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No Chance Computer Solutions, LLC
16739 Scheer Blvd.
Hudson, FL 34667

Re: No Chance Computer Solutions Software System
Legal Compliance

Dear Sirs:

I have been asked by No Chance Computer Solutions, LLC to review certain custom video computer software and amusement games that it has developed and provide my legal opinion as to whether the software and games as currently configured comply with the requirements of Florida law. The software under consideration is known as the No Chance Operating System (the “System” or “NCOS System”).

The NCOS System consists of video games that allow player participation and the opportunity to win prizes without risk and without chance. The game software has been specifically modified to remove any element of chance and any preset win/loss ratio to ensure compliance with Florida law. Specifically, I have been requested to provide a legal analysis regarding whether the No Chance system software, or its utilization, violates Florida’s gambling laws.

For the reasons set forth below, I believe that the use of the NCOS System does not constitute gambling under Florida law and that the use of such software on video game terminals does not convert the computers being used into slot machines. The video games do not involve the element of chance at any point which is a necessary component to establish illegal gambling in the State of Florida and seem to comply with all existing Florida law.

The software

My understanding of how the software works follows. To the extent that the software or usage of the video games differ from what is set forth below, the legal opinions in this letter will not apply. Please be advised that I am not an expert in computer software nor have I conducted any forensic analysis of the software itself other than viewing a functional demonstration of software that is represented to operate the same as this software and rely wholly on the information provided by my client and/or software developer for such information.

The video games provide an entertaining way to win prizes without any risk to the customer or any chance involved. Prior to spending any money, a customer has the ability to display a substantial number of final outcomes including every level and every game that is available on the NCOS System. There is no money risked by the customer at any time. All NCOS System results can be seen without spending or parting with money in any way. Further, the NCOS System results can be seen even after credits for the game are purchased but before they are expended on game play. Thus, the customer has the ability to make an independent, conscious decision whether to purchase credits at all before knowing the exact result of the game entry or before committing to expend any funds. This ability removes all risk from participation in the game.

The NCOS System consists of a custom software program that runs on a computer. It provides games that have an entertaining presentation and the opportunity to win prizes. The System uses several different game themes, all of which operate similarly. After engaging the amusement game terminal, the screen will display the separate game theme options.

Before any credits are purchased or any money is expended the customer see all results of each and every game entry. First, the customer selects a game theme from the main menu. After the game theme is selected the graphic designs are revealed and several buttons appear on the screen. The PREVIEW button is prominently displayed just above the PLAY button. Once the PREVIEW button is pressed, another screen appears in which the graphic icons line up in the final sequence, revealing the final result of the game. The result of each game play, which shows the position of all graphic icons, will match exactly the results that had been previously foretold to the customer. The software program ensures that the simulated display of the depicted on-screen reels do not play any role in the generation of the actual game outcomes.

The PREVIEW screen also shows the exact amount won, if any, by playing the game. On this PREVIEW screen the operation of the PREVIEW function is clearly explained to the customer. It states:

PREVIEW NEXT PLAY

This result represents the next committed play.

At this time your balance has not been changed,
any win result will not be added to balance until play.
The shown result for this entry will not change until played.

The customer can take as long as they want to see the result and decide if they want to expend credits to play the game. When the customer has decided on a course of action they can click anywhere on the screen to close the PREVIEW screen.

After the PREVIEW screen is closed, the customer can click the PLAY button if they want to play the game. If the PLAY button is selected, the game will display the same sequence of icons and same game result as just foretold to the customer. Any prize won would be reflected in the customer's total. The game ends when the customer sees, and is awarded, the exact same result that was shown when the player clicked on the PLAY button. At that point, the game is complete. All of the results of the games are thus completely predictable, and known, to the customer and the computer ahead of time.

However, if the customer chooses not to play the game which results were just shown to them, there are numerous other options. They can change the play level and similarly preview the results of the next game in that play level. The customer can spend as long as they want reviewing every possible outcome available, moving from level to level, forward or backwards. Again, they can make the informed decision of whether to play that game or not. In this manner, the customer can continue changing the play level and continue to make the decision whether or not they wish to play the game. The customer, and only the customer, would then decide whether or not to play any of the results displayed.

At any time the customer can exit the game theme. If the customer exits the game theme they will return to the main menu and can choose a different game theme or re-select the same game theme that was just exited. After having done so, the same features are available for every play level. Every result is shown in advance and the player must affirmatively choose to select the play option and thereby accept the results shown. Of course, no credits are expended at any time unless the player chooses to click the PLAY button.

In order to play the game and expend credits the player must affirmatively select the PLAY button. Pressing the PLAY button is the only way that credits can be expended by the customer. If the player chooses not to play, no credits will be removed at all and that game will not cost them anything. The customer is also aware that the outcome shown when Preview is pressed will always be the outcome played when the PLAY button is chosen. The player is never required to play any game.

Of course, they can also walk away from the game console, choose a different console, or leave the establishment at any time having spent exactly what they chose to spend, or nothing at all.

Thus, the essential features of the NCOS System leave the decision to play or not wholly in the hands of the customer. Should the customer not choose to play any of the games or levels viewed, the customer would not have expended any credits whatsoever. The game has not yet begun, and the player has not placed any money at risk.

The customer's money is not committed until the customer accepts the results that are revealed before the game play begins. In other words, there is never any risk to the customer's money at any time. Should the customer choose to accept the entry revealed before the beginning of the game, he will receive exactly what is expected and has been shown to him. Should he choose not to accept the results, he may skip the game, choose a different game, or different entries. At any time during the process the customer can walk away without expending any credits. Only when the customer accepts the results that have been shown to him and consciously selects the play option are the credits used and therefore non-refundable.

There is no chance whatsoever involved in the game play. The results are always known to both the computer and the player *before* the player chooses to play the game and utilize the credits he or she has available for the game play. The game does not determine the outcome and cannot change the outcome that has already been created and displayed to the player. The results are predetermined in that they are established in advance of any player interaction. They are not created at the time the customer purchases credits or when the customer hits the play button like a standard slot machine. A standard slot machine chooses the result, through the use of a random number generator, **after** the player engages the device in game play. Thus, there is no chance at any point in the process of the System's operation.

I have also looked at the System with regard to the presence of the element of skill and do not find any element of skill present in the NCOS System.

The Law

As a general rule, Florida prohibits gambling as defined in the Florida Statutes. The definition of gambling is codified in § 849.08, Fla. Stat., which provides:

849.08 Gambling.—Whoever plays or engages in any game at cards, keno, roulette, faro **or other game of chance**, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083

(emphasis added). If the game is cards, keno, roulette, or faro, it is gambling. If it is some other game that is a game of chance, it is gambling. Thus, it is absolutely clear that Florida law requires, as the principal element of the offense, that the activity constitutes a game of chance. Without the element of chance there is no gamble and no criminal activity. The Florida Supreme Court has

held that, “Chance is the material element in both [lotteries and unlawful gaming].” Lee v. Miami, 163 So. 486, 489 (Fla. 1935). If there is no chance, the activity is not gambling even though money is paid to participate and money is awarded as a prize.

The current Florida Standard Jury Instruction, approved by the Florida Supreme Court, recognizes this clear requirement:

22.1 GAMBLING

§ 849.08, Fla. Stat.

To prove the crime of Gambling, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **played or engaged in a game of chance by** (read from charge).
2. (Defendant) **risked money or property on the outcome of the game.**
3. (Defendant) **expected to gain or lose money or property as a result of the game.**

The NCOS System does not meet these elements of gambling as specifically defined by Florida Statute and approved by the Florida Supreme Court. The games do not involve chance. Instead, the player knows with certainty the result of the game before the game is played and the result of the game is exactly what was already known by the player. In addition, the player does not risk money or property on the outcome of the game. The player and the computer know the result before the credits are committed to play and the player affirmatively chooses to play that specific game. There simply is no risk when the outcome is already known.

A case from Wisconsin serves as a perfect illustration of the existence of the element of chance with regard to gambling. In U.S. v. Bergland, 209 F. Supp. 547 (E.D. Wis. 1962), the defendants were charged with participating in a gambling enterprise. In Bergland, the defendants would travel to Arkansas to watch a horse race. When the winner was announced, they would radio a co-defendant outside the track. The second person would then telephone a third person in Wisconsin who would place a bet with a bookmaker who had not yet received the results of the race and was unaware that it was over. The court found:

It is beyond question, and counsel for the United States so concedes, that an indispensable element of “betting,” “wagering,” or “gambling” is the element of risk or chance. Every federal statute involving gambling offenses requires this element. See 18 U.S.C.A. Sections 1301-1304, and 15 U.S.C.A. Sections 1171-

1177. Many judicial definitions of “gambling” were cited and many were found. None were cited or found that did not require the element of “chance.” It is agreed by all parties that if the alleged scheme of the defendants did not involve the element of chance, then the defendants were not gambling, and if they were not gambling, then they cannot be tried for the offenses here charged.

However nefarious, may be the alleged schemes, they did not involve the element of chance. The alleged bet or wagers placed with unsuspecting bookmakers involved what is known in common parlance as a sure thing.” The defendants were certain to win, and the bookmakers were certain to lose.

In this alleged, scheme, it cannot plausibly be argued that defendants took a *chance* of winning more money than was placed in the bet.

The supposed “gamble” was upon a simple objective circumstance – the result of a horse race. Where such result is an accomplished fact at the time when the bet is placed, there no longer is a “chance” of its occurring in the future.

Bergland at 548-549. Based on the analysis above, the Court dismissed the indictment. Likewise, here, the result of the game is established beforehand by a mathematical algorithm and the result is an established fact before the customer engages in the game.

The fact that there is no gambling makes it clear that there is no violation of Chapter 849, Fla.Stat. since the entire chapter is predicated on the crime of gambling. In addition, the electronic devices used to display the video games are probably not slot machines and subject to the prohibitions of § 849.15, Fla.Stat. A slot machine is defined in § 849.16, Fla Stat., as follows:

(1) As used in this chapter, the term “slot machine or device” means 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 added.) It is clear that, pursuant to the statute, one of three (3) things must be present to conclude that the video game terminals are slot machines:

- (1) the application of skill; or
- (2) any element of chance; or
- (3) any other outcome unpredictable by the user.

If none of these are present, the video game terminal is not a slot machine. It seems that the existence of any of the above three (3) elements is determined from the perspective of the player, not the computer. All three (3) elements are controlled by the modifier, “and if the user.” Thus, the application of skill must be the skill of the user, the element of chance must be the user taking the chance, and the outcome must be unpredictable by the user. But see, Gator Coin II, discussed below, in which the First District primarily focused on the creation of chance by the machine.

The video games do not purport to be games of skill and there is no discernable application of skill in their operation. Again, there is no element of chance and there could be no outcome unpredictable by the user since the user would be aware of the result before participating. Thus, the result is completely predictable to the user. Since none of these three elements are present in the NCOS System, it does not fall within definition of a slot machine provided by § 849.16, Fla.Stat.

There is no element of chance. The outcome is fully known by the customer¹ before the game is activated and before the game is played. The customer is not taking a chance and there is no chance in the outcome of the game. Further, the outcome is not unpredictable to the player. In fact, it is fully and completely predictable 100 % of the time. As said by Justice Holmes, “What a man does not know and cannot find out is chance as to him, and is recognized as chance by the

¹ And, also by the computer itself although this is not an element under the statute, but apparently is considered by the court, such as in the Gator Coin II base below.

law.” Dillingham v. McLaughlin, 264 U.S. 370, 44 S. Ct. 362, 362, 68 L.Ed 742 (1924). Here, the customer knows and must find out the result before the game.

Chance has been defined as, “an accident; an unexpected, unforeseen, or unintended consequence of an act; a fortuitous event.” Thelawdictionary.org. And, it has also been defined as, “something that happens unpredictably without discernible human intention or observable cause.” Merriam-Webster. Chance has also been defined as “accomplishing a result that is one in which a person’s choice, will, or input has no part and will not enable the individual to know or to determine the result until it has been accomplished.” Great Atlantic and Pacific Tea Co. v. Cook, 240 N.E. 2d d114, 118 (Ohio Misc. 1965); State ex rel. McKittrick v. Globe-Democrat Publishing Co., 110 S.W. 2d 705, 713 (Mo. 1937) cited by Florida Attorney General Opinion 76-131.

In 2013, the slot machine statute was amended to include a presumption that a machine which displayed images of a game of chance was a slot machine. Subsection (3), 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.” As a result, there would be a rebuttable presumption that the machine is a slot machine. This presumption, however, can be overcome by demonstrating that it is not a slot machine since it does not have the element of chance or skill level as required by the law.

The definition of a slot machine in Chapter 551, Fla.Stat., is also incorporated by reference in § 849.16. That definition is very similar:

“Slot machine” means any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash...

§ 551.102 (8), Fla. Stat. (emphasis added). Like § 849.16, Fla.Stat., this definition requires one of three (3) elements to make a video game a slot machine:

- (1) skill; or
- (2) chance; or

(3) both.

In 2018, the Florida First District Court of Appeal decided Gator Coin II v. Florida DBPR, 254 So. 2d 1113 (Fla. 1st DCA 2018). The computer games at issue in Gator Coin II were similar but clearly distinguishable from the NCOS System software. In Gator Coin II, the court considered whether Blue Sky Games Version 67 violated Florida gambling laws. The issue, as framed by the First District, was whether Version 67 involved “skill or any element of chance or any other outcome unpredictable by the user.”

As described above, the NCOS System does not involve skill or any element of chance. Further, there is not outcome unpredictable by the user. The user is able to predict, at any time before engaging in game play, the result with one hundred percent accuracy.

Gator Coin II also found that Version 67 at issue was a slot machine because of its limitation to preview only the first game result, not at all subsequent game results. It held:

Version 67 is a slot machine for the additional and independent reason that also inherent in it is an outcome unpredictable by the user. While it is true that the user is advised of the outcome of the game at hand ahead of time through the preview feature, the user cannot predict that outcome until it is randomly generated and then displayed by the machine. Nor can the user predict the outcome of Game 2 while playing Game 1.

The NCOS System, on the other hand, is not limited in this manner. The user can always predict the outcome ahead of time through the preview feature not only of the game at hand but also for other games before engaging in game play. Further, the user can always know the outcome an almost infinite number of game results before playing a single game. Gator Coin II did not establish that preview games are unlawful, only that the game under consideration, which had a random number generator, a preset win/loss ratio, and only a single game preview, was unlawful. None of those features are present in the NCOS System.

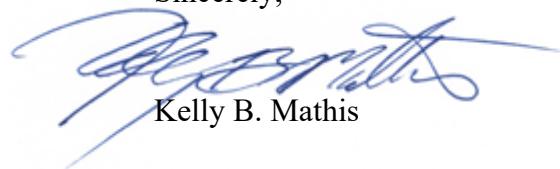
Since the NCOS System does not involve skill it is not limited to merchandise prizes as set forth in § 546.10, Fla.Stat. There would be no legal prohibition to offering cash prizes for participation. Many prize enterprises from game shows to sweepstakes offer cash prizes to its participants and there is no law which would preclude NCOS System participants from winning cash prizes.

Based on my review and interpretation of the cited statutes and applicable Florida law, it is my opinion that the NCOS System described herein does not violate Florida’s gambling laws and does not convert the computers used for the games into slot machines.

Please note, however, that all laws, including the laws applicable to this opinion letter, are subject to interpretation by a court of law. A judge, law enforcement officer, or a prosecutor may adopt a contrary position to the opinions expressed herein. Moreover, laws are subject to change by action of the Florida legislature. In the past ten (10) years there have been many changes and proposed changes to the laws relating to gambling, including proposed laws relating to games that provide a preview or pre-reveal function, and the possibility always exists that the laws may change.

Please feel free to contact me if I can provide any further information or assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelly B. Mathis".

Kelly B. Mathis