

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

e an Cri ante , an individual, and P P)	
C C , A Florida Limited Liability)	
Company,)	
)	
Plaintiffs,)	Civil Action No:
)	
)	
v.)	
)	
im Coat , individually and in his Official)	
Capacity as Sheriff of Pinellas County,)	
Florida, a on a ret , an individual, and)	
Paul iovannoni , an individual,)	
)	
Defendants.)	

V R I C O P I N T O R C R T O R I N U N C T I V
N O T R R I N N O R U R T R I

Plaintiffs, Megan Crisante, individually (“Crisante”), and PMP CAFÉ LLC, a Florida limited liability company d/b/a Palm Harbor Internet (“Palm Harbor Internet”) sue Defendants Jim Coats, individually and in his official capacity as Sheriff of Pinellas County, Florida, Jason Bahret, individually, and Paul J. Giovannoni, individually, pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983, seeking a judgment declaring the Defendants’ actions, as more fully described below, to be unconstitutional under the First, Fourth, and Fourteenth Amendments to the United States Constitution and for damages. Plaintiffs further ask the Court to permanently enjoin the Defendants’ enforcement actions and to grant supplemental relief as permitted by law, including the laws of the State of Florida.

uri diction

1. This action arises under the Constitution of the United States, Article 1, Section 8, Clause 3; and the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States as made applicable to the states by the Fourteenth Amendment to the Constitution of the United States, Section 1.

2. This suit is brought pursuant to 42 U.S.C. § 1983, which states

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

3. This Court has “Federal Question” jurisdiction pursuant to 28 U.S.C. § 1331 to hear cases arising under the Constitution of the United States, under 28 U.S.C. § 1343(3) to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution, and under 28 U.S.C. § 1343(4) to recover damages and secure other relief for the invasion of civil rights.

4. The Court has the authority to issue declaratory judgments and grant further relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Fed.R.Civ.P. 65.

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

6. This Complaint seeks declaratory and injunctive relief to prevent violations of Plaintiffs’ rights, privileges, and immunities under the Constitution of the United States and Title 42 U.S.C. §§ 1983 and 1988, specifically seeking redress for the deprivation under color of state statute, ordinance, regulation, custom or usage of rights,

privileges, and immunities secured by the Constitution and laws of the United States. The rights sought to be protected in this cause of action arise and are secured under the First, Fourth, and Fourteenth Amendments to the Constitution.

7. This Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

Venue

8. Venue is proper in the Middle District of Florida, Tampa Division, since the enforcement actions were taken in Pinellas County, Florida, which is within the district and geographical area assigned to the Tampa Division.

CTU TION

efendant

9. Defendant Jim Coats, in his official capacity as Sheriff of Pinellas County, Florida (“Sheriff”) is an independent constitutional officer with jurisdiction in Pinellas County and is authorized to enforce state and local laws therein. The Sheriff is the final policy maker of his office with respect to law enforcement actions and decision-making within Pinellas County. The Sheriff has the actual supervision, control, authority, and responsibility over enforcement of the laws of the State of Florida. The Sheriff also has authority over whether and when: to initiate or pursue criminal investigations of Plaintiffs, to search Plaintiffs’ property, and to effectuate custodial arrests of Plaintiffs.

10. Defendant Jim Coats, individually (“Coats”), is a sui juris individual employee of the Pinellas County Sheriff’s Office. Coats is employed as “sheriff” – the head of the agency.

11. Defendant Jason Bahret (“Bahret”) is a sui juris individual detective employed by the Pinellas County Sheriff’s Office. Bahret was an investigating officer and Search Warrant co-affiant in the instant case. Bahret also personally investigated and was the search warrant affiant for Mike’s Internet Café, case no. CRC0811627CFANO (*see, infra*).

12. Defendant Paul J. Giovannoni (“Giovannoni”) is a sui juris individual detective employed by the Pinellas County Sheriff’s Office. Giovannoni was an investigating officer and Search Warrant co-affiant in the instant case. Giovannoni also personally investigated Mike’s Internet Café, case no. CRC0811627CFANO (*see, infra*).

13. Unless otherwise specified, all of the acts taken by the Defendants, described herein, constituted the officially-adopted custom and policy of the Sheriff, and/or were approved and ratified by the final policy maker of the Sheriff. Unless otherwise specified, all actions taken by the Sheriff and described herein are intended to include his agents, employees, officials, and deputies.

Plaintiff

14. Crisante is a sui juris individual resident of the State of Florida, a United States citizen, and the Managing Member of Palm Harbor Internet. Crisante has supervisory authority over PMP’s employees and operations by virtue of her position.

15. Palm Harbor Internet is an active, limited liability corporation registered and doing business in the State of Florida. Palm Harbor Internet operated its business at 38541 U.S. Hwy 19 North, Palm Harbor, FL 34684. Palm Harbor Internet maintained all required licenses to operate within Pinellas County.

Other Relevant Title

16. Phone-Sweeps, LLC (“Phone-Sweeps”) is a Florida limited liability company whose principal address is 230 Osprey Lane, Flagler, Florida 32138. It developed the software utilized by Crisante and Palm Harbor Internet to reveal sweepstakes results. Phone-Sweeps provides software applications to over eighty (80) internet café operators in Florida engaged in game promotions pursuant to Chapter 849.094, Fla. Stat. (2010), including Crisante and Palm Harbor Internet. To reveal the results of the sweepstakes, Phone-Sweeps’ software uses video games that display images traditionally associated with casinos and gambling.

The Controversy

17. Defendants have engaged in a campaign to eliminate, and have eliminated, Plaintiffs’ First Amendment rights to engage in marketing promotions that use video games displaying casino and gambling images because of the content of the images. Defendants have taken the position that Plaintiffs’ activity is unlawful gambling merely because the video games depict simulations of gambling. To effect their goal, Defendants have closed Palm Harbor Internet by fabricating and threatening unsubstantiated and unprovable gambling allegations against Plaintiffs. By doing so, Defendants have eliminated Plaintiffs’ ability to currently – and in the future – provide internet services to customers, conduct marketing promotions, and provide entertaining video games to their customers.

Palm Harbor Internet

18. Palm Harbor Internet sells prepaid long distance telephone cards, prepaid cellular phones, cellular accessories, internet access time, and also provides printing,

faxing, and copying services.¹ Palm Harbor Internet also provides non-alcoholic beverages and snacks to its customers. Computers are located on premises for internet access, email, and other typical PC functions. The computers offer a direct print option to Palm Harbor Internet's central printer.

19. Palm Harbor Internet's computers are common desktop personal computers, including brands such as Hewlett Packard, which may be found in most businesses, schools, and residences. All of the computers use a Microsoft Windows operating system that provides customers with full access to Microsoft Office, including programs such as Excel and Word.

20. Palm Harbor Internet sells long distance telephone time (i.e., phone cards) at a very competitive rate of \$0.03 per minute. Additionally, the phone cards sold do not impose service charges typical of almost every other carrier, and calls are rounded up to the nearest 1-minute, unlike competing carriers that round up to 3-minutes or 5-minutes.

21. The phone cards are fully rechargeable. The recharge may be accomplished in one of three ways: at the point of sale computer in a transaction conducted by the employee, at any of the computers on premises in a purchase transaction conducted by the customer, and by calling the toll-free number on the back of the phone card in a transaction conducted over the telephone with a Tel-Connect representative.

22. Just like any other retail transaction, when a customer purchases a phone card or phone time (or any of the other cellular phones or accessories) at the point of sale, the customer provides money to the cashier in exchange for the product. The cashier then

¹ Printing and copying cost \$0.08 per page; faxing costs \$1.00 per page; internet access costs \$12.50 per hour; prices for cellular phones and accessories vary.

deposits the money into a cash register. The cash register is wholly disconnected from the store's computer network, including the point of sale computer; its only electronic or physical connection to anything is an electrical cord plugged into an outlet to provide electrical power to the register.

23. If the customer purchases phone time, the cashier uses the point of sale computer to manually input the data regarding the amount of phone time purchased. At no time is any money, coin, or other object inserted into the store's point of sale computer or other computers to initiate or complete a transaction.

24. Palm Harbor Internet's computers do not monitor, regulate, or restrict the websites accessed by its customers in any way, except for the voluntary filtering of pornography. Likewise, Palm Harbor Internet does not direct its customers to any particular websites. Customers can and do access any and all URLs (uniform resource locator) available over the internet. Palm Harbor Internet's customers may use the computers to "surf" the internet as they choose in their sole discretion.

25. Palm Harbor Internet's computers are available to customers purchasing phone time or internet time or receiving sweepstakes entries (with or without purchase). In any case, patrons wishing to use the computers log on by typing into the computer's keyboard a personal identification number ("PIN") that is provided by Palm Harbor Internet. After logging on, customers may connect to the internet and begin using the internet access time purchased.

26. The customer computer terminals function through a connection to the server. Customers' phone cards themselves have no value and only serve as identification for the customer. None of the computers in Palm Harbor Internet operate

by means of the insertion of money, coin, or other object. Additionally, the computers, including the point of sale computer, do not dispense cash or anything of value; any sweepstakes prizes won are collected at the front desk.

27. Customers at Palm Harbor Internet can use the computers on premises to access any of the myriad websites on the internet that offer sweepstakes, promotions, and other contests, some of which simulate casino games (see, e.g., www.pchgames.com/casino-games) and may entitle the customer to a prize, including cash. Likewise, customers may use the computers to participate in Palm Harbor Internet's sweepstakes.

T e P o n e e e p e e p t a e

28. To stimulate interest in its consumer products and services, and promote sales thereof, Palm Harbor Internet conducts a game promotion² (commonly called a sweepstakes, and referred to herein either as "game promotion" or "sweepstakes") whereby customers receive free sweepstakes entries that allow them the chance to win prizes. The sweepstakes entries are distributed in connection with the sale of Palm Harbor Internet's phone cards. All customers, regardless of the product purchased and regardless of whether they purchase anything at all, can obtain entries into the sweepstakes on request and without purchase. Palm Harbor Internet sells telephone calling card time at competitive market rate and provides the sweepstakes entries free of charge. Once a customer receives an entry, he or she can use the computers on premises to reveal the results of the entry.

² Fla. Stat. § 849.094 is Florida's Game Promotion, or sweepstakes, statute and is more fully described below.

29. Pursuant to Fla. Stat. § 849.094(4), the sweepstakes is bonded, and a copy of the bond has been furnished to the Florida Department of Agriculture, the agency regulating sweepstakes in Florida. Palm Harbor Internet's sweepstakes otherwise complies with each and every requirement in Fla. Stat. § 849.094.

30. Customers purchasing a phone card receive a proportionate number of entries into Palm Harbor Internet's free promotional sweepstakes. Customers may also obtain sweepstakes entries with no purchase necessary either by mailing a request to the sweepstakes sponsor, Phone-Sweeps, or by making a request in person at Palm Harbor Internet.

31. Palm Harbor Internet's sweepstakes is a marketing tool to promote the sale of its telephone calling card time. Similar to the McDonald's Monopoly[®] game where each additional order of French fries provides additional game pieces or the Suncoast Schools Federal Credit Union "In It to Win It"³ sweepstakes where each credit card purchase transaction provides an additional entry, the more telephone minutes purchased, the more sweepstakes entries provided.

32. All of Palm Harbor Internet's sweepstakes entries are drawn from a set, or finite, pool of entries containing a precise number of winners, non-winners, first prizes, second prizes, etc. In other words, the pool of entries is pre-defined. All entries distributed without purchase are drawn from the same finite pool of entries – and thus have the same chances of winning a prize – as those entries distributed in connection with the purchase of phone time.

³*Available at* <http://www.suncoastfcu.org/BorrowingCredit/CreditCards/InIttoWinIt/tabid/535/language/en-US/Default.aspx> (last visited Aug. 17, 2011).

33. When a customer receives a sweepstakes entry, Palm Harbor Internet's central computer (i.e., "server") electronically draws the entry from the finite pool of available electronic entries, which is contained on the on-premises server. The pool is created at the inception of the sweepstakes period and once an entry is drawn it is permanently removed from the pool and is no longer available to subsequent participants. All of the entries are drawn in this manner until the pool is exhausted.

34. The manner of entry distribution from the finite pool remains the same regardless of how ("quick reveal" or "game display" – described below) the customer reveals his or her results. Accordingly, how the entries are revealed plays no role in the results achieved.

35. Customers may learn if they have won the sweepstakes by requesting the cashier to reveal the results via alphanumeric text, without fanfare, on the point of sale computer. The cashier can read the results on the screen and inform the customer whether he or she has won. This method of showing the results is commonly called "quick reveal," because it can be done quickly for customers electing to participate in the sweepstakes but not wishing to remain on the premises after their purchase.

36. Alternatively, customers may use the computers on site to access the results of the sweepstakes. Customers who use the computers to access their results ordinarily do so because the computers display the results in connection with an entertaining video game. This method of showing the results is commonly called "game display," and it is the images used by the game display to communicate the results of the sweepstakes that has caused Defendants to pursue their unreasonable course of action.

37. The “game display” uses video games to animate raw computer data and inform the customer whether a sweepstakes entry contains a winning value. The video games use alphanumeric text, graphic icons, and animations, some of which include simulations of casino games, to convey the information. In addition, the video games use interactive artwork, storylines, symbols, sounds, and text to create the emotions of excitement and suspense within the customer while also communicating the results of the entry. The video games or images do not affect the results of the sweepstakes. Likewise, the customers may interact with the games but cannot affect the results of the entries.

38. These video games are protected First Amendment speech Palm Harbor Internet uses these games in aid of its phone card marketing, which is also a form of speech protected by the First Amendment. It is irrelevant whether Plaintiffs’ speech results from an economic motive. So too does a great deal of vital expression. Consequently, Defendants’ actions are subject to heightened judicial scrutiny – a standard which the Defendants cannot satisfy.

39. The operation of the customer computer terminal does not entitle the user to receive anything of value nor does the computer dispense anything of value. The use of the computer terminal itself is irrelevant in that its use is not necessary for customers to discover their sweepstakes results or to collect any prize. Customers may learn from the cashier at the point of sale whether they have won.

40. Use of the computer terminals to reveal sweepstakes entries is free. Customers do not expend their telephone time or internet access time to reveal results.

41. Palm Harbor Internet's video games – as well as all of the internet communications occurring at Palm Harbor Internet – are communications protected by the Free Speech Clause of the First Amendment. Even if Palm Harbor Internet's sweepstakes communications were considered merely commercial speech, they nonetheless enjoy significant First Amendment protection.⁴

Preliminary Legal Concept Regarding Sweepstakes in Florida

42. Sweepstakes are legal in Florida, even when the results are revealed via computer. A sweepstakes, statutorily referred to as a “game promotion,” means,

but is not limited to, 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 and prize are present.

Fla. Stat. § 849.094(a)(1) (2011).

43. Sweepstakes are specifically authorized so long as they do not “require an entry fee, payment, or proof of purchase as a condition of entering[.]” Fla. Stat. § 849.094(2)(e). Sweepstakes are permitted in Florida because there is no consideration provided by the entrant for the chance to win.

44. Sweepstakes operate by the distribution of a number of entries, one or more of which may be a winner. Historically, the entries were paper tickets containing numbers and/or letters, pull tabs, or other tangible media. The advent of the computer has digitized much of this tangible media. Like movies that are now streamed instantly on the internet as opposed to being checked out on VHS, sweepstakes entries likewise are often revealed in electronic format. Frequently, no paper ticket or pull tab exists.

⁴ See, e.g., Sorrell v. IMS Health Inc., 564 U.S. ____ *1 (2011) (stating, “Speech in aid of ... marketing ... is a form of expression protected by the Free Speech Clause of the First Amendment.”).

Entrants receive a code (often on a receipt or under a bottle cap) to enter on a computer to reveal their results.

45. Florida law prohibits the possession or use of slot machines,⁵ but it does not prohibit the use of ordinary desktop computers to reveal or verify the results of a sweepstakes entry. A slot machine is defined under Florida law as

(1) Any machine or device is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, **a a result of t e in ertion of any piece of money coin or ot er o ject**, such machine or device is caused to operate or may be operated and if the user, by reason of any **element of c ance** or of any other outcome of such operation unpredictable by him or her, may:

(a) Receive or become entitled to **receive any piece of money credit allo ance or t in 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 it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

Fla. Stat. § 849.16 (2011) (emphasis added).

46. In essence, a slot machine is a fully automated device in which all three elements of gambling are present in the machine. Gambling consists of: (1) consideration paid (2) for a chance (3) to win a prize. In addition, the consideration must be furnished by the physical “insertion” into the device of “money, coin, or other object,” and the machine must operate “as a result of” that insertion.

⁵ The prohibition contains some exceptions not relevant here. See, Fla. Stat. § 551 et. seq. (pari-mutuels); Fla. Stat. § 285.710 (Seminole Tribe).

**History of Repeated Harassment against Plaintiff Phone Sweep
Retailer by Florida Law Enforcement**

47. There is a clear pattern of harassment against Phone-Sweeps retailers by State and local law enforcement resulting in arrests and seizure of property. There is also a clear history of law enforcement subsequently dismissing or losing their cases. Although initial arrests and prosecutions may have arisen out of law enforcement's honest, yet mistaken, interpretation of the circumstances continued and repeated arrests, seizures, and prosecution demonstrate blatant harassment.

48. Any good faith mistaken belief of the illegality of Plaintiffs' actions have been dispelled by over two years of litigation. Any additional arrests and prosecution can only be seen as baseless. In just over two years the State of Florida filed **nineteen (19) criminal prosecution** against Phone-Sweeps retailers. Of those nineteen (19) prosecutions, two were lost in jury trial by the prosecution and every other case was dismissed. In fact, the Phone-Sweeps retailers prosecuted in Marion County have reopened their businesses.

49. In addition, the Sheriff and the Marion County Sheriff's Office together have filed **five (5) civil forfeiture** in just over two years against the property (i.e., computers and cash) used by these businesses. Of those five forfeiture actions, all of them were voluntarily dismissed, and in four of them, the computers returned to their rightful owners. The civil and criminal cases are described in detail below.

50. The first of the nineteen (19) criminal cases involved a location in Pinellas County called Mike's Internet Café. On and before May 28, 2008, Mike's Internet Café, LLC ("Mike's Internet") operated a retail store located at 10251 Seminole Blvd., Pinellas County, Florida. Mike's Internet sold prepaid long distance phone cards, internet access,

and printing, faxing, and copying services. Steven George Duke (“Duke”) managed Mike’s Internet.

51. To provide for the promotion and marketing of its products, Mike’s Internet conducted a game promotion pursuant to § 849.094, Florida Statutes. Mike’s Internet used the Phone-Sweeps sweepstakes to conduct its promotion.

52. On May 28, 2008, the Sheriff served a search warrant at Mike’s Internet, and seized, among other things, its computers and arrested Duke under the mistaken belief that Mike’s Internet’s Phone-Sweeps sweepstakes violated Florida’s gambling laws. On June 23, 2008, the State of Florida (“State”), by and through Defendant McCabe, operating under the same mistaken belief that the Phone-Sweeps sweepstakes violated Florida’s gambling laws, subsequently charged Duke with Possession of a Coin Operated Device (Fla. Stat. § 849.16) and Maintaining a Gambling Establishment (Fla. Stat. § 849.01). (Case No. CRC0811627CFANO).

53. On July 11, 2008, the Sheriff filed a civil complaint in Pinellas County Circuit Court that sought to forfeit the computers, equipment, and cash seized from Mike’s Internet. (Case No. 08-009441-CI). On March 2, 2009, after several months of litigation and discovery, the Sheriff voluntarily dismissed its forfeiture complaint.

54. On December 1, 2009, the State Attorney, after diverting Duke’s case to a pretrial intervention program, dismissed its case against Duke.

55. On and before June 25, 2009, Cyber Zone E Café, LLC (“Cyber Zone”) operated a retail store located at 6837 SE Maricamp Road, Ocala, Marion County, Florida, selling pre-paid long distance phone cards, internet access, printing, faxing, and

copying services. Jeffrey M. Reed (“Reed”) was the managing member of Cyber Zone and the general manager of the Cyber Zone retail store on Maricamp Road.

56. To provide for the promotion and marketing of its products, Cyber Zone conducted a game promotion pursuant to § 849.094, Florida Statutes. Cyber Zone used the Phone-Sweeps sweepstakes to conduct its promotion.

57. On June 25, 2009, State Attorney Brad King, Marion County Sheriff Ed Dean, and Ocala Police Chief Samuel Williams, acting in concert through their agents and employees, arrested Reed and other employees of Cyber Zone and seized all of Cyber Zone’s assets and equipment in the mistaken belief that the Phone-Sweeps sweepstakes violated Florida’s gambling laws.

58. Reed was charged with keeping a gambling house in violation of Florida Statutes §§ 849.01, 849.02; possession of a coin operated device (Fla. Stat. §§ 849.15, 849.16); and conducting an illegal lottery (Fla. Stat. § 849.09). (Case No. 2009CF2599). Reed’s employees were likewise charged with gambling-related offenses including Agent of a Keeper of a Gambling House and Possession of a Coin Operated Device.

59. A criminal jury trial commenced on December 7, 2009 on the above charges against Reed. The State claimed that the Cyber Zone computers constituted slot machines and that the use of the computers to reveal sweepstakes results was gambling. On December 9, 2009, the Honorable Hale Stancil, based on the lack of even a prima facie case of a violation of Florida’s gambling laws based on the evidence presented, granted Reed’s Motion for Judgment of Acquittal and dismissed the case after the State rested.

60. Shortly thereafter, Reed and Cyber Zone recommenced operation in a manner materially identical to that which was conducted prior to June 25, 2009. Cyber Zone again sold pre-paid long distance phone cards, internet access, printing, faxing, and copying services which were promoted through the use of the Phone-Sweeps sweepstakes and pursuant to § 849.094, Florida Statutes.

61. On April 14, 2010, King, Dean, and Williams again seized all of the assets and equipment at the Cyber Zone store and arrested Reed on the same gambling-related offenses for which Judge Stancil granted his judgment of acquittal. In addition to arresting Reed, King, Dean, and Williams arrested Cyber Zone store manager John Robert Andrews, Jr. and charged him with the same gambling-related offenses.

62. Also on April 14, 2010, the King, Dean, Williams, and their agents arrested Jeaneen Crisante for the same alleged gambling-related offenses with which they charged Reed. Jeaneen Crisante operated a store materially identical to Reed's.

63. Jeaneen Crisante's store, Marion Internet Services Inc., operated at 16670 South Hwy 441, Ste. 103, 104, Summerfield, Marion County, Florida 34491. The managing member of Plaintiff Palm Harbor Internet, Megan Crisante, is a former managing member of Marion Internet Services, Inc.

64. Like Cyber Zone and Mike's Internet, Marion Internet Services used the Phone-Sweeps sweepstakes to market its products. In addition to Jeaneen Crisante, King, Dean, and Williams also arrested Tim Crisante and Marion Internet Services store manager Krystal Stoy. Stoy and Tim Crisante were likewise charged with felony gambling offenses relating to the operation of the store.

65. Jeaneen Crisante proceeded to trial on the State's claim that the Phone Sweeps sweepstakes constituted gambling and that the computers became illegal slot machines because they were used to reveal sweepstakes entries. On October 18, 2010, after five days of trial, the jury rejected the State's claim that the Phone-Sweeps sweepstakes was gambling and that a computer used to reveal sweepstakes results constituted a slot machine. It returned a verdict of not guilty on all counts (Keeping a Gambling House, Fla. Stat. § 849.01, Possession of a Slot Machine, Fla. Stat. § 849.15). The prosecution dismissed its charge of Conducting an Illegal Lottery (Fla. Stat. § 849.09).

66. After suffering a second acquittal on these charges, the State dismissed all of its other charges in Marion County relating to businesses using the Phone-Sweeps sweepstakes, to wit:

a. On August 12, 2010, the State dismissed its case against Krystal Stoy (Case No. 2010-CF-001543-A-X).

b. On September 7, 2010, the State dismissed its case against Tim Crisante (Case No. 2010-CF-001543-C-X).

c. On December 10, 2010, the State dismissed its case against John Robert Andrews, Jr. (Case No. 2010-CF-001503-A-Y).

d. On December 10, 2010, the State dismissed its second case against Jeffrey M. Reed (Case No. 2010-CF-001505-A-Y).

The State dismissed the criminal charges against the owner and employees of Internet Express Café, LLC,⁶ located at 8810 SW Hwy 200, Unit 121, Ocala, FL. (Case Nos.: 09CF3930, 09CF3927, 09CF3960, 09CF3964).

67. Also arising out of the first Cyber Zone case, law enforcement arrested, and the State criminally charged and subsequently dismissed the charges against all of the following Cyber Zone personnel:

- i. Dorine Alexander (Case No. 09CF2709);
- ii. Kerri Barker (Case No. 09CF2672);
- iii. Casey Smith (Case No. 09CF2726);
- iv. Lacey Desouza (Case No. 09CF2727);
- v. Vanessa Ellis (Case No. 09CF2675);
- vi. Alyssa Ellis (Case No. 09CF2710);
- vii. Brian Casey (Case No. 09CF2604); and
- viii. Lisa Smith (Case No. 09CF2680).

68. Likewise, the Marion County Sheriff's Office, after discovery had been completed, voluntarily dismissed with prejudice all four of its forfeiture cases pending against the Marion County businesses employing the Phone-Sweeps sweepstakes. (Case Nos.: 2009-CA-6055-G, 2010-CA-2342-B, 2009-CA-4574-B, and 2010-CA-2524-G). Thereafter, the Marion County Sheriff's Office returned all of the computers and related equipment seized from the stores.

⁶ Internet Express Café, LLC likewise used the Phone-Sweeps sweepstakes to promote the sale of its phone cards. The State brought criminal gambling charges against the Internet Express owner and employees for their use of the Phone-Sweeps sweepstakes.

69. Marion County is not the only jurisdiction that recognizes the computers at issue simply do not constitute slot machines, the mere possession of which would be illegal under Fla. Stat. § 849.15. Law enforcement in the following judicial circuits have also seized computers under materially identical circumstances and either returned them to the owner or refurbished them for use in other settings: First Judicial Circuit (Case No. 2008CF002537); Thirteenth Judicial Circuit (Case No. unknown); Seventeenth Judicial Circuit (Case No. CACE 10015953); Eighteenth Judicial Circuit (Case No. 05-2010-CA-013750).

70. If prosecution ensues in the instant case, there is no reasonable likelihood of the Defendants' obtaining a valid conviction. The facts and the law applicable to the instant case, as demonstrated above and as more fully described below, simply will not support a conviction for any gambling-related offenses.

71. All of the Phone-Sweeps retailers mentioned above: Marion Internet Services, Cyber Zone (both cases), Mike's Internet, and Internet Express, all used the same computer software and materially identical computers (different in brand name only) as Palm Harbor Internet to reveal the results of the Phone-Sweeps sweepstakes. There is nothing new or different about Palm Harbor Internet that factually or legally distinguishes it in any material manner from Marion Internet Services, Cyber Zone, or any of the other Phone-Sweeps cases. Yet, Phone-Sweeps, Palm Harbor Internet, Crisante, and others similarly situated endure repeated prosecution or threats of prosecution for engaging in their protected First Amendment activities, including the provision of interactive computer communications and video games.

72. At the time they investigated Plaintiffs and served their Search Warrant at Palm Harbor Internet, Defendants had actual knowledge of most, if not all, of the above information related to the history of law enforcement action taken against Phone-Sweeps retailers.

73. The Defendants' threat to Plaintiffs' federally protected rights is not one that can be eliminated or remedied by Plaintiffs' successful defense against a single prosecution. As history shows, retailers using the Phone-Sweeps sweepstakes have mounted numerous successful civil and criminal defenses, yet they still face the threat of Defendants' unconstitutional enforcement of Florida's gambling laws. The Defendants' latest enforcement action against Plaintiffs is but one of a series of repeated prosecutions to which retailers using the Phone-Sweeps sweepstakes have been and will be subjected. Defendants will repeat their enforcement actions even if Plaintiffs successfully defend any civil or criminal actions arising out of Palm Harbor Internet's use of the Phone Sweeps sweepstakes.

T e r r i f f e n f o r c e m e n t P o l i c y a n d E f f o r t

74. Despite clear precedent on this issue and despite his own repeated admissions that the law is either unclear or does not address the issue at all, the Sheriff has adopted and approved a custom and policy within his office specifically targeting Palm Harbor Internet's business model. The Sheriff's enforcement campaign has included public appearances in the media, issuing demand letters to businesses, and conducting searches and seizures.

75. Days before serving the search warrant at Palm Harbor Internet, The Sheriff made a media appearance on the television network CNN and spoke out against

the business model.⁷ In this interview, the Sheriff, apparently aware that the gambling laws in Florida do not prohibit the use of a computer to reveal the results of sweepstakes entries, stated, “The law has not kept up with the technology....”

76. The Sheriff has repeatedly indicated that either he is unclear on this area of the law or that the law itself is unclear. In a May 6, 2011, New York Times article,⁸ The Sheriff stated, “I just want clarity.... The Legislature ought to make the law clear.... We need regulation.”

77. In Florida sweepstakes are regulated by the Florida Department of Agriculture and Consumer Services.⁹ The Florida Agriculture Commissioner has likewise cautioned that the application of gambling laws to electronic sweepstakes is not clear. In May 2011, Commissioner Adam Putnam stated¹⁰ regarding Florida’s Gambling and Game Promotion statutes’ interpretation,

Clarification is needed. There is no question in my mind that there is an ambiguity in the law itself, which is leading to uneven enforcement, and that’s unhealthy regardless of who the impact parties are. You can’t have a rule of law that is subject to an individual sheriff or state attorney’s interpretation. So even the internet cafes would say that there is an ambiguity. And so the short answer is, yes, it needs to be clarified.

⁷ Available at http://money.cnn.com/video/news/2011/07/05/n_Casinos_Inc_at_Mall.cnnmoney/ (last visited July 20, 2011).

⁸ Available at <http://www.nytimes.com/2011/05/07/us/07sweepstakes.html?pagewanted=all> (last visited Aug. 2, 2011)

⁹ See, Fla. Stat. § 849.094(3)-(6), (8), (9)(b).

¹⁰ Available at <http://www.tampabay.com/blogs/the-buzz-florida-politics/content/ag-commissioner-adam-putnam-wants-legislature-clarify-legality-internet-cafes> and <http://www.youtube.com/watch?v=kDU3t74y2h4> (last visited Aug. 22, 2011).

78. In a July 22, 2011, St. Petersburg Times article,¹¹ the Sheriff, in what can only be interpreted as an acknowledgement of the obvious: that the law does not prohibit the use of computers to reveal the results of a sweepstakes, stated, “There needs to be some clarification from the Legislature on the use of these machines and the technology...and the laws need to catch up with this technology.” Evidently, the Sheriff has taken the position that the law does not prohibit the activity but he believes it should. Based on this belief of what he thinks the law should be, the Sheriff chose to seize all of the computers and assets of Palm Harbor Internet and pursue prosecution for gambling. Thus, despite his acknowledgement that the activity is not currently illegal he has taken action to deprive Plaintiffs of their property and liberty. This is an untenable position for a constitutional officer to assume, especially when due process requires criminal statutes to be construed narrowly and in favor of the accused.¹²

79. Nonetheless, on July 14, 2011, the Defendants eradicated Palm Harbor Internet’s constitutionally protected First Amendment activity solely because of the images Palm Harbor Internet portrayed on its computers. The Defendants seized PMP’s, Crisante’s, and other’s property, including over eighty (80) computers and United States currency. The Defendants have not filed a forfeiture action or any other case seeking to adjudicate the issues raised by the seizure, yet the Defendants retain the property.

¹¹ Available at <http://www.tampabay.com/news/publicsafety/attorney-generals-opinion-may-boost-bid-to-prosecute-pinellas-pasco/1182037> (last visited Aug. 2, 2011).

¹² See, Fla. Stat. § 775.021(1), stating, “The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.”

80. Even after the seizure, the Sheriff maintained that the law is unclear. On August 8, 2011, the Sheriff stated, “We’re working with a state issue that’s not exactly black and white. There’s a lot of gray.”¹³

T e f f i d a v i t a l e t a t e m e n t

81. The Sheriff, intentionally, or with reckless disregard for the truth, made material misrepresentations of fact in the Search Warrant Affidavit that, if removed from the Affidavit, would cause the warrant not to issue. The false statements in the Affidavit are not honest mistaken beliefs but deliberate misstatements of clearly discernable facts which were intentionally calculated to mislead the court in order to obtain issuance of a warrant. The factual misrepresentations include:

- a. “said business ... offers a sole product for sale...”
- b. “after the free [sweepstakes] points are used additional points can be purchased.”
- c. “‘sweepstakes points’ can be purchased on the device with the winnings...”
- d. “the product being offered...is not in the forefront of the business...”
- e. “While there is some indication within the business of the consumer product offered it is over whelmed [sic] by the advertisement within the business to play sweepstakes and win cash.”
- f. “The employee did not attempt to sell your Affiants a phone card....”
- g. “Your Affiants also found that they could purchase additional chances to play the device....”

¹³ Available at <http://www.abcactionnews.com/dpp/news/state/senator%3A-sweepstakes-caf%C3%A9-law-unclear> (last visited Aug. 8, 2011).

h. “they [the games] all allowed the wagering of funds.”

i. “There was little or no indication in the business of the consumer service offered.”

j. “By entering the PIN, the user’s account is accessed via the network and the electronic funds are available...to be wagered.”

82. Contrary to these allegations, Palm Harbor Internet offered numerous products other than long distance calling cards. These products and services included printing, faxing, copying, prepaid cellular phones, cellular phone accessories, and internet access. Any allegation that these offerings were not “front and center” of the store is likewise false. The obvious and prominent nature of the products and services offered is clear in the photographs of the interior and exterior of Palm Harbor Internet as it was during the Sheriff’s investigation. Attached hereto as Exhibit “A”, the photographs speak for themselves. Further, advertisement of the Phone-Sweeps sweepstakes was not a feature within the business, but even if it were, such advertisement is entirely lawful and protected First Amendment speech.

83. Bahret’s and Giovannoni’s representation that the employee did not attempt to sell them a phone card is likewise false. Not only did the employee try to sell them a phone card, the employee did, in fact, do so. The Bahret’s and Giovannoni’s Affidavit (“Affidavit”) states, “The employee accepted a sum of U.S. Currency...[and] provided your Affiants with a credit card sized plastic card with a “Tel-Connect” logo on the front...”). The “Tel-Connect” card is the phone card, and the Defendants knew they were fully capable of using it to make a telephone call.

84. Most importantly, customers at Palm Harbor Internet cannot purchase sweepstakes entries. The entries are given away only on request without purchase or in connection with the sale of a phone card. Phone-Sweeps' rules, prominently displayed both on the wall of Palm Harbor Internet and on the customer's computer screen where they must be accepted before a customer can participate in the sweepstakes, state, in pertinent part,

Sweepstakes entries are awarded free when purchasing long distance phone time on a PHONE-SWEEPS LLC Phone Card ("Tel-Connect") or by completing a free entry form and submitting it based on the rules of entry.

All purchases of Phone-Sweeps Long Distance Phone Cards will receive sweepstakes entry points in an amount proportionate to the amount of long distance phone time purchased. The sweepstakes points have no value and can only be used to enter the sweepstakes games. Purchased phone time CANNOT be lost, traded, redeemed or exchanged for additional sweepstakes points....

Having investigated retailers using the Phone-Sweeps sweepstakes before (i.e., during the Mike's Internet investigation), the Defendants knew sweepstakes entries could not be purchased.

85. The purchase of "additional chances to play the device" simply was not possible. However, customers could purchase additional phone time which came with additional sweepstakes entries – just like the purchase of an additional McDonald's hamburger provides the customer with an additional Monopoly game piece. Participants in the sweepstakes likewise did not, and could not, wager "funds." Every dollar spent purchased a corresponding amount of phone time, available for use whenever and wherever at the customer's discretion.

86. But for the Defendants' false statements in the Affidavit, the Search Warrant would not have issued. The Defendants did not even have arguable probable cause for the search of Palm Harbor Internet or for the seizure of Palm Harbor Internet's and Crisante's property.

The Affidavit Contains No Factual Conclusion

87. Well aware that Mr. Sertell's theory that a computer used to reveal sweepstakes results makes it a slot machine was rejected by the jury in Jeaneen Crisante's case, Defendants rely on a different "expert," Desmond C. Ladner, to substantiate their knowingly false assertions that Palm Harbor Internet's computers are slot machines.

88. The Defendants hired Ladner to perform a personal, on-site investigation of Palm Harbor Internet. On July 13, 2011, Ladner purchased a phone card and participated in Palm Harbor Internet's sweepstakes – revealing the results of his entries on the customer computers. In concert with the Defendants, Ladner also drafted and provided to Defendants an affidavit attesting to his experience with and conclusions regarding Palm Harbor Internet. Ladner stated in the affidavit, "I am giving this affidavit to be used in support of the Pinellas County Sheriff's Office request for a search warrant in connection with this establishment." Ladner is currently acting in concert with the Defendants to examine some of Palm Harbor Internet's seized computers and intends to testify as an "expert" witness in any civil or criminal actions that may arise in this case.

89. The Defendants based their Affidavit principally on the "expert" affidavit of Desmond C. Ladner. His affidavit was incorporated into the Sheriff's Affidavit. Mr. Ladner may have expertise in electronics, but there are no opinions or information

contained in his affidavit regarding the functioning of the electronic system. Instead, Mr. Ladner, knowingly or with reckless disregard for the truth, made materially false factual and legal statements regarding the requirements for determining that something is gambling under Florida law and whether a certain machine qualifies as a slot machine under Florida law. The Defendants knew Mr. Ladner's statements in this regard were false, but the Defendants nonetheless included the statements in their Affidavit.

90. Ladner's affidavit states the preposterous notion that insertion of cash into a cash register constitutes the "insertion of any piece of money, coin, or other object..." as required by § 849.16, Fla. Stat., which defines the requirements for a slot machine under Florida law. This absurd premise leads Ladner to the false conclusion that, "Palm Harbor Internet Services is operating a gambling establishment and the machines or terminals...constitute a '*slot machine*'." (italics in original). These statements are patently false, and Mr. Ladner made them either intentionally or with reckless disregard for the truth. Mr. Ladner either failed to observe the nature of the connection between the cash register and computer system or intentionally disregarded what he observed. In either event, his material false statements caused the Search Warrant to issue when it otherwise would not have.

91. Ladner proposes that Florida's slot machine statute's requirement of physical insertion is satisfied because "upon insertion (consideration) of U.S. Currency into the cash register at the Point of Sale computer...said Prohibited Coin-Operated Device...is caused to be operated...." Ladner's theory is patently false. Under such a theory, the following popular retail stores, through their use of cash registers and

commensurate provision of sweepstakes entries that are revealed on a personal computer, likewise violate Florida's slot machine law:

a. Romano's Macaroni Grill and Lowe's Home Improvement are but two (2) examples of the thousands of companies that utilize, or have utilized, an electronic or computer based sweepstakes. There, a customer hands cash to an employee for the purchase of a plate of Calamari Fritti or perhaps a hammer or broom and the cashier places the cash into the point of sale cash drawer. The customer then receives a receipt, along with their purchased product, containing a serial number that may contain a winning sweepstakes number. The sweepstakes result is only accessible by typing into a computer keyboard the unique serial number contained on the receipt. In order to receive the sweepstakes information, the computer revealing the results invariably connects via an electronic network to the retailers' computers.

b. During McDonald's Monopoly Sweepstakes a customer pays cash to an employee for the purchase of a hamburger. The employee places the cash into a cash drawer at the point of sale. The customer then receives a hamburger with a game piece on the wrapper whose result may be determined by typing into a computer keyboard the unique code provided on the game piece. In order to receive the sweepstakes information, the computer revealing the results invariably connects via an electronic network to the retailer's computers.

Not only is Ladner's allegation that the placement of money into a cash register constitutes "insertion of any piece of money..." under the statute a theory that leads to an absurd result, it is a material false statement and wholly unsupported by the facts and the

law. Ladner has sufficient training and experience¹⁴ in this area of the law to know that his statements are unsupported by the facts and incorrect as a matter of law.

92. Neither Ladner's Affidavit nor the Defendants' Affidavit establishes that Palm Harbor Internet's cash register is in any way connected physically or electronically to the Point of Sale computer or to any other computer in the store.

93. Palm Harbor Internet's cash register, in fact, is not connected to any other device. Fla. Stat. § 849.16 requires "insertion" to occur within the same "device" where chance and prize are present. If the cash register were part of the Defendants' and Ladner's purported computer network slot machine, then certainly the Defendants would have seized it during the service of the Search Warrant. They did not. Rather, the Defendants found it more appropriate to take all of the money – which was not identified as property to be seized – out of the register and leave the register behind.

94. In contrast to Ladner, the Defendants propose that "insertion" occurs when a patron manually types his or her PIN into the keyboard. The Defendants' Affidavit states, "Without the insertion of the PIN, no access was granted to the games and the devices would not operate." It is unclear whether the Defendants consider a PIN to be money, coin, or other object, but common sense dictates that it is none of those. The stroke of a finger on a computer keyboard does not constitute the "insertion" of anything.

95. Obviously at odds, neither Ladner's nor the Defendants' strained interpretation of "insertion" is legally recognizable, and neither establishes probable cause to find that these desktop computers are slot machines. The facts show that

¹⁴ Ladner worked as a Division Director for the Mississippi Gaming Commission from 1995 to 2004. He holds himself out as having expertise in the operation of gaming equipment and currently (since 2004, when he left the Gaming Commission) provides "expert" opinions to government agencies regarding the legality of such equipment.

Ladner's version of insertion does not cause the computer to operate. A PIN is not an object and typing it into a keyboard does not constitute insertion.¹⁵

T e a c t o f t h e A f f i d a v i t t a l i a a f u l g a m e P r o m o t i o n

96. The Affidavit upon which the Defendants relied to obtain a search warrant for Palm Harbor Internet fails to establish probable cause that a crime has been committed. Instead, the material facts establish a business that is fully compliant with the game promotion statute (Fla. Stat. § 849.094). The Affidavit does not show a violation of the lottery (Fla. Stat. § 849.09), gambling (Fla. Stat. §§ 849.01, 849.02, 849.08), or slot machine (Fla. Stat. § 849.16) statutes.

97. The facts of the Affidavit, in contrast to the impermissible legal conclusions, merely establish that Palm Harbor Internet conducted a lawful game promotion authorized by §849.094, Fla. Stat. The Affidavits describe the following scenario:

a. "Each personal computer is comprised of a tower/monitor combination, keyboard, mouse and connecting cables. The personal computers are networked to a server and have access to the internet."

b. "[T]he personal computers had hyper-links to some nationally run sweepstakes such as Allstate Sweepstakes, Holland America Sweepstakes, Rainbow Sweepstakes, Rock Star Energy Drink Sweepstakes and Estee Lauder Sweepstakes."

c. "...there are opportunities for free entries via the mail."

¹⁵ "Insert" means to put or place in; to introduce or cause to be introduced into the body of something. See, <http://dictionary.reference.com/browse/insert> (last visited July 20, 2011).

d. “Upon the tender of payment, consumers invariable [sic] receive a phone card proportional to the amount paid, at a competitive rate....”

e. “The access time on the phone card can only be depleted by using the card for placing calls and is not affected by playing the [sweepstakes].”

f. “The business model also provides free entries to customers....”

98. The facts above establish that Palm Harbor Internet sold a viable commercial product and made sweepstakes entries available with no purchase necessary. This establishes Palm Harbor Internet’s compliance with Florida Statutes § 849.094. Thus, it did not violate the gambling or lottery prohibitions of Ch. 849, and the search of Palm Harbor Internet was not justified.

T e r r i f f e i e d P r o p e r t y s e i z e d w i t h o u t a w a r r a n t a n d w i t h o u t a n e x c e p t i o n t o t h e w a r r a n t R e q u i r e m e n t

99. On July 14, 2011, the Defendants presented their Affidavit to the Honorable Thomas McGrady, Pinellas County Circuit Judge, and prayed for the issuance of a search warrant, which Judge McGrady issued. On the same day, the Defendants served the Search Warrant at Palm Harbor Internet. Defendants Bahret and Giovannoni were physically present during the search and participated in the removal of the property from the premises. No one was arrested.

100. The property seized was secured by an unreasonable and/or warrantless search. The Search Warrant specifically identified the following property to be seized:

slot machines, to include all devices consisting of

- i. video monitor/tower combinations,
- ii. keyboards, mouse and connecting cables,
- iii. all network devices,

- iv. all server devices,
- v. Point of Sale computer,
- vi. all electronic storage devices connected internally or externally to any device,
- vii. Network device or Server,
- viii. any documents evidencing maintenance of a gambling house to include without limitation utility records, bank records, Department of Revenue records, Winners Logs,
- ix. Tel-Connect cards, and
- x. any other gambling paraphernalia.

While the Search Warrant and Affidavit identified the property to be seized as “slot machines,” it is clear that the items seized were standard desktop personal computers. Even Pinellas County Sheriff’s Office Detective J. Shields, who completed the Return and Inventory, identified the items seized as computers, not slot machines. A true and correct copy of the Return and Inventory identifying the items seized is attached hereto as Exhibit “B”.

101. Notably, forty (40) of these computers were in boxes and were not in use. No facts suggest they were ever in use or ever intended to be used. The Defendants’ execution of the Search Warrant exceeded its lawful scope. The Search Warrant did not name, much less describe with particularity, the following items, which were seized by the Defendants:

- a. a safe,
- b. a “sum of U.S. Currency to Be Determined later[,]”

- c. forty (40) computers in boxes,
- d. a fax machine,
- e. a digital video recorder, and
- f. a scanner.

Money, computers, fax machines, scanners, DVRs, and safes are not gambling paraphernalia. Not only were these items not named in the Search Warrant as items to be seized, no probable cause exists in the Affidavit to support a finding that the property would otherwise have been subject to seizure. In fact, the existence of the items was never mentioned in the Affidavit or Search Warrant. The facts known to the Sheriff at the time of the seizure of the items do not even arguably create a reasonable suspicion that this property was associated with criminal activity.

102. The safe, boxed computers, scanner, fax machine, DVR, and U.S. currency were not seized pursuant to any exception to the warrant requirement.

**enforcement against Plaintiff because their acceptance
in playing Casino Image is a Content based Restriction on speech**

103. The Defendants are well aware that sweepstakes are permitted in Florida. The Defendants undertook this enforcement action to prohibit Palm Harbor Internet's method and substance of communication relating to its sweepstakes. The Defendants' enforcement actions have eliminated Plaintiffs' and their customers' ability to engage in constitutionally protected speech on several levels:

- a. Plaintiffs are no longer able to use the computers and video games to communicate with Palm Harbor Internet customers regarding the results of the Phone-Sweeps sweepstakes;

b. Plaintiffs are no longer able to use the computers to provide Palm Harbor Internet customers internet access to all forms of communications, including news, blogs, stories, art, and other forms of constitutionally protected speech;

c. Customers are no longer able to receive Palm Harbor Internet's communications regarding its promotional sweepstakes; and

d. Customers may no longer use Palm Harbor Internet's computers to access online communications, including other businesses' games, sweepstakes, and other promotions as well as news, movies, art, blogs, and television shows.

104. In contrast, the Defendants allow other companies to conduct the exact same marketing activity on paper, verbally, through any other non-electronic means, and even through other electronic means not involving the video games used by Plaintiffs.

105. The Defendants have distinguished Plaintiffs' sweepstakes from other sweepstakes based solely on the manner and content of the communication. For example, in the Affidavit for Search Warrant, the Defendants stated,

Unlike a traditional Promotional Sweepstakes such as the widely known McDonald's Monopoly where a single pull-tab is provided on the purchased box of a Big Mac said PALM HARBOR INTERNET SERVICES 'sweepstakes' is offered electronically on a common Personal Computer (PC) and *has the appearance* of a Las Vegas style slot machine.

(emphasis added). In essence, because Palm Harbor Internet communicates via computer and includes depictions of casino images in those communications, the Defendants have deemed its sweepstakes illegal. In reality, there is no difference between what the Defendants call a "traditional Promotional Sweepstakes" and the Phone-Sweeps sweepstakes other than the manner and content of the communication.

106. The Defendants' enforcement actions disfavor a specific manner of speech. That is, the Defendants have determined that speech which resembles or depicts images similar to those seen in Las Vegas is not allowed. Such an enforcement action impermissibly abridges Plaintiffs' rights to engage in constitutionally protected speech. Heightened scrutiny applies to such a categorical prohibition on the use of certain video games to disseminate information.¹⁶

107. The Defendants have specifically targeted Palm Harbor Internet because some of its computer games display images associated with gambling. This distinction is the sole basis for the Defendants' enforcement action. The Defendants' Affidavit states:

a. "PALM HARBOR INTERNET SERVICES' 'sweepstakes' is offered electronically ... and has the appearance of a Las Vegas style slot machine."

b. "The video games are designed with bright colors, spinning reels and audio 'dings, bells and tones' that replicates screens and sounds found on acknowledged Las Vegas type slot machines."

c. "Each device has an icon that opens the software that runs the Las Vegas style slot games being promoted by said business."

d. "Your Affiants observed that these games had casino themed names such as '7 of Diamonds'."

e. "Prior to gaining access to the Las Vegas style games..."

f. "Your Affiants viewed a menu that offered a selection of several different Las Vegas style slot machine games."

¹⁶ The United States Supreme Court has made it abundantly clear that video games, even ultra-violent ones sold to minors, are speech protected by the First Amendment. Brown v. Entm't Merch. Ass'n, No. 08-1448, 564 U.S. ____ (2011).

g. “The games had a traditional appearance of a Las Vegas style slot machine with virtual reels that contained various icons, payout lines, buttons and display windows....”

h. “Your Affiants found that traditional terms/verbiage was exchanged for terms associated with the ‘sweepstakes’ theme. Your Affiants viewed the Available Betting Funds¹⁷ were titled as ‘Sweepstake Points’ and the Winnings were titled as ‘Win Points’.”

i. “Affiants viewed a Pay Table associated with each game that displayed specific combinations of icons had [sic] specific rates of payout....”

j. “Your Affiants found that by clicking on the ‘Reveal’ (Spin) button, the virtual reels would spin, and after a brief time, the reels would stop. Based on the icons position, as they related to the payout lines, your Affiants either loss [sic] the wagered¹⁸ amount or won the specified payout rate.”

k. “Your Affiants played a variety of game titles ... and found that each game title was similar in appearance and play. Your Affiants found that the theme of the game/icons changed, and some games had more or less reels....”

¹⁷ “Available Betting Funds” is a term coined by the Defendants and is a conclusion, not a fact. Additionally, it mischaracterizes Palm Harbor Internet’s sweepstakes entries as something they are not. The free sweepstakes entries are not cash and cannot be bet or wagered.

¹⁸ The Defendants repeatedly mischaracterize the act of electronically opening a game piece, or “revealing” the result of the sweepstakes entry, as betting or wagering. “Bet” and “wager” have specific legal meaning in Florida and require the risk of money or property. Discovering whether Palm Harbor Internet’s sweepstakes entries contain a winning value costs nothing and allows no economic risk by the customer.

l. “The readers are designed to show sights and sounds that replicate those found on acknowledged Las Vegas type slot machines to heighten the suspense and excitement of play.”

m. “The games offered are designed to closely replicate screens found on acknowledged slot machines in legal jurisdictions such as Las Vegas, NV, Biloxi, MS or Atlantic City, NJ.”

n. “Unlike a slot machine, there is no “fun” or “entertainment” associated with a standard vending machine.”

o. “Each of the video terminals that I played offered the customer several video gambling scenarios that closely replicated those found on acknowledged slot machines.”

The Defendants’ repeated invocation of the similarities between Palm Harbor Internet’s video games and images commonly seen in Las Vegas belies the extent to which the content of the games has become the central feature of the enforcement action.

108. Contrary to the Defendants’ position, the images displayed on the computer screen have nothing to do with the lawfulness of the activity at issue. Companies conducting a sweepstakes are free to communicate the results of their promotion using images of gambling, dancing bears, or juggling clowns or by using no images at all. The *depiction* of gambling is entirely lawful, even if gambling is not.¹⁹

109. Apparently, it would be acceptable for Plaintiffs to use paper or speak through tin cans connected with string to notify their customers that they had won the

¹⁹ The depiction or replication of gambling is lawful and protected First Amendment speech. See, e.g., Brown v. Entm’t Merch. Ass’n, No. 08-1448, 564 U.S. ___, *4 (2011) (stating, “There was no American tradition of forbidding the *depiction* of animal cruelty – though States have long had laws against *committing* it.”).

sweepstakes, but it is not acceptable to communicate the same information using a computer display.

110. A an independent constitutional officer of the State of Florida, organized and operating under the laws of the State of Florida, the Sheriff and his deputies, agents, and employees, including Bahret and Giovannoni, are acting under color of state law and authority, as defined and understood in connection with 42 U.S.C. § 1983. Unless this Court declares the Defendants' enforcement actions against Plaintiffs to be unconstitutional, Plaintiffs will continue to be deprived of the right to engage in their lawful activity.

111. The threat to Plaintiffs' federally protected rights is such that it will not be eliminated by Plaintiffs' successful defense against a single criminal prosecution. Rather, Phone-Sweeps retailers have been the subject of repeated prosecutions which constitute continuing violations of their constitutionally protected rights. The pattern of arrest, seizure, and civil and criminal charges spans over two years, five locations, and nineteen individuals – all because the Phone-Sweeps sweepstakes uses images that replicate casino games to display the results of its sweepstakes. Plaintiffs are simply the latest to suffer the unconstitutional consequences.

112. The irreparable injury facing Plaintiffs is both great and immediate, as the pattern of Defendants' behavior is certain to repeat. In the meantime, Defendants have prevented and continue to prevent Plaintiffs from engaging in constitutionally protected speech.

113. The Defendants have not filed criminal or civil proceedings against Plaintiffs or their property, but Plaintiffs remain closed under threat of further enforcement action.

114. Plaintiffs have retained Mathis & Murphy, P.A. as their attorneys to represent them in this action and have agreed to pay them a reasonable fee, which fee Defendants must pay pursuant to 42 U.S.C. § 1988.

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

COUNT I

**(Violation of the Court's Amendment Unreasonable and
arrantless Search and Seizure no Probable Cause)**

116. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 115 above as if fully set forth herein.

117. This is an action against all Defendants for declaratory relief pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

118. A genuine and actual controversy exists between the parties as to the unconstitutionality and illegality of the Defendants' enforcement actions as described above. Plaintiffs' rights and status have been violated by the Defendants' unconstitutional search and seizure of Plaintiffs' property. No reasonable officer in the same circumstances would contend that the Defendants' actions were reasonable.

119. Plaintiffs have been deprived of the possession and use of their property which has resulted in the suppression of Plaintiffs' ability to engage in communication protected by the First Amendment. Plaintiffs' right to provide internet access and

communications to its customers, to provide video games to its customers, and to engage in marketing-related speech are clearly established rights.

120. Likewise, the Defendants' search and seizure of Plaintiffs' property violated their clearly established Fourth Amendment rights protecting against unreasonable and warrantless searches and seizures for at least the following reasons:

a. The Search Warrant is insufficient to establish probable cause for a violation of Florida Statutes Ch. 849.

b. The Defendants seized a safe, forty (40) computers in boxes, a scanner, a fax machine, a DVR, and United States Currency that were not named in the Search Warrant and for which no probable cause was established on the face of the Search Warrant Affidavit. No exception to the warrant requirement exists that would otherwise justify the seizure of these items.

c. The Defendants, intentionally or with reckless disregard for the truth, made material misrepresentations of fact in their Affidavit for Search Warrant. But for these material misrepresentations, the Search Warrant would not have issued.

121. The right to be free from warrantless and unreasonable searches and seizures is a clearly established right. A seizure of property not particularly described in a warrant constitutes a warrantless seizure which may not be lawfully accomplished absent a valid exception to the warrant requirement. Such an exception does not exist here. The Defendants' search without probable cause and making of material misrepresentations of fact to establish probable cause are plainly and patently unconstitutional.

122. The Sheriff has a custom and policy of unjustified and unlawful enforcement against businesses like Palm Harbor Internet that constituted deliberate indifference to Plaintiffs' constitutional rights, and that policy caused the violation of Plaintiffs constitutional rights.

WHEREFORE, Plaintiffs pray for the following relief against the Defendants:

- a. That this Court take jurisdiction over the parties and this cause;
- b. That this Court enter a judgment declaring the Defendants' search and seizure of Plaintiffs' property to be unconstitutional under the Fourth Amendment to the United States Constitution for all of the foregoing reasons;
- c. That this Court quash the search warrant;
- d. That this Court award Plaintiffs their recoverable costs, including a reasonable attorneys' fee pursuant to 42 U.S.C. § 1988; and
- e. That this Court award Plaintiffs all other relief in law and in equity to which they may be entitled.

COUNT II

(Violation of Fourth Amendment Free Speech)

123. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 115 above as if fully set forth herein.

124. This is an action against all Defendants for declaratory relief pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

125. A genuine and actual controversy exists between the parties as to the unconstitutionality and legality of the Defendants' enforcement actions as described above. Plaintiffs' rights and status have been violated by the Defendants' enforcement actions, which have eliminated Plaintiffs' ability to engage in protected communication.

Not only are Plaintiffs prevented from communicating with Palm Harbor Internet customers regarding the results of the sweepstakes, they are also prevented from providing their interactive computer services to their customers.

126. Palm Harbor Internet has also been prevented from sending and receiving communications via the internet. Palm Harbor Internet's customers have also been prevented from using Palm Harbor Internet's computers to send and receive communications via the internet and intranet.

127. The Defendants' enforcement actions have unconstitutionally violated Plaintiffs' First Amendment rights under the United States Constitution. More specifically, use of Plaintiffs' computers to electronically communicate the results of a contest, promotion, or sweepstakes and to provide entertaining video games in connection therewith is both pure speech and expressive activity. The computer displays convey a particularized message to the viewer, which message is clearly understood by those who view it. Such activity comes within the ambit of the First Amendment. The Defendants' enforcement actions have completely eliminated Plaintiffs' customers' ability to engage in this activity.

128. Because they are directed at the content of Palm Harbor Internet's speech, Defendants' enforcement actions are subject to strict scrutiny. Defendants can demonstrate no compelling government interest that justifies their actions. Further, Defendants' seizure of Plaintiffs' property, closure of their business, and threat of civil and criminal prosecution is not the least restrictive means of accomplishing whatever their purported interests may be.

129. Alternatively, the Defendants' enforcement action fails to bear any reasonable relationship to the lawful exercise of police power, thereby denying Plaintiffs due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

130. Access to the internet, and the right to view materials and information found there, is a form of free speech fully protected by the First Amendment to the United States Constitution. The right to disseminate information and communicate via the internet is likewise protected speech.

131. The free speech protections for internet communications apply whether the speech is commercial or non-commercial in nature.

132. Plaintiffs have the right to provide internet services for their customers and invitees free of interference by the government and without prior restraint. Additionally, Plaintiffs have the right to communicate via computer with their customers, regardless of whether the communication travels over the internet. Conversely, Plaintiffs' customers and invitees have a First Amendment right to access Plaintiffs' and others' computer simulations and video games via the intranet and internet. Many such video games are available via the internet from sources other than Palm Harbor Internet but are nonetheless available on Plaintiffs' computers. These sources include businesses, charities, governments, and other such groups unaffiliated with Plaintiffs.

133. Plaintiffs have a right to conduct sweepstakes promotions as part of their speech-related activities. Plaintiffs' sweepstakes combine pure speech and expressive conduct via video display to communicate with and entertain their customers. Plaintiffs have a First Amendment right to display their results via video display and provide

entertaining video games in connection therewith, even if that display includes simulations of casino games.

134. The Defendants' enforcement actions target the content of Plaintiffs' communications, result in an impermissible content-based restriction on free speech, and otherwise eliminate Plaintiffs' ability to engage in all manner of speech-related activities at Palm Harbor Internet for the following reasons:

a. The Defendants' enforcement actions targeted Plaintiffs' business based solely upon the content of its communications.

b. The Defendants' enforcement actions eliminated an entire category of speech based on its content alone.

c. The Defendants have made content-based determinations to ascertain whether particular communications are lawful or proscribed.

135. The Defendants' enforcement actions do not attempt to regulate the time, place, or manner in which video games containing images commonly seen on Las Vegas style slot machines are accessed or played, but instead eliminate all such computer simulations outright.

136. The Defendants' enforcement actions cannot survive strict scrutiny because they are not supported by a compelling government interest and do not employ the least restrictive means of regulation. Defendants could, as a less restrictive alternative,

a. Engage in an educational campaign to address and support their purported position that viewing simulated images of casino games and other displays of contests, sweepstakes, and drawing results is harmful,

b. Regulate the activity to require disclosures to prevent any purported deceptive effects of the activity, and/or

c. Implement regulations relating to cash and crowd management that would deter and prevent any purported increase in crime.

137. The Defendants' enforcement actions have abridged Plaintiffs' right to engage in activities which are entirely lawful in the State of Florida, including conducting a sweepstakes that includes video game displays of images of Las Vegas slot games.

138. The Defendants' enforcement actions have prohibited Plaintiffs from engaging in protected communication with their customers and from communicating via the internet.

139. The Defendants' enforcement actions have prohibited Palm Harbor Internet customers from receiving communication from Palm Harbor Internet and from communicating via the internet by using Palm Harbor Internet's computers.

140. The Defendants' enforcement actions will have a chilling effect on speech because their enforcement efforts against Plaintiffs will deter many citizens from accessing or engaging in clearly protected speech out of fear that they, too, will be subjected to Defendants' enforcement efforts.

WHEREFORE, Plaintiffs pray for the following relief against Defendants:

a. That this Court take jurisdiction over the parties and this cause;

b. That this Court enter a judgment declaring Defendants' enforcement efforts to be unconstitutional under the First Amendment to the United States Constitution because they have resulted in a content-based restriction on Plaintiffs'

communications which is neither supported by a compelling government interest nor achieved by the least restrictive means;

c. That this Court award Plaintiffs their recoverable costs, including a reasonable attorneys' fee pursuant to 42 U.S.C. § 1988; and

d. That this Court award Plaintiffs all other relief in law and in equity to which they may be entitled.

COUNT III

(Violation of Equal Protection)

141. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 115 above as if fully set forth herein.

142. This is an action against all Defendants for declaratory relief pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

143. The Defendants have violated Plaintiffs' rights to equal protection under the law, as similarly situated businesses are permitted to conduct sweepstakes pursuant to Florida law. Plaintiffs have been unreasonably classified and discriminated against based upon their chosen method of revealing sweepstakes entries.

144. The Equal Protection Clause of the Fourteenth Amendment prohibits government from discriminating against similarly situated individuals without a rational and neutral basis for doing so.

145. The Defendants have intentionally singled out Plaintiffs for selective enforcement, inequitable treatment, and purposeful discrimination through the unequal, unjust, and oppressive enforcement of the laws by Defendants.

146. There exists no rational basis for Defendants' treating Plaintiffs in a disparate fashion.

147. The Defendants have irrationally discriminated against Plaintiffs presumably because Plaintiffs display casino images in connection with informing participants in their sweepstakes whether they have won. Defendants have also irrationally discriminated against Plaintiffs because they employ electronic devices in conjunction with promotional sweepstakes while permitting those who use other media for the same or substantially similar activity. In particular, Plaintiffs note the following irrational and discriminatory categories:

a. The Defendants have prohibited Plaintiffs' speech because they use computers that display casino images when conveying the results of their sweepstakes, but Defendants allow exactly the same games and simulated "casino" games by persons who use paper or manual sweepstakes.

b. The Defendants have prohibited Plaintiffs' speech because they use computers that display casino images in connection with conveying the results of their sweepstakes, but Defendants allow exactly the same games and simulated "casino" games by other retailers that conduct sweepstakes whose results are revealed electronically.

c. The Defendants have prohibited Plaintiffs' speech because they use computers that display casino images when conveying the results of their sweepstakes, but Defendants allow exactly the same devices to display non-casino games to reveal the results of sweepstakes.

d. The Defendants permit countless other promotional sweepstakes in their jurisdiction that are offered online and that pay cash as a prize. Such sweepstakes include:

i. Challenge Butter “100 Years, 100 Days of Winners” Sweepstakes. *Available at* www.challengebutter100years.com (last visited Aug. 1, 2011). The Challenge Butter sweepstakes is administered online and provides over \$25,000 in cash and prizes, including a \$10,000 grand prize. Participants go online and use a desktop personal computer to verify whether they won a prize by “spinning” a windmill that may stop on a prize. The position of the windmill, when it stops, informs the participant whether and what he or she has won.

ii. The Cheez-It “Real American Roadtrip” Sweepstakes, sponsored by Kellogg Company. *Available at* www.cheez-it.com (last visited Aug. 1, 2011). The Cheez-It sweepstakes is administered online and permits participants to use a standard desktop personal computer to enter and possibly win. Five grand prizes will be given away in a drawing on Nov. 18, 2011, and include up to \$4,000 for the rental of a recreational vehicle (paid by check) and two gift cards pre-loaded with \$500 each for Wal-Mart and gasoline purchases. The sweepstakes provides an online game where participants may earn bonus entries for finding the block of cheese hidden in a series of pictures on the website.

iii. The American Family “\$50,000 in Cold, Hard Cash” Sweepstakes, sponsored by American Family and administered by ePrize, LLC. *Available at* www.americanfamily.com (last visited Aug. 1, 2011). Participants may enter online to win \$50,000 in cash. The winner will be notified via email or postal mail. Participants may also obtain “Bonus

Entries” by redeeming their “Program Points” from their account through the American Family Store. Program Points are units of value customers collect by participating in certain activities on the American Family website. The points may be spent like cash for purchases of items such as magazines, jewelry, and gift cards.

148. Online sweepstakes games are ubiquitous. Many provide substantial cash prizes and most permit the patron to log on to the internet and use a personal computer to enter and learn whether he or she has won.

149. All lawful online sweepstakes provide an alternative method of free entry, and many provide additional entries when the customer purchases a product. See e.g., Sandals “Luxury Included” Sweepstakes. *Available at* www.sandals.com/sweepstakes (last visited Aug. 1, 2011) (providing five entries in connection with purchase but providing one entry in connection with online entry without purchase). Although Phone-Sweeps sweepstakes operates in a materially identical manner, Defendants have irrationally selected Plaintiffs for enforcement because they use casino-themed video games in connection with the display of their results.

150. The disparate treatment of Plaintiffs is motivated by an invidious purpose, to-wit: Defendants wish to harass Plaintiffs and extinguish their First Amendment activity because of Defendants’ dislike for the content of the communications.

WHEREFORE, Plaintiffs pray for the following relief against Defendants:

- a. That this Court take jurisdiction over the parties and this cause;

b. That this Court enter a judgment declaring Defendants' enforcement actions to be unconstitutional under the Equal Protection clause of the Fourteenth Amendment to the United States Constitution;

c. That this Court award Plaintiffs their recoverable costs, including a reasonable attorneys' fee pursuant to 42 U.S.C. § 1988; and

d. That this Court award Plaintiffs all other relief in law and in equity to which they may be entitled.

COUNT IV

(Temporary and Permanent Injunctive Relief)

151. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 115 above as if fully set forth herein.

152. This is an action against all Defendants for preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983.

153. Defendants' seizure occurred July 14, 2011. Defendants' actions have and will continue to prevent Plaintiffs and others from engaging in constitutionally protected conduct. It will also prohibit other individuals from engaging in lawful First Amendment activity in accordance with applicable State and federal law. The Defendants' actions, with the resulting closure of Palm Harbor Internet, will result in a substantial loss of First Amendment freedoms - even if Plaintiffs eventually prevail in a trial on the merits.

154. The threat of civil and criminal penalties and continued closure of Palm Harbor Internet creates an imminent risk of irreparable harm to Plaintiffs and others, as any loss of First Amendment freedoms, even if for a brief amount of time, is sufficient to constitute irreparable injury necessary to justify the issuance of an injunction. Because

chilled speech cannot be compensated by monetary damages, an ongoing violation of the First Amendment constitutes irreparable injury.

155. Because Defendants' actions interfere with Plaintiffs' rights of free speech and expression as alleged herein, Plaintiffs have no adequate remedy at law and would suffer the irreparable harm of being deprived of privileges and immunities secured to them by the First and Fourteenth Amendments to the United States Constitution, securing the right of free speech and expression, if Defendants are allowed to continue their enforcement policy.

156. A substantial likelihood of success on the merits of this action exists. Plaintiffs can readily demonstrate that Defendants' enforcement action is unconstitutional.

157. The public interest lies in favor of granting an injunction on behalf of Plaintiffs. The potential for irreparable injury to Plaintiffs clearly outweighs any potential, reparable harm to Defendants.

158. The public interest is always served when constitutional rights, especially free speech, are vindicated. Plaintiffs seek an injunction in order to ensure that Defendants do not unconstitutionally trample these freedoms. Not only does enjoining the Defendants' actions benefit Plaintiffs, but it also serves those members of the public who choose to patronize Plaintiffs, as they are interested in receiving communications that are protected by the First Amendment.

WHEREFORE, Plaintiffs pray for the following relief against Defendants:

- a. That this Court take jurisdiction over the parties and this cause;

b. That this Court enter a preliminary injunction enjoining, restraining, and prohibiting Defendants, their agents, officers, servants, and employees during the pendency of this action from taking further action against Plaintiffs for their business operation as described herein;

c. That this Court enter a permanent injunction enjoining, restraining, and prohibiting Defendants, their agents, officers, servants, and employees from taking further action against Plaintiffs for their business operation as described herein;

d. That this Court award Plaintiffs all other relief in law and in equity to which they may be entitled.

COUNT V

(Petition for writ of Replevin)

159. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 115 above as if fully set forth herein.

160. This is an action against all Defendants for damages and return of property pursuant to 42 U.S.C. § 1983 and Fla. Stat. § 78.01 et seq.

161. Defendants have unlawfully deprived Plaintiffs of the lawful possession and use of their property, which is identified in the Return and Inventory, attached hereto as Exhibit "B". The property has an aggregate value of over \$85,000 and is currently in the possession of the Pinellas County Sheriff's Office, Pinellas County, Florida.

162. Plaintiffs are the owners of the property and are entitled to possession of it, as they acquired it through purchase as well as the sale of their products and services.

163. The property is wrongfully detained by Defendants, who came into possession of the property through their unlawful seizure. Defendants maintain

possession of the property under the false premise that it constitutes illegal gambling paraphernalia.

164. The property has not been taken for a tax, assessment, fine pursuant to law, or under an execution or attachment against the property or Plaintiffs.

165. As a result of Defendants' unlawful deprivation of Plaintiffs' property, Plaintiffs have been damaged in that they have lost the entire value of the property as well as the use – and income derived therefrom – of the property.

166. As more fully described above, Defendants Bahret, Giovannoni, and Coats, in their seizure of Plaintiffs' property, acted in bad faith, with a malicious purpose, or with willful and wanton disregard for Plaintiffs' rights and property.

WHEREFORE, Plaintiffs pray for the following relief against the Defendants:

- a. That this Court take jurisdiction over the parties and this cause;
- b. That this Court issue a writ commanding the replevy of the Plaintiffs' property;
- c. That this Court award Plaintiffs damages;
- d. That this Court award Plaintiffs their recoverable costs, including a reasonable attorneys' fee pursuant to 42 U.S.C. § 1988; and
- e. That this Court award Plaintiffs all other relief in law and in equity to which they may be entitled.

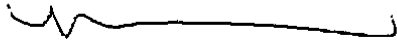
Jury Trial

Plaintiffs demand a jury trial on all matters so triable as a matter of right.

V R I C T I O N

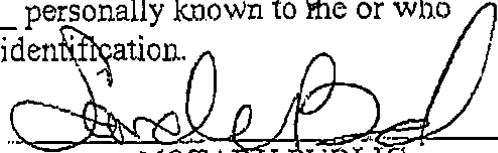
I declare under penalty of perjury that I have read this complaint and the facts state in it are true and correct.

SIGNED on this 24th day of August, 2011



Megan Crisante, individually and as
Managing Member of PMP CAFE LLC

SUBSCRIBED AND SWORN TO BEFORE ME on August 24th
by Megan Crisante, who is ___ personally known to me or who
provided Bill Dumas as identification.



NOTARY PUBLIC



DATED this 2nd day of September, 2011.

T I U R P P

By: /s/ Kelly B. Mathis
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PMP CAFÉ LLC



RETURN

Received this Warrant on the 14th day of July, 2011, and executed same on the 14th day of July, 2011 by reading the Warrant to BUSINESS and delivering a true copy to BUSINESS and searching the herein described BUSINESS and upon completing such search, I deliver to BUSINESS, a written inventory of the property taken and set forth same specifying such property in detail. A true and correct list is set forth in the following inventory.

Det. J. Shields #5938

INVENTORY

Forty-four (44) WORKING Computers Stations, Fifty (50) Boxed Computers, ONE (1) Computer Server, ONE (1) SCANNER, ONE (1) FAX MACHINE, ONE (1) DVR Recorder, Fifty-Nine (59) Records (Mill), A Sum of US Currency to be Determined Later, Misc. amount of paperwork and documentation, Diagram of Business, Three (3) Boxes of "Tel-Connect" Cards, ONE (1) Roll of tickets, ONE (1) "ED Hardy" Thumb Drive, ONE (1) Key Chain Lanyard with (2) Cards and Key Fob, ONE (1) SAFE, ONE (1) "Phone-Swap" MANUAL Binder, Misc. Receipts, Four (4) Computer Routers, (2) Computer monitors and attached keyboards, Several wall posters and notices.

STATE OF FLORIDA

COUNTY OF PINELLAS

I, DET. J. Shields #5938, the Officer by whom this Warrant was executed, do swear that the above inventory contains a true and detailed account of all property taken by me on said Warrant.

Det. J. Shields #5938

SWORN TO AND SUBSCRIBED BEFORE ME THIS 14th DAY OF July, 2011.

Det. J. Shields #5938

MY COMMISSION EXPIRES F.S.S. 117.110
(ORIGINAL COPY TO COURT)