing an “automatic amusement device” (“AAD”). *See* Oak Lawn, Ill., Vill. Code, Art. 3, Ch. 4A, Sec. 2–1.

106. As a result, the Village does not impose any requirements that the operators of AADs collect and remit any tax to the Village. Instead, the operators of AADs are only responsible for paying a yearly licensing fee. *See* Oak Lawn, Ill., Vill. Code, Art. 3, Ch. 4A, Sec. 2–5.

107. Consequently, despite deeming both VGTs and AADs to be “amusements,” the Village does not treat the operators of such devices similarly, imposing a tax on the play of the former and requiring the operator to collect and remit said tax while levying no taxes on the play of the latter and imposing no collection and remittance obligations on the operators. The Village thus treats similarly situated parties, i.e., terminal operators and AAD operators, dissimilarly.

108. Moreover, there is no rational basis for the wholly arbitrary distinction between the operators of VGTs on the one hand and the operators of AADs on the other.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter, pursuant to 735 ILCS 5/2-701, a judgment declaring that the Tax Ordinance violates the Uniformity Clause of Article IX, Section 2 of the Illinois Constitution;

- b. Enter a temporary, preliminary and permanent injunction, enjoining the Village from applying and enforcing the Push Tax, and any amounts due and owing as a result of the Push Tax, including any fines and penalties; and
- c. Grant any further relief as justice may require.

Dated: March 10, 2020

Respectfully submitted,

**Illinois Gaming Machine Operators
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LLC, J&J Ventures Gaming, LLC, Eureka
Entertainment, LLC d/b/a Universal Gaming
Group, T's Gaming, LLC, Velasquez
Gaming, LLC, Illinois Operators, Inc.,
Gaming and Entertainment Management –
Illinois, LLC, G.F.M. Gaming, LLC, and
Illinois Gaming Systems, LLC**

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