

December 10, 2013

**BY E-MAIL (CITYCLERK@HAYWARD-CA.GOV)**

Miriam Lens  
City Clerk  
City of Hayward  
777 B St.  
Hayward, CA 94501-5007

Re: December 10, 2013 City Council Meeting – Proposed Amendment to the Hayward Municipal Code adding Article 16 to Chapter 4 regarding simulated gambling devices and proposed revisions to the definitions section of the Hayward Zoning Ordinance (Section 10-1.3500)

Dear Madam Clerk:

This firm represents Ron Doyle and Net Connection Hayward, LLC (“Net Connection”). Net Connection operates a business at 778 B Street in Hayward. Net Connection’s business is one of the direct targets of the proposed ordinance before the City Council. Net Connection presents this letter in order to submit its further comments regarding the proposed ordinance. More specifically, Net Connection submits this letter to correct various inaccuracies in the staff reports to the City Council on these matters. Please note that this letter is intended to supplement Net Connection’s earlier letter to the City, dated November 7, 2013, submitted in conjunction with the hearing before the Planning Commission.

First, the report from the Director of Development Service and City Attorney to the City Council dated December 10, 2013 (hereinafter the “Staff Report”), incorrectly states that Net Connection did not indicate “simulated internet gambling” in conjunction with its business license application. To the contrary, as found by the federal court in *Net Connection Hayward, LLC v. City of Hayward*, Northern District of California Case No. 12-1212, Net Connection *fully* disclosed the nature of its business to the City *prior* to receiving its business license. The City, *thereafter*, chose to issue the business license to Net Connection. Consequently, Net Connection has a vested property right in its business license to operate its current business at 778 B Street. While Net Connection has no knowledge of the disclosures made by other businesses in the City in conjunction with their business license applications, the record needs to be clear that Net Connection made every effort to be transparent with the City in the application process.

Second, the Staff Report refers to various complaints regarding some of the customers of the “simulated gambling businesses.” According to the Staff Report, these complaints include loitering, smoking in the parking lot, using the access area behind the downtown Lucky’s store as a parking lot, one occasion where several men were playing dice in front of one of the stores, use of inappropriate parking lots belonging to neighboring businesses, and late night noise. To the extent these alleged complaints relate to Net Connection’s business, the City is, or should be, well aware that these problems are not unique to Net Connection’s business. People regularly loiter in the downtown area. Employees from the Lucky’s store regularly smoke in the back alley behind Lucky’s. The adjacent business owner who complains about use of her parking lot admittedly has no sign indicating that such parking lot is private, or for use by her patrons only.

Importantly, Net Connection only has the ability to control its business and area immediately outside its business, and has made reasonable efforts to do so. When the City brought to Net Connection’s attention the issue of its customers using an adjacent business owner’s parking lot, Net Connection offered to purchase a sign for that business owner stating that the parking was private and for use by patrons of that business only. The City indicated it was going to communicate this offer to the business owner, and to date no response from that owner has been communicated back to Net Connection. In short, even though the issues identified by the City are by no means unique to Net Connection, Net Connection has done everything it can do within its power to address the City’s concerns.

The Staff Report further notes that there have been approximately 50 calls for service since the beginning of 2013 to the three existing “simulated gambling businesses” in the City. While Net Connection cannot speak to the number of these calls that were directed to the other two businesses in the City, Net Connection is not aware of a single incident where it made a call for assistance to the Hayward Police Department. Rather, to the extent the police appeared at Net Connection’s business, the police did so of their own volition, and not because of any disturbance or other incident. The simple fact that the police opted to visit Net Connection’s business to conduct “security checks” or otherwise does not mean Net Connection’s business is a public nuisance. Surely, if the police made a similar number of unsolicited visits to any number of businesses in Hayward for purposes of conducting “security checks,” the same or even a greater number of arrests would occur.

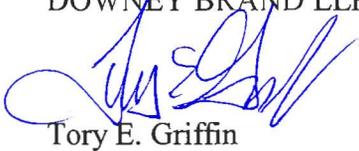
It is also important to note that, at the two day evidentiary hearing in federal court in the *Net Connection Hayward, LLC v. City of Hayward* litigation, the *only* evidence presented by the City that links *any* of these alleged problems to Net Connection was from the testimony of the adjacent business owner regarding unauthorized use of her parking lot. Not a single witness presented by the City could testify that Net Connection’s customers were the cause of any public nuisance or other disturbance. Since that time, at the request of the City, Net Connection has taken additional steps to address the City’s concerns. Net Connection has not received any further indication from the City that Net Connection’s efforts are insufficient. Net Connection has been, and will continue to be, responsive to communications from the City. And, as was

more than evident from the testimony before the federal court in the ongoing litigation, Net Connection has every desire to run a clean business, and to be a good neighbor within the downtown area.

To ensure that the actual facts on these issues are before the City Council, we attach for the record the transcripts from the two day evidentiary hearing in the *Net Connection Hayward, LLC v. City of Hayward* litigation.

Very truly yours,

DOWNEY BRAND LLP



Tory E. Griffin

Enclosures

1345251.1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Samuel Conti, Judge

NET CONNECTION HAYWARD LLC, a )  
California limited liability )  
company, )

Plaintiff, )

VS. )

NO. C 13-01212 SC

CITY OF HAYWARD, )

Defendant. )

San Francisco, California  
Tuesday, April 30, 2013

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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STEPHEN J. MEYER, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR  
Official Reporter

1 APPEARANCES: (CONTINUED)

2 For Defendant:

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3  
4 BY: MICHAEL S. LAWSON, CITY ATTORNEY  
MICHAEL G. VIGILIA, ASST. CITY ATTORNEY

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I N D E X

Tuesday, April 30, 2013

PLAINTIFF'S WITNESSESPAGE VOL.DOYLE, EDWARD LARON

(SWORN)

10 1

Direct Examination by Mr. Griffin

10 1

Cross-Examination by Mr. Vigilia

47 1

Redirect Examination by Mr. Griffin

71 1

HERNANDEZ, AZALEA KEYAWIE

(SWORN)

75 1

Direct Examination by Ms. Pope

75 1

Cross-Examination by Mr. Vigilia

96 1

Redirect Examination by Ms. Pope

101 1

GREY, RUSSELL

(SWORN)

106 1

Direct Examination by Mr. Griffin

106 1

Cross-Examination by Mr. Vigilia

200 1

Redirect Examination by Mr. Griffin

215 1

DEFENDANT'S WITNESSESPAGE VOL.PATENAUDE, RICHARD

(SWORN)

219 1

Direct Examination by Mr. Vigilia

219 1

Cross-Examination by Ms. Pope

228 1

Redirect Examination by Mr. Vigilia

235 1

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I N D E X

E X H I B I T S

PLAINTIFF'S EXHIBITS

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DEFENDANT'S EXHIBITS

IDEN    EVID    VOL.

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64    74    1

1 Tuesday - April 30, 2013

10:02 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 ---000---

4 THE COURT: All right. Shall we start?

5 MR. GRIFFIN: Yes, Your Honor.

6 THE COURT: Put your names on the record.

7 MR. GRIFFIN: Good morning, Your Honor. Tory Griffin  
8 of Downey Brand on behalf of the plaintiff, Net Connection  
9 Hayward LLC; and with me at counsel table are my colleagues  
10 Kelly Pope and Stephen Meyer.

11 MR. VIGILIA: Good morning, Your Honor. Michael  
12 Vigilia on behalf of the defendant City of Hayward.

13 MR. LAWSON: Michael Lawson also on behalf of the City  
14 of Hayward.

15 THE COURT: All right. I'd like to ask you one  
16 question before we start. In reading this ordinance, it says:  
17 (reading)

18 "The California Bureau of Gambling Control has  
19 determined that computer gambling and Internet access  
20 businesses that sell Internet time on phone or phone cards  
21 in connection with a promotional sweepstakes are illegal  
22 online gambling operations."

23 Now, is that the law in California or is that just an  
24 opinion, and who is this Gaming Bureau?

25 MR. GRIFFIN: Your Honor, if I may address that first.

1           **THE COURT:** Yes.

2           **MR. GRIFFIN:** It is -- that comes from an advisory  
3 that was issued by the Bureau of Gambling Control, which is an  
4 agency in the State of California, in December of 2012. The  
5 actual advisory is attached, I believe, to City of Hayward's  
6 opposition on the written pleadings.

7           We have addressed the validity of that advisory in writing  
8 in quite some detail in our papers.

9           **THE COURT:** Is that a new law?

10          **MR. GRIFFIN:** No. It's our position that -- it  
11 expressly states on the bottom of it that it's just an  
12 advisory, it's not a legal opinion, and it's not law; and we've  
13 articulated in our papers that if it's being held out to be law  
14 by any other municipality within the state, that it's  
15 essentially a void underground regulation, and we've  
16 articulated all the reasons for that.

17          It has to go through the APA rule-making process and so  
18 forth, and the Bureau didn't do that here. It simply said,  
19 "This is an advisory." It's very general, very general  
20 characterizations; and at the bottom of the second page it  
21 says, "and this is not a legal opinion." And that's very clear  
22 in the document itself, and we've addressed that in more detail  
23 in our papers, Your Honor.

24          **THE COURT:** Do you agree or disagree?

25          **MR. VIGILIA:** No, I agree that it is a legal opinion.

1 It's the interpretation of a state agency, and it's an  
2 informational advisory sent to local agencies to put them on  
3 notice of a particular law enforcement issue; and it's  
4 incumbent upon every separate local agency to do its own  
5 investigation and its own determination as to how it would  
6 interpret the meaning of that advisory and interpret the law.

7           **THE COURT:** All right, then, maybe you can answer this  
8 for me. I read someplace in all your papers that some of the  
9 other cities in Contra Costa and elsewhere had such an  
10 ordinance. I don't know if it's the same ordinance, but  
11 they're holding it in abeyance to modify it. What does that  
12 mean?

13           **MR. VIGILIA:** I'm not aware of which particular  
14 agencies --

15           **THE COURT:** City of Pittsburg. One of them was the  
16 City of Pittsburg.

17           **MR. VIGILIA:** Okay. I don't know. I believe they may  
18 have had a moratorium, and then --

19           **THE COURT:** Is it the same ordinance you have here?

20           **MR. VIGILIA:** Substantially similar, yes, and --

21           **THE COURT:** So what are they doing?

22           **MR. VIGILIA:** You know, off the top of my head, I'm  
23 not sure. I know it was either Pittsburg or Antioch that ended  
24 up enacting the ordinance that regulated the businesses and  
25 imposed certain conditions, certain operating conditions and

1 conditions for obtaining business licenses, and things like  
2 that.

3 THE COURT: Is it different than Hayward, if you know?

4 MR. VIGILIA: It is different because Hayward does not  
5 at this point have an ordinance that has a permitting process  
6 for this particular type of business and imposes specific types  
7 of conditions for operation.

8 THE COURT: So they have a permitting process that  
9 allows this type of business?

10 MR. VIGILIA: Yes. It's either Antioch or Pittsburg.  
11 I can't recall which of the two.

12 THE COURT: So if it's a lottery in your case, why  
13 wouldn't it be a lottery in their case?

14 MR. VIGILIA: Well, I think that -- I can't speak for  
15 that particular city, but certainly out there  
16 interpretations -- you know, perhaps they interpreted the  
17 Bureau of Gambling Control advisory differently or maybe  
18 they -- maybe they didn't consider it at all. I don't know. I  
19 can't speak to that, the motivations for those cities.

20 THE COURT: All right. Fine. Thank you.

21 Okay. Do you have your first witness?

22 MR. GRIFFIN: I'm ready, Your Honor. The first  
23 witness, we'd like to call Ron Doyle.

24 MR. VIGILIA: And, Your Honor, before we begin,  
25 counsel and I had agreed to exclude witnesses from the

1 courtroom at the beginning of the hearing, and as well we had a  
2 stipulation with respect to exhibits.

3 THE COURT: That's fine. Will you both, then, monitor  
4 the courtroom so far as the witnesses are properly excluded?

5 MR. GRIFFIN: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. GRIFFIN: Now, while Mr. Doyle is making his way  
8 up, with respect to exhibits, Your Honor, we have a number of  
9 exhibits that have been attached to our written pleadings and  
10 we've stipulated that they can be admitted into evidence.  
11 Would you like them separately marked or is simply reference to  
12 the written pleading sufficient?

13 THE COURT: You have to separately mark them.

14 MR. GRIFFIN: I'm just asking --

15 THE COURT: Do you have an evidence book or anything?

16 MR. GRIFFIN: I do not, Your Honor.

17 THE COURT: Well, that doesn't help me.

18 Okay. So separately mark each exhibit you have at the  
19 time.

20 MR. GRIFFIN: Thank you, Your Honor.

21 THE COURT: And see that the clerk has them.

22 (Pause in proceedings.)

23 THE CLERK: Sir, please raise your right hand.

24  
25 ///

1                                    EDWARD LARON DOYLE,

2        called as a witness for the Plaintiff, having been duly sworn,  
3        testified as follows:

4                    **THE WITNESS:**    Yes, I do.

5                    **THE CLERK:**    Please state your full name and spell your  
6        last name.

7                    **THE WITNESS:**    Edward LaRon Doyle, D-O-Y-L-E.    I go by  
8        Ron Doyle.

9                    **THE REPORTER:**    Can you spell your middle name for me,  
10       please?

11                   **THE WITNESS:**    L-A capital R-O-N.

12                                    DIRECT EXAMINATION

13        **BY MR. GRIFFIN:**

14        **Q.**    Good morning, Mr. Doyle.

15        **A.**    Good morning.

16        **Q.**    Mr. Doyle, would you please explain to the Court what your  
17        occupation is?

18        **A.**    Well, I have two occupations.    The first occupation is I'm  
19        the executive director of the Seventh Step Foundation.    It's a  
20        501(c)(3) nonprofit organization located in Hayward.    It is a  
21        residential drug treatment center for adult male parolees that  
22        get released from prison; and they live, eat, and sleep with  
23        us, and our job is to help rehabilitate them and to get them  
24        back in society as productive members.    I'm the executive  
25        director.

1 Q. How long have you been doing that, Mr. Doyle?

2 A. I've been the executive director for about 11 years, and  
3 prior to that I served on the Board of Directors for 25 years.  
4 So all together I've been with them about 35, 36 years.

5 Q. And I may have missed it. Did you say that's in the city  
6 of Hayward?

7 A. I'm sorry?

8 Q. Is that business in the city of Hayward?

9 A. It's in the unincorporated area of Alameda County, which  
10 we call it Hayward. Everyone calls it Hayward.

11 Q. Thank you.

12 Now, you mentioned another occupation. What is that?

13 A. Yeah, the other occupation is I'm the owner of the  
14 Net Connection LLC.

15 Q. There are -- you have Net Connection Hayward LLC?

16 A. Yes.

17 Q. And Net Connection LLC?

18 A. Yes. I have five locations, two in Southern California  
19 and three in Northern California.

20 Q. And is one -- the Net Connection Hayward, that business is  
21 in Hayward, California?

22 A. Yes. It's 778 B Street, Hayward.

23 Q. And how long have you had that business?

24 A. I believe we were licensed in November of 2012. I think  
25 we opened in December 2012 and have it since then.

- 1 Q. Mr. Doyle, can you please explain for the Court what the  
2 business is that you do at Net Connection?
- 3 A. We sell and rent computer time. People come into our  
4 place and rent our computers. We also have fax machines,  
5 scanning machines, copy machines. We have prepackaged food  
6 items, potato chips, candy bars, Coca-Cola, coffee.
- 7 Q. Anything else that you sell, office products or anything?
- 8 A. Office products, packaging supplies, pens, paper, tape,  
9 that kind of stuff, yes.
- 10 Q. Now, as I understand it, you also operate a -- to promote  
11 your products, you do sweepstakes; is that correct?
- 12 A. Yes.
- 13 Q. And who do you license that sweepstakes software from?
- 14 A. Capital Sweepstakes. I'm not sure of the complete full  
15 name. Capital Sweepstakes.
- 16 Q. Thank you.
- 17 Now, you mentioned you have five locations.
- 18 A. Yes.
- 19 Q. You have another location in San Lorenzo?
- 20 A. Yes.
- 21 Q. A couple miles away from your Hayward location?
- 22 A. Yes.
- 23 Q. And that location is actually in the incorporated area or  
24 unincorporated area of Alameda County?
- 25 A. Yes, correct.

1 Q. Now, with respect to the license, you had to apply for a  
2 business license for your location in Hayward; is that correct?

3 A. Yes.

4 Q. And when did you do that?

5 A. It was in November of 2012.

6 Q. How did you go about -- describe for me how you went about  
7 getting a business license.

8 A. First I had to pick a location. When I selected that  
9 location and negotiated the lease with the leasing agent, as  
10 soon as that deal was completed, in my discussion with the  
11 leasing agent, I told him my next step would be to get a  
12 business license for Hayward. He indicated he knew somebody in  
13 Hayward. Not that they were friends or anything, but a contact  
14 in the business office.

15 I was given the name of Rich Patenaude. I called  
16 Mr. Patenaude, said who I was, that I had just leased a place  
17 in Hayward, and I wanted to get a business license to operate a  
18 business there.

19 He asked me what kind of business I was going to do. I  
20 explained to him. He asked me could I send him something in  
21 writing to elaborate a little more as to exactly what we would  
22 do there. I did. I sent him an email explaining exactly what  
23 we would do.

24 Q. Okay. Let me slow you down a little bit, Mr. Doyle, and  
25 back up.

1 Did you -- who was Mr. Richard Patenaude?

2 A. I can't recall his exact title, but planning director,  
3 assistant planning director, or something of that fashion, for  
4 the City of Hayward.

5 Q. You made contact with Mr. Patenaude?

6 A. Yes, on the phone myself personally.

7 Q. Okay. Did you talk to him on more than one occasion?

8 A. Yes, I did.

9 Q. The first time you talked to Mr. Patenaude, did you  
10 introduce yourself and explain what you were -- why you were  
11 contacting him?

12 A. Yes. I was contacting him for the purposes of obtaining a  
13 business license.

14 Q. What did he say in that regard?

15 A. He asked me what kind of business, where the business  
16 would be located. I told him it would be 778 B Street in  
17 Hayward, and I explained to him exactly what our business would  
18 be, such as I just outlined here; the selling and renting of  
19 computer time, photocopying, scanning, selling of office  
20 products, prepackaged snack items, coffee, Coke, that kind of  
21 thing.

22 Q. Did you mention to Mr. Patenaude in that first discussion  
23 you had with him the idea of a sweepstakes?

24 A. I said we do promotional items to get customers to come  
25 in, and that would be one of them. He wasn't familiar with

1 what I was talking about. He asked -- that's when he asked me  
2 could I explain it a little bit further in the letter. That's  
3 when I sent him the letter.

4 Q. So you sent him a letter by email?

5 A. Yes.

6 MR. GRIFFIN: Your Honor, I have -- I do have a copy  
7 of this exhibit for the Court. I apologize for not having an  
8 exhibit binder in advance. This is a letter that has  
9 previously been attached to Mr. Doyle's declaration, and I'd  
10 like to --

11 THE COURT: Do you have a copy?

12 MR. GRIFFIN: -- mark it.

13 THE COURT: Counsel, do you have a copy?

14 MR. VIGILIA: I do have a copy of it, Your Honor.

15 (Plaintiff's Exhibit 1 marked for identification)

16 MR. GRIFFIN: Your Honor, may I approach the witness,  
17 please?

18 THE COURT: Yes.

19 MR. GRIFFIN: Thank you.

20 Q. Mr. Doyle, I've handed you what has been marked as  
21 Plaintiff's Exhibit 1. Do you recognize that document?

22 A. Yes.

23 Q. Is that the letter you just referred to that you sent to  
24 Mr. Patenaude of the City of Hayward?

25 A. Yes.

1 Q. This letter itself is not signed. Did you -- how did you  
2 deliver this to Mr. Patenaude?

3 A. By email.

4 Q. And does this appear to be a true and correct copy of the  
5 letter you sent?

6 A. I'm sorry?

7 Q. Does this appear to be a true and correct copy of the  
8 letter that you sent him?

9 A. I'm sorry?

10 Q. Does this appear to be a true and correct copy of the  
11 letter that you sent him?

12 A. Yes, exactly.

13 THE COURT: When did you send this letter? I don't  
14 see a date on it. When did you send the letter?

15 THE WITNESS: I believe it was November 11th or 12th.

16 BY MR. GRIFFIN:

17 Q. Of which year?

18 A. Of 2012.

19 Q. This was before your business was licensed; correct?

20 A. Yes.

21 MR. GRIFFIN: And, Your Honor, I just want to offer  
22 Plaintiff's Exhibit 1 into evidence.

23 THE COURT: All right. Received.

24 (Plaintiff's Exhibit 1 received in evidence)

25 MR. GRIFFIN: Thank you, Your Honor.

1 Q. Mr. Doyle, thank you.

2 When --

3 THE COURT: Just a moment. Does the clerk have a copy  
4 of this?

5 THE CLERK: No, sir.

6 THE COURT: No?

7 MR. GRIFFIN: Here. My apologies.

8 THE COURT: What are we introducing into evidence  
9 then? Is that in evidence?

10 THE CLERK: You wish to admit this?

11 MR. GRIFFIN: Yes.

12 THE COURT: Okay, fine.

13 THE CLERK: I do now have a copy.

14 MR. GRIFFIN: Thank you, Your Honor.

15 Q. Mr. Doyle, prior to or after you sent this letter to  
16 Mr. Patenaude, did he call you back and ask for further  
17 explanation?

18 A. No. I believe I called him after a couple days when I  
19 hadn't heard from him, and asked him, "I'm eager to get  
20 started. What's the status of us getting a business license?"

21 Q. What did he -- what did you say -- or what did he say?

22 A. He had some questions about it. He still didn't  
23 understand what it was that we did. At that point I explained  
24 to him that about a mile and a half, two miles away we have  
25 another business located on Hesperian Boulevard in San Lorenzo;

1 and that if he would go over there and take a look at that,  
2 that is exactly what we were going to be doing in Hayward.

3 Q. In actuality, is the business that you run over in  
4 San Lorenzo exactly what you're doing over in Hayward?

5 A. Exactly the same. Exactly the same services, exactly the  
6 same.

7 Q. So if Mr. Patenaude went over to your location in  
8 San Lorenzo, he would see what you were going to be doing in  
9 Hayward?

10 A. Exactly the same. Same computers, same tables, same  
11 chairs, everything the same.

12 Q. Mr. Doyle, do you know if at the time that you applied for  
13 the business license in Hayward, whether there were any other  
14 locations in Hayward that were open as Internet cafes that were  
15 also offering sweepstakes?

16 A. Yes. There were two already licensed already doing  
17 business in the city of Hayward.

18 Q. Did you point that out to Mr. Patenaude at any point?

19 A. Yes, I did. Yes, I did. After he had gone to our  
20 San Lorenzo place, in the next discussion I had with him, I  
21 pointed out to him that there were two other locations in  
22 Hayward that were licensed to do the same thing.

23 He sounded as if he wasn't aware of that. Asked me, "Oh,  
24 really? Where are they?" I gave him the addresses. He said,  
25 okay, he would check that out; and a day or two later I

1 contacted him again.

2 Q. Okay. When you contacted him again, what did you say?

3 A. When I contacted him the last time, he said, okay, he  
4 checked them out. He would go ahead and issue the business  
5 license. That was on a Thursday afternoon.

6 I said, "All right. We'll go down and get it now." He  
7 said, no, they close -- I believe he told me they closed at  
8 noon on Thursday.

9 I said, "Well, then I'll go on Friday."

10 He said, "No, they're closed on Friday."

11 I says, "All right. I'll be there on Monday."

12 He says, "I'm not going to be here next week," but he'll  
13 leave word that we've been approved. So the following Monday  
14 my son took me and we both went into the business office in  
15 Hayward and obtained our business license.

16 Q. Do you remember the date that you obtained the license?

17 A. No, I don't. I think that -- no, no, I don't.

18 Q. Toward the end of November 2012?

19 A. Yes. Yes.

20 Q. At any point in time during your discussion with  
21 Mr. Patenaude with the City of Hayward, did Mr. Patenaude  
22 question the legality of the sweepstakes?

23 A. Not at all.

24 Q. Did he ever express any concern about the propriety of the  
25 business that you were proposing to run?

1 A. Not at all.

2 Q. Do you know if Mr. Patenaude ever visited your location in  
3 San Lorenzo at your invitation?

4 A. Yes, I do. I know for a couple reasons. One is my staff  
5 told me that he had visited there, and the second one is  
6 Mr. Patenaude told me that he had visited there.

7 Q. What did Mr. Patenaude tell you, if anything, about your  
8 location in San Lorenzo?

9 A. Mr. Patenaude's only comment was, "I was there. It looks  
10 a little dingy." And I was surprised, I was very surprised at  
11 that, because I didn't believe it looked dingy. That was his  
12 only comment, that it looked dingy.

13 I believe we discussed that because it had gray carpeting  
14 and there were some spots on the carpeting our carpet shampoo  
15 people couldn't get it up.

16 Q. Was that the same -- when he said that, was that the same  
17 conversation where he also informed you he would approve the  
18 license for your business?

19 A. Yes. Yes.

20 THE COURT: What was Mr. Patenaude again? He was  
21 the -- what position?

22 THE WITNESS: Planning director, assistant planning  
23 director, something like that, Your Honor.

24 THE COURT: All right.

25 MR. GRIFFIN: He is actually a witness that will be

1     testifying here today.

2             **THE COURT:** Oh, he'll be here?

3             **MR. GRIFFIN:** Yes, Your Honor.

4     **Q.** Let me talk with you briefly, Mr. Doyle, about the  
5     business in Hayward.

6     **A.** Yes.

7     **Q.** Mr. Patenaude, you mentioned he made a comment that your  
8     business in San Lorenzo in his opinion was a little bit dingy.  
9     Tell me a little bit about your location in the city of  
10    Hayward. Is it -- would you describe it as dingy?

11    **A.** No, not at all. In that location we had an opportunity to  
12    put a new floor in, and we put in what appears to be hardwood  
13    floors. They brighten up the room, make it look nice. It  
14    doesn't look dingy at all. It's nice and bright and well lit,  
15    very modern, very nice.

16    **Q.** New computers?

17    **A.** New computers, new floor, new chairs, new everything.

18    **Q.** Fax machine and all that kind of stuff?

19    **A.** New fax machines, scanning machines, copy machines, coffee  
20    machines, shelves, everything is brand new.

21    **Q.** Now, you mentioned a few minutes ago that you have five  
22    locations similar to the location that you have in Hayward.

23    **A.** Yes.

24    **Q.** Now, prior to opening your first of those locations, did  
25    you do any research into these types of businesses?

1 A. Yes, I did.

2 Q. And can you describe for the Court, please, what you did?

3 A. Well, after doing a lot of research, I found out that  
4 there were four or five or six of these locations throughout  
5 the Bay Area that I was aware of and I visited each one. I  
6 went in as a customer and -- to see what they did, played their  
7 games, see how they operated to observe how they conducted  
8 business, all that stuff.

9 THE COURT: Are these your businesses or somebody  
10 else's?

11 THE WITNESS: Somebody else's.

12 THE COURT: Oh, okay.

13 MR. GRIFFIN: This is before -- this is his -- I asked  
14 him what research he did, Your Honor, before he decided to open  
15 one of these just to educate himself on what these businesses  
16 did.

17 THE COURT: Where are these locations, do you know?

18 THE WITNESS: There was one in Pleasant Hill. There  
19 was one in Marina Boulevard in San Leandro. There was one in  
20 Antioch or two in Antioch. At that time there were two in  
21 Antioch. Those are four that come to mind immediately.

22 THE COURT: All right.

23 BY MR. GRIFFIN:

24 Q. And through your research, did you, in visiting these  
25 other places, did you have any concerns before opening one of

1 these of your own?

2 A. Yes. I had a couple concerns. One was the software that  
3 some of these places -- they had different software that they  
4 used. I was concerned that some of the software may be pushing  
5 the line too much. If I was going to go into this business, I  
6 had to make sure I got a software that didn't do that.

7 The second concern I had was they didn't seem to police  
8 their establishments very well. They had unruly customers,  
9 customers acting out, maybe some of them were doing drugs right  
10 there in front of everybody, were not hiding it, smoking a  
11 joint right there, that kind of thing. I thought that was  
12 terrible that the business would allow them to do that.

13 So making my own mental notes of this as I'm observing  
14 what's going on saying, "Well, if I were to go into this  
15 business, I need to make a couple major changes, and one is the  
16 software and one is I need to have security staff that police  
17 customers to make sure that none of this bad activity goes on."

18 Keep in mind that the -- my primary thing was working as  
19 the executive director at the Seventh Step Foundation, which  
20 was a drug rehabilitation center, and teaching adult males how  
21 to live a life without the use of crime and without the use of  
22 drugs, and to see people doing that in society just goes  
23 against my grain. It really upset me to see them do that. So  
24 I was -- I had problems myself. Those are two things that are  
25 not going to be happening in my place.

1 Q. Let me break that down and go backwards.

2 A. All right.

3 Q. Let me break that down for the Court.

4 The concern you had with the software, you mentioned you  
5 thought it might be pushing the line a bit too much.

6 A. Yes.

7 Q. What did you mean by that?

8 A. Well, some of the games that they played visually would  
9 have a slot-machine-type of games where the reels would go  
10 around and -- just like a slot machine except it would be on  
11 the computer.

12 Some of them would have games where it said "Keno" and  
13 have the tube come out with 80 different -- with balls with 80  
14 different numbers on it just like you see in Nevada when you  
15 play Keno.

16 Some of them would have another game called "Bingo,"  
17 B-I-N-G-O, with in the B column would be different numbers.

18 You know, wait a minute. That is really, I thought,  
19 inappropriate and really was really pushing the line, and I  
20 can't use that kind of software and don't want to go with a  
21 company that has that kind of software.

22 Q. Now, why exactly did you think that was pushing the line?  
23 Too close to gambling?

24 A. Pardon me?

25 Q. Was it too close to the gambling-type theme?

1 A. Yes. Yes. In my research I'd also read an Attorney  
2 General opinion letter that was written by Jerry Brown when he  
3 was Attorney General which stated those games by name, those  
4 games Keno, Bingo, poker, slot machines. So he named them by  
5 name. So I says, "Well, these people are doing that and that's  
6 something that I can't do and don't want to do."

7 Q. So in your ultimate choice of software, did you choose a  
8 software that stays away from those types of games?

9 A. Yes. Yes.

10 Q. So your software that you utilized doesn't have any  
11 spinning reels?

12 A. That's correct, did not have any of those types of games.

13 Q. Thank you.

14 Now, you also mentioned your second concern had to do with  
15 the type of people that came into these establishments.

16 A. Yes.

17 Q. So tell me, Mr. Doyle, when you opened, let's talk about  
18 Hayward, what steps did you take to make sure that you provided  
19 a good environment for your customers to keep those types of  
20 people away?

21 A. Well, I hired my own security staff, which are guys that  
22 had worked for me or had been, you know, in my Seventh Step  
23 Program who were ex-criminals themselves, ex-drug addicts  
24 themselves, rehabilitated their lives, who can spot a drug  
25 transaction by listening to half of the conversation, who can

1 see any illegal activity going on because that's what they used  
2 to do. They're not doing it anymore, but they know what's  
3 going on. And for them to stop it and tell the people, "You  
4 can't do that here. You can't come in here. You can't do that  
5 in our place."

6 THE COURT: What does your staff consist of?

7 THE WITNESS: My staff consists of mostly males. I  
8 have two ladies working for me. I have 20 -- about 22, 21, 22  
9 males that work for me.

10 THE COURT: No. I mean in Hayward.

11 THE WITNESS: In Hayward, I have about 12 different  
12 people that work for me in Hayward of which I have one lady,  
13 and she's here with me today.

14 THE COURT: What are your hours of operation?

15 THE WITNESS: We're open from 10:00 in the morning to  
16 2:00. Sometimes we stay open past 2:00.

17 THE COURT: A.m.?

18 THE WITNESS: A.m., yes.

19 THE COURT: And you have security all that time?

20 THE WITNESS: Oh, yes, sir. We have double security.

21 THE COURT: Okay.

22 BY MR. GRIFFIN:

23 Q. And your security, they're not armed; is that right?

24 A. No. No. No.

25 Q. Okay.

1 A. And they're not to have any confrontations with the  
2 people. If there's anything going wrong, they ask them to  
3 leave; and if there's a problem, to tell the people, "If you  
4 don't leave, we have no choice except to call the police."  
5 We've never had to call the police yet.

6 Q. Okay. I'm going to get into that.

7 What type of things do you instruct your -- the security  
8 person that's working at the time to look out for?

9 A. To look out for that they're not trying to do anything on  
10 my computers to cheat our computers, to break the machines for  
11 payoffs when they shouldn't be doing that. To make sure to not  
12 come in under the influence of drugs or alcohol, to come in and  
13 just sit around and loiter in our place, hanging out while  
14 they're waiting for a friend or someone else to do something.

15 If they're just sitting in our chairs sitting there  
16 drinking our coffee and not doing business, just hanging out in  
17 there, they can't do that. You can't loiter in there, and they  
18 can't loiter outside.

19 If the people that are on the outside, outside of the  
20 door -- some of the people go out there and smoke. In Hayward  
21 it's my understanding it's illegal to smoke anyplace in the  
22 city, not just indoors but outdoors as well. So if the people  
23 want to go outside and smoke, we say, "You can't smoke. It's  
24 against the law. You can't smoke here. And you can't just  
25 hang around out front and loiter around out front."

1 Q. So they keep them from -- folks from loitering around out  
2 front of your establishment?

3 A. Yes. Yes.

4 Q. Now, what if people are loitering down the street, do your  
5 security guards have any -- do you tell them to do anything  
6 about that?

7 A. No. I've been asked that by my security staff, "How far  
8 do I go?" I say, "You go right to the driveway." Our business  
9 is at the end where the driveway ends. Now, what they do down  
10 the street at the BART station, we're not police. It's not our  
11 job to police that.

12 Q. You mentioned -- let me interject something -- you  
13 mentioned a BART station. There's a BART station about a block  
14 away?

15 A. Yes.

16 Q. And, so, as a result of that BART station, do you get  
17 quite a bit of foot traffic coming back and forth?

18 A. Yes, we do.

19 Q. Just wait for me to finish, so the court reporter --

20 A. Okay. Sorry.

21 Q. She can't take us both down at the same time. Thank you.

22 So you get a lot of foot traffic in front of your  
23 establishment because of that BART station?

24 A. Yes.

25 Q. And, as I understand it, part of the security personnel's

1 job is to make sure that those people don't stop and loiter  
2 outside of your business?

3 A. Yes.

4 Q. Have your security staff advised you that there are people  
5 loitering down the street or across the street?

6 A. Yes.

7 Q. And do you have any knowledge as to whether those are your  
8 customers or not?

9 A. No, I have no knowledge that they're our customers. I  
10 don't.

11 Q. You mentioned a few rules that you have for purposes of  
12 people that can come in. You have the no drug -- you can't be  
13 under the influence of drugs or alcohol, you can't be loitering  
14 with another person.

15 Do you have any rule with respect to -- or policy with  
16 respect to how old a person has to be before they can enter  
17 your sweepstakes?

18 A. Yes. They have to be 18.

19 Q. And is that something, as far as you're aware, that is  
20 regulated by law or is that something you decided to do?

21 A. It's something I decided to do. I don't know if it's  
22 regulated by law. I don't believe so.

23 Q. And why did you decide to do that?

24 A. Well, we're not interested in attracting the juvenile  
25 trade and having them just come in there to do that. That's

1 not what we're interested in.

2 Q. So since you've been open in the city of Hayward,  
3 Mr. Doyle, has there been any need for anybody within your  
4 establishment to call the Hayward Police Department?

5 A. No.

6 Q. Have you had any problems with drugs at your location?

7 A. No.

8 Q. Have you had any problems with prostitution at your  
9 location?

10 A. No.

11 Q. Have you had any problems with assault at your location?

12 A. No.

13 Q. Vandalism?

14 A. No.

15 Q. Public intoxication?

16 A. Well, they try to come in, but we tell them they can't  
17 come in and they go on down the street. No. Not at our place,  
18 no.

19 Q. You don't let people drink alcoholic beverages in your  
20 establishment?

21 A. Absolutely not.

22 Q. You mentioned something about smoking in the alley  
23 adjacent to your business, the back alley. Are those -- do you  
24 have any knowledge as to who those people are that occasionally  
25 smoke in the back alley? Are they your customers or --

1 A. Well, we're at the end of a little shopping center.  
2 There's Lucky's. And the same law applies to everybody, you  
3 can't smoke anywheres. So a lot of the Lucky employees who  
4 want to smoke have to do it in a place where no one can see  
5 them, and they come around the corner in the back where the  
6 Dumpsters are put in there. The Dumpsters are out of the way  
7 but it's in like a little cove, and they come back there and  
8 smoke.

9 They're not our customers. They're employees of Lucky's,  
10 they're employees of the other businesses and customers of the  
11 other businesses up and down the strip.

12 We tell them that they can't do it, but we're not there to  
13 tell Lucky's, who's the main business in that center. We don't  
14 want to argue with their employees and have a problem with  
15 their employees. If they're wearing a Lucky's uniform, we let  
16 them go.

17 Q. Now, Mr. Doyle, prior to -- well, let me ask you this:  
18 When was the first time any police officers from the City of  
19 Hayward walked into your location?

20 A. Gee, I don't remember the date, but I believe it was about  
21 three weeks or a month to us getting the cease and desist  
22 order.

23 Q. So was it after the first of the year 2013?

24 A. Yes. Yes.

25 Q. And did that police officer walk in as a result of a phone

1 call that somebody made to the police from your location?

2 A. No.

3 Q. So it wasn't because of a disturbance, in other words?

4 A. No. No.

5 Q. And what did that -- when that police officer came in,  
6 what did that police officer say?

7 A. Well, I wasn't there when the officer came in. I know  
8 what my staff told me that he said.

9 Q. What did your staff -- who was the staff that told you  
10 this?

11 A. Keyawie is her name. She was --

12 THE REPORTER: I'm sorry, the name?

13 THE WITNESS: Keyawie, K-E-Y-A-W-I-E.

14 BY MR. GRIFFIN:

15 Q. And she's here today?

16 A. She's here today.

17 Q. So she can tell us then?

18 A. She can tell you what happened.

19 Q. Thank you.

20 A. She told me that the police were there.

21 MR. VIGILIA: Objection. Hearsay, Your Honor.

22 THE COURT: Sustained.

23 BY MR. GRIFFIN:

24 Q. The next time -- when was the next time the police showed  
25 up at your location?

1 A. Well, it was the same time when she informed me that the  
2 police were there.

3 MR. VIGILIA: Objection. Hearsay, Your Honor.

4 BY MR. GRIFFIN:

5 Q. Are you -- I don't want you to say what Ms. Hernandez told  
6 you, but did you then go show up at the --

7 A. Yes.

8 Q. Okay. So you went to the location after --

9 A. Yes, about five minutes later.

10 Q. When you got there, did you speak to the officer?

11 A. Yes.

12 Q. Okay. Tell me what the officer said.

13 MR. VIGILIA: Objection. Hearsay.

14 THE COURT: Overruled.

15 BY MR. GRIFFIN:

16 Q. What did the officer say? You may answer.

17 A. The officer said, "Well, you're gambling here."

18 I said, "No, we're not gambling here."

19 He said, "Look, sure you're gambling."

20 I said, "No, we're not gambling here. That's not  
21 gambling.

22 "Why isn't it?"

23 I said, "Why isn't it? Because it's not gambling."

24 He was very insistent that it was gambling, and I didn't  
25 want to be rude or argumentative with the man, but I kept

1 saying, "Well, you're not informed correctly. It's not illegal  
2 gambling.

3 "Well, you have slot machines.

4 "No, I don't have slot machines.

5 "Yes, you do.

6 "No, I don't. Show me a slot machine. There are no slot  
7 machines in here. There's nothing that resembles slot machines  
8 in here."

9 He wanted to argue with me on that; and I said, "I'm not  
10 going to argue with you about it. That's not what we do. We  
11 don't have that in here."

12 That conversation went on about, that type of  
13 conversation, for ten minutes and then he left. He was with a  
14 lieutenant, I believe a lieutenant -- I don't know what the  
15 rank is white bars with a gold bar, I don't know what that rank  
16 is -- but who stood behind him making notes on a -- making  
17 notes. He never said anything.

18 Q. At that point in time did the City issue an abatement  
19 order?

20 A. No, not at that time.

21 Q. When did the City issue you an abatement order?

22 A. I would say two weeks later.

23 Q. In that interim two-week time period, did the City --  
24 anybody from the Police Department visit your location?

25 A. My understanding is that he did come back, same officer

1 did come back, and have the same discussion with my staff.

2 Q. And you weren't there at that point?

3 A. No.

4 Q. Tell me about when the abatement order was issued, was it  
5 delivered to you personally?

6 A. Yes.

7 Q. And where were you?

8 A. I was in my car.

9 Q. Did you have a discussion with an officer or anybody else  
10 from the City about the abatement order?

11 A. No. When he handed it to me, there was no discussion. He  
12 just said, "Mr. Doyle, I have these papers to give you," and he  
13 handed me the papers.

14 Q. And without telling me what he said to you, did you then  
15 consult with an attorney about what to do in response to the  
16 abatement order?

17 A. Yes.

18 Q. And to your knowledge did your attorney at the time, Kevin  
19 Kennedy, write a letter to the City offering, among other  
20 things, to meet with the City?

21 A. Yes.

22 Q. And do you know if the City ever accepted that offer?

23 A. No. Yes, I know that they never accepted the offer. They  
24 never contacted my attorney or me.

25 Q. Now, after -- thank you.

1 Or you?

2 A. Or me. Even though the letter said, "Call me," there was  
3 never any -- when we made calls, there was no return phone  
4 call. There was no attempt to get back with us.

5 Q. Now, was that letter -- the abatement order you received  
6 by hand, was that before or after the City adopted the urgency  
7 ordinance that we're talking about here today?

8 A. The abatement order that I received was prior to that. It  
9 was prior to the City Council meeting. Was that your question?

10 Q. Yes.

11 A. Yes, it was prior to the City Council meeting.

12 Q. Now, did you appear at the City Council meeting?

13 A. Yes, I did.

14 Q. And you were -- did you speak?

15 A. Yes, I did.

16 Q. And you were given your three minutes, I guess, to speak?

17 A. Yes. Yes.

18 Q. At any point in time prior to that hearing in front of the  
19 City Council, did you have any other opportunity to address the  
20 City about the question of the legality of your business?

21 A. No. They would not return the phone calls.

22 Q. Now, after the City Council meeting where the City Council  
23 adopted the ordinance, did you subsequently receive a second  
24 abatement order?

25 A. I don't think I received an abatement order. I don't

1 recall.

2 Q. You don't recall, okay.

3 So after the ordinance was adopted by the City, did you  
4 continue to stay open for a short period of time?

5 A. Yes.

6 Q. What changed that?

7 A. The police officer came in again and was -- gave our staff  
8 a real hard time.

9 Q. Were you there?

10 A. No.

11 Q. Okay. Was Ms. Hernandez there, do you know?

12 A. Yes.

13 Q. Then we can ask her about that.

14 A. Yes.

15 Q. At any point in time did you confront or discuss anything  
16 with the Hayward Police Department about whether your business  
17 was permitted to stay open?

18 A. No.

19 Q. Those discussions were all through Ms. Hernandez?

20 A. I didn't have any direct discussion with the Police  
21 Department.

22 Q. Okay. So why did you decide to temporarily close your  
23 business in response to the ordinance?

24 A. Well, on advice of counsel that the thing to do would be  
25 to go ahead and close.

1 Q. Was there an increased police presence within your  
2 location?

3 A. Yes.

4 Q. And when the police showed up, do you know whether the  
5 police had any interaction with your customers?

6 A. They had interaction with our customers and with our  
7 staff. They roused everybody and arrested one of my staff,  
8 arrested him because he had an 80-dollar ticket out of  
9 San Francisco. Took him to the police station. Two hours  
10 later they released him, but they arrested him right there in  
11 front of everybody.

12 Q. So you decided the best thing to do was to temporarily  
13 close?

14 A. Yes, sir. On advice of counsel, yes.

15 Q. Mr. Doyle, after you -- let me go back very briefly.

16 After you received the okay from the City, the City  
17 indicated it was going to license your business, did you then  
18 sign a lease? Did you sign a lease for your location?

19 A. I signed a lease prior to them giving me the business  
20 license contingent upon them giving us a business license.

21 Q. Okay. So there was an opt-out, if you will?

22 A. Yes.

23 Q. So once that contingency was removed, you were committed  
24 to the lease?

25 A. Yes.

1 Q. Do you know how long that lease was for?

2 A. I believe it was three years with options for two more.

3 MR. GRIFFIN: And if I could mark this as Exhibit 2.

4 (Plaintiff's Exhibit 2 marked for identification)

5 MR. GRIFFIN: May I approach the witness, Your Honor?

6 THE COURT: Please proceed.

7 MR. GRIFFIN: Thank you.

8 Q. Mr. Doyle, I've handed you what's been marked as  
9 Exhibit 2, which was previously attached to your declaration in  
10 this proceeding. Do you recognize this document, Mr. Doyle?

11 A. Yes.

12 Q. What is it?

13 A. It is our lease.

14 Q. For the Hayward location?

15 A. For the Hayward location.

16 Q. Mr. Doyle, if you could, please, turn to page 25 of this  
17 document.

18 A. (Witness complies.) Yes, sir.

19 Q. Do you see under where it says "Tenant: Net Connection  
20 Hayward" and then it has a signature?

21 A. (Witness examines document.) Yes.

22 Q. Is that your signature, Mr. Doyle?

23 A. Yes, it is.

24 Q. Thank you.

25 Mr. Doyle, I'm not going to ask you to read every word,

1 but does this appear to be a true and correct copy of the lease  
2 you signed for your location in Hayward?

3 A. Yes.

4 MR. GRIFFIN: At this point, Your Honor, I'd like to  
5 offer Plaintiff's Exhibit 2 into evidence.

6 THE COURT: Received.

7 (Plaintiff's Exhibit 2 received in evidence)

8 MR. GRIFFIN: Thank you.

9 Q. You can set that up there, Mr. Doyle.

10 Mr. Doyle, after you signed the lease, did you incur some  
11 costs to get your business up and running?

12 A. Yes, I did.

13 Q. And can you explain to the Court what those costs  
14 consisted of?

15 A. The first cost was to build a floor. It was just a  
16 concrete floor. We had to put in the hardwood flooring. We  
17 did that. I had to buy the material and hire a contractor to  
18 put it in.

19 The second costs were to be to order the fixtures, the  
20 long rows of tabletops and dividers, and buy all the chairs,  
21 all the computers, and have the computers installed and wired.  
22 Buy all the shelving, all the other incidentals in the  
23 business, the check-in counter where the staff works, have a  
24 security monitoring system purchased, and install the different  
25 security cameras. To buy all -- the refrigerator, and things

1 of that fashion, to keep cold drinks cold, and buy the coffee  
2 machines. And buy the fax machines, scanning machines, copy  
3 machines. To buy all that equipment and have it installed and  
4 have the computers installed and hooked up.

5 Q. Can you give us a rough estimate of what that financial  
6 cost was to you to do that?

7 A. I believe it was about 40,000.

8 Q. And you paid that personally?

9 A. I'm sorry?

10 Q. You paid that personally?

11 A. Yes.

12 Q. What was at that location before you took over?

13 A. It was just an empty shell. I don't know what was there.

14 Q. Do you know how long it had been empty?

15 A. I believe -- I believe it had been empty for a year or so.  
16 I'm not sure.

17 Q. When you visited the location when you were scouting  
18 locations, did you notice any problems in the neighborhood with  
19 people loitering?

20 A. I noticed it was downtown, and in any downtown you have  
21 the people that hang out downtown. I noticed that. I noticed  
22 that it was a block away or half a block away, three quarters  
23 of a block away from the BART, Hayward main BART station, and  
24 that people were coming and going from the Hayward BART station  
25 walking right up past our potential establishment.

1 Q. All right. Now --

2 A. And I also noticed that in downtown Hayward they would  
3 have different events where they would close off the blocks and  
4 have carnivals or things to promote businesses in the area, and  
5 I thought that would be quite nice to be real close to that so  
6 we could get that clientele from them.

7 Q. Did you ever notice people, the Lucky's employees, smoking  
8 in the back alley when you were scouting the location?

9 A. At that time, no, I did not notice that.

10 Q. What about the Dumpster around the corner in the alley,  
11 did you --

12 A. I never paid any attention to that at the time.

13 Q. Do you believe, Mr. Doyle, that the condition of where  
14 your business is is better now than it was prior to you taking  
15 possession?

16 A. Oh, a hundred percent better. A hundred percent better.

17 Q. Now, just a few more questions, Mr. Doyle.

18 Do you -- you mentioned -- you talked about your research  
19 prior to opening the Internet cafes and using the sweepstakes  
20 promotion. So now that you have five locations, have you  
21 visited a number of different locations that do these types of  
22 things?

23 A. Yes.

24 Q. And as I --

25 THE COURT: Wait a minute. You have five locations

1 now?

2 THE WITNESS: Yes, I do, sir.

3 THE COURT: Okay.

4 MR. GRIFFIN: Only one in --

5 THE COURT: Where are they located?

6 THE WITNESS: I have one in Fullerton, one in  
7 Hacienda Heights. Those are both Southern California. I have  
8 one in Milpitas in Northern California, one in San Lorenzo, and  
9 this one in Hayward.

10 THE COURT: Same type of business?

11 THE WITNESS: Exactly the same.

12 THE COURT: Same computer programs?

13 THE WITNESS: Exactly the same.

14 THE COURT: Same sweepstakes programs?

15 THE WITNESS: Exactly the same software.

16 THE COURT: Where did you get the program?

17 THE WITNESS: We paid --

18 THE COURT: Sweepstakes program.

19 THE WITNESS: Pardon me?

20 THE COURT: Where did you get the sweepstakes program?

21 THE WITNESS: We lease that from Capital Sweepstakes.

22 BY MR. GRIFFIN:

23 Q. That's a software manufacturer provider?

24 A. Yes.

25 Q. We've talked about these other operators that are out

1 there running Internet cafes with sweepstakes. Do you know if  
2 they're running -- do they all run the same software?

3 A. No, they do not.

4 Q. So after visiting -- you visited a number of different  
5 places --

6 A. Yes.

7 Q. -- run by different people; correct?

8 A. Yes.

9 Q. Do you feel like you do things differently than the norm  
10 in this particular industry?

11 A. There's no question about it. We are far above the norm  
12 of the other places. They allow too much bad stuff. We don't  
13 allow any of that.

14 Q. What do you mean by "bad stuff"?

15 A. Rowdy customers hanging out causing trouble, loitering,  
16 doing drugs right on the premises or outside the premises. And  
17 the software that they use has Bingo games on it and slot-  
18 machine-appearing-type games, and Keno-appearing games, and  
19 things of that fashion.

20 And they seem to do nothing about -- although they may  
21 have a security guard out front with a badge on, but they don't  
22 tell customers to move on down the road.

23 I've been solicited for prostitution by parking in front  
24 of one of the other places just looking inside by a lady coming  
25 outside with a guard standing right next to her that did

1 nothing.

2 Q. That would not be -- you would not tolerate that sort of  
3 thing?

4 A. Absolutely not.

5 Q. And --

6 A. Would not and do not.

7 Q. Thank you.

8 Now, very briefly, with respect to the sweepstakes itself,  
9 I have just a few questions for you in this regard, Mr. Doyle.  
10 How is it one of your customers get to enter the sweepstakes?

11 A. I'm sorry, I don't understand.

12 Q. You have -- we've been talking about sweepstakes; right?

13 A. Yes.

14 Q. And as I understand it, a customer will get entries to the  
15 sweepstakes with a purchase?

16 A. Yes.

17 Q. And what can they purchase that will result in them  
18 receiving sweepstakes?

19 A. Well, everything that they purchase in our place they get  
20 free sweepstakes. If they buy a Coca-Cola, buy a cup of  
21 coffee, buy a fountain pen -- we don't have fountain pens, but  
22 a ballpoint pen, buy packaging supplies, if they want to scan  
23 something, if you want to fax something, if you want to copy  
24 something, buy a candy bar, buy a bag of potato chips.  
25 Whatever they buy, we give them free credits for the

1 sweepstakes.

2 Q. You don't actually sell sweepstakes credits?

3 A. Oh, no, no. We do not sell sweepstakes. Whenever the  
4 customers buy, we give them free sweepstakes. We give them  
5 free credits for the sweepstakes.

6 Q. Now, what if a customer comes in and doesn't want to buy  
7 anything, can they still get a free sweepstakes?

8 A. Yes, one customer per day can get a hundred free points.

9 Q. Now, on the first day a customer comes in, do they get  
10 additional free entries?

11 A. Yes, depending upon the promotional program that I'm  
12 running to get that customer in. If they just happen to walk  
13 down the street and see our sign and walk in, we give them 500  
14 free points.

15 If we do a promotion where we send out mailers and things  
16 and ask them to come in, we give, depending upon the mailer, we  
17 give them an offer of free sweepstakes credits.

18 Q. So you do have people that come in and request and  
19 receive --

20 A. Yes.

21 Q. -- free sweepstakes?

22 A. Yes.

23 Q. And they're entitled to play --

24 A. Yes.

25 Q. -- the sweepstakes --

1 Just wait for me to finish.

2 A. Sorry.

3 Q. They're entitled to play the sweepstakes just like any  
4 paying customer that's paying for a product?

5 A. Yes.

6 Q. And do you, within your place of business, do you have a  
7 poster on the wall that displays the odds of winning the  
8 sweepstakes?

9 A. Yes.

10 Q. And does that -- that poster indicates that there's no  
11 purchase necessary to participate?

12 A. Yes.

13 Q. It says it conspicuously in big letters; correct?

14 A. Big giant sign, yes.

15 Q. Thank you.

16 (Pause in proceedings.)

17 MR. GRIFFIN: At this point in time, Your Honor, I  
18 don't have any further questions. Thank you.

19 CROSS-EXAMINATION

20 BY MR. VIGILIA:

21 Q. Good morning, Mr. Doyle.

22 A. Good morning.

23 Q. So you've testified that with respect to the services that  
24 you offer, you offer fax services; correct?

25 A. Yes.

1 Q. At the location in Hayward, where is the fax machine  
2 located?

3 A. It's located against the back wall.

4 Q. Is it accessible by the public? Can customers go use it?

5 A. Yes.

6 Q. What are your rates for sending faxes?

7 A. I'm -- I don't recall. I'm not sure.

8 Q. And you have a photocopy machine at the Hayward business  
9 as well?

10 A. Yes. Yes.

11 Q. Where is that located?

12 A. I believe it's at the same location, on the back wall.

13 Q. And with respect to this location, is it behind a counter  
14 where only a cashier can access it?

15 A. No. No.

16 Q. And what are your rates for making copies?

17 A. I think it's 30 cents a copy, but it may have gone up or  
18 down 5 or 10 cents. I don't recall.

19 Q. And you indicated you also rent computer time?

20 A. Yes.

21 Q. What rates do you charge for rental of computer time?

22 A. The computer time I believe is 30 cents a minute.

23 Q. And you indicated that you sell office supplies as well?

24 A. Yes.

25 Q. What types of office supplies do you sell?

1 A. Paper, pens, paperclips, supplies like that.

2 Q. All right. And you've indicated that it seems that if you  
3 purchase an item at your store, whether it's computer time,  
4 faxing a letter, making a copy, buying a soda, you award  
5 sweepstakes points to the customer; correct?

6 A. Yes. We give them sweepstakes points.

7 Q. You give them. Is there -- how many sweepstakes points  
8 does a person get for purchasing a soda?

9 A. I believe it's a hundred.

10 Q. And how would they -- how many points does a person get  
11 for sending a fax?

12 A. I believe it's a hundred.

13 Q. Okay. So everyone would get at least a hundred points --

14 A. Yes.

15 Q. -- for purchase of a service?

16 A. Hundred points would be the minimum.

17 THE COURT: What does the hundred points do for you?

18 THE WITNESS: It allows the customers to play the  
19 sweepstakes games.

20 THE COURT: For how long?

21 THE WITNESS: One or two minutes. That's all. The --

22 BY MR. VIGILIA:

23 Q. Let me ask a question. I'll follow up on the Court's  
24 question.

25 So the amount -- so the sweepstakes points are tied to a

1 certain amount of time that they are able to play?

2 A. The sweepstakes points are tied to the customer selects  
3 how many points they want to reveal at one time. If they want  
4 to reveal 25, if they want to reveal 50, if they want to reveal  
5 the whole hundred, they can do that at one time. So the  
6 customer gets to select. It's their choice as to how -- how  
7 many points they're going to reveal.

8 Q. Okay. And I guess their selection or their wager could  
9 determine how long they play depending on how much or how  
10 little they select at a time?

11 A. Yes.

12 Q. Would the fact that they may win a prize affect how much  
13 longer they could play?

14 A. That would be their option. If they won a prize, if they  
15 won points, they can redeem the points or they can purchase  
16 more time.

17 Q. And what types of prizes would they be eligible to win?

18 A. Cash.

19 Q. And if they won a cash prize, how would they redeem that?

20 A. Come to the counter and tell the cashier at the counter  
21 that they won and redeem their prize.

22 Q. And would they be given cash at the location or would it  
23 be mailed to them at a later time?

24 A. No, they would receive cash at the location.

25 Q. Does your business keep track of how much in cash is paid

1 out in prizes on any particular day?

2 A. Yes.

3 Q. And how is that recorded?

4 A. I'm not sure I understand that.

5 Q. Where do you keep track of that information?

6 A. It's kept out of the computer terminal, the master  
7 computer terminal.

8 THE COURT: Let's see, if you buy a candy bar and get  
9 a hundred points, and then I play the machine, and suppose I  
10 win something. I get another -- I can win either points or win  
11 a prize on the machine; is that right? Can I win points on the  
12 machine?

13 THE WITNESS: They don't win points. They win  
14 credits. Points, okay.

15 THE COURT: Whatever you want to call it.

16 THE WITNESS: They win credits.

17 THE COURT: So you get a credit, you get 50 credits --  
18 you won 50 credits on the machine.

19 THE WITNESS: Yes.

20 THE COURT: So now you've got 150.

21 THE WITNESS: Yes.

22 THE COURT: Can you take those credits to the cashier  
23 and get money for them?

24 THE WITNESS: Yes.

25 THE COURT: You can?

1           **THE WITNESS:** Yes.

2           **THE COURT:** Okay. So the credit -- are the credits  
3 the prize? What's the prize?

4           **THE WITNESS:** The prize is cash. It's a penny a  
5 credit. So if you --

6           **THE COURT:** So when I'm playing your machine, am I  
7 playing for points or am I playing, "You won \$50," "You won a  
8 hundred dollars," "You won 50," or both? I'm not too clear on  
9 what's going on there.

10          **THE WITNESS:** If you won 500 points, that equates to  
11 \$5. So you go to the cashier and redeem that for \$5. If you  
12 won 5,000, it would be \$50.

13          **THE COURT:** So when I buy a candy bar and I've got a  
14 hundred points, can I redeem that for cash?

15          **THE WITNESS:** No.

16          **THE COURT:** I have to play the machine?

17          **THE WITNESS:** Yes.

18          **THE COURT:** Okay.

19 **BY MR. VIGILIA:**

20 **Q.** With respect to the computers, it's some sort of software  
21 that allows customers to play or reveal their sweepstakes  
22 results; is that right?

23 **A.** Yes.

24 **Q.** And is there a function for using the Internet as well?

25 **A.** Yes.

- 1 Q. Is there a function for word processing?
- 2 A. Yes.
- 3 Q. Do computers have Word or Word Perfect installed on them?
- 4 A. You know, I don't recall.
- 5 Q. Okay. Do your computers have PowerPoint or a software to  
6 make presentations?
- 7 A. I believe they do, but I don't recall the specifics on  
8 that.
- 9 Q. Are your computers hooked up to printers so customers can  
10 print the documents that they create on them?
- 11 A. Yes.
- 12 Q. And how much do you charge for printing a page?
- 13 A. I believe it's 30. I believe it's 30 cents a copy.
- 14 Q. And is that printing considered a separate purchase where  
15 people can get -- or customers can get additional points?
- 16 A. Ask that again, please.
- 17 Q. So my understanding is that every time a customer  
18 purchases a product or service, that they will be given  
19 sweepstakes points; correct?
- 20 A. Yes.
- 21 Q. And, so, suppose a customer purchases some time on the  
22 computer and they're given their hundred points, and they use  
23 the computer to type up a résumé and now they need to print  
24 their résumé. Would the printing constitute another purchase  
25 for which they could get more points?

1 A. Yes. They haven't used the points as yet.

2 Q. But would they be given another set because they purchased  
3 another service?

4 A. Yes. Yes.

5 Q. All right. Do you know how the frequency -- strike that.

6 Do you know the percentage in terms of how often people  
7 play the sweepstakes on the computer as opposed to, say, use  
8 the Internet?

9 A. It's about 50 percent.

10 Q. So half the people will spend time playing or revealing  
11 sweepstakes and half the people will use some other service?

12 A. It ends up being that number. It doesn't start off with  
13 that number.

14 Q. Okay. And how do you -- and how do you -- what do you  
15 base that observation on? Do you track it with some -- through  
16 the computer system or something like that?

17 A. No. I have my security staff walking around on a  
18 continuous basis making sure that the customers aren't doing  
19 anything illegal, that they don't have pornography on the  
20 screen, that they don't have something on the screen that they  
21 shouldn't have. By them constantly reviewing and looking at  
22 what is going on in the business establishment and me  
23 interviewing my security staff and my counter staff, that's  
24 where I draw that information.

25 Q. Okay. So it's based on observations?

1 A. Yes.

2 Q. All right. In your research regarding these businesses,  
3 you indicated you visited some existing businesses in the  
4 Bay Area.

5 A. Yes.

6 Q. Pleasant Hill, San Leandro, Antioch; correct?

7 A. Yes.

8 Q. And you said you noted some -- you said you had some  
9 concerns when you visited these businesses; is that right?

10 A. Yes.

11 Q. And one of them -- one of the concerns was you saw conduct  
12 that included sort of drug use and maybe some criminal conduct  
13 of some type; is that right?

14 A. Yes.

15 Q. And that was happening at those locations?

16 A. Yes.

17 Q. Did you see it at every single location that you went to?

18 A. No.

19 Q. How many of the locations did you observe this type of  
20 behavior going on?

21 A. I would say two of the four.

22 Q. Okay. And were there any other observations you had at  
23 the other locations that may have given you pause about conduct  
24 that if you decide to go in this business, you would have to,  
25 you know, take efforts to regulate?

1 A. Yes.

2 Q. And what types of conduct did you see?

3 A. Loitering around out front, just hanging around out front.  
4 We don't allow that in our place, and I would have to do  
5 something about that. Although standing around out front may  
6 not be against the law, standing on the sidewalk smoking and  
7 the city doesn't allow that, I don't think that's good business  
8 practices so at our place I would not allow that.

9 Q. And that's in addition to some of the criminal behavior  
10 you believe you saw?

11 A. Yes. Yes. I seen that every place.

12 Q. Sure. But in two of the places or two of the locations  
13 you visited, it looked like it was happening inside or around  
14 it, outside it, something like that?

15 A. In two of the places I seen people using narcotics,  
16 illegal narcotics, right in front of everybody, snorting  
17 cocaine off of the tabletop right there in front of everybody.

18 Q. Inside the business?

19 A. Inside the business, yes.

20 Q. When you were doing this type of research, did you speak  
21 with any of the adjacent business owners and ask them, you  
22 know, about how they felt about a business that you just took a  
23 look at?

24 A. No.

25 Q. And you indicated one of your concerns was the type of

1 software that you saw?

2 A. Yes.

3 Q. And you described them as slot machine looking or having  
4 words like "Keno" or "Bingo"; is that right?

5 A. Yes.

6 Q. And you stated that you thought it pushed the line or got  
7 too close to the line; correct?

8 A. Yes.

9 Q. And by "pushing the line," you mean it was gambling or  
10 appeared like gambling?

11 A. Yes.

12 Q. Which one?

13 A. That it appeared to be gambling.

14 Q. And do you have -- that made you uncomfortable?

15 A. It made me very uncomfortable.

16 Q. Okay.

17 A. And had I not found a software company that did not have  
18 that, I would not have gone in that business.

19 Q. Sure. My understanding is that the software promotes the  
20 sale of your products; correct?

21 A. Yes.

22 Q. And, so, you're selling, whether it's Internet time,  
23 chips, soda, copy machine, that's what people are paying for;  
24 right?

25 A. Please ask me that again.

1 Q. When a person -- when a customer comes into your business  
2 and asks to buy some computer time and he's given some  
3 sweepstakes entries, the reason that customer is there is  
4 because he wants to use the computer; is that right?

5 A. Yes.

6 Q. And is it your understanding that that's -- you indicated  
7 you had a conversation with a Hayward police officer who was  
8 under the impression that these were slot machines.

9 A. Yes.

10 Q. But you don't use software that mimics -- that looks like  
11 slot machines; correct?

12 A. Yes.

13 Q. And, so, my question is, what would -- why would you be  
14 uncomfortable with the fact that they appeared like slot  
15 machines if you were really selling product? Isn't the  
16 appearance irrelevant because you're selling the product and,  
17 you know, whether it looks like a slot machine, whether it  
18 looks like Bingo or Keno or, you know, some sort of spinning  
19 wheel that lands on something, isn't that really irrelevant  
20 because the product that's being sold is making copies, sending  
21 a fax, or going on the Internet, something like that?

22 A. No. I'm in the rehabilitation business, and that's --  
23 that appears to be too much close to the line, and I don't want  
24 to have my people that I'm associated with involved in a  
25 business that's doing that.

1           Even though you're right, it may not be illegal, it  
2 appears to be too close to the line for my taste, and I would  
3 not want -- I would not be comfortable with that.

4 Q.   Okay.  So your concern was that the environment that it  
5 might create --

6 A.   Yes.

7 Q.   -- if you use those types of software systems?

8 A.   No.  I would be uncomfortable with the appearance.

9 Q.   The appearance?

10 A.   Yes, sir.

11 Q.   Because it appears as if customers are gambling?

12 A.   Yes.

13 Q.   Okay.  Even though they are not gambling?

14 A.   That's correct.

15 Q.   Now, you indicated that you don't -- your intent is not to  
16 market to, I think, juvenile crowds is what you indicated,  
17 people under 18?

18 A.   Yes.  However, we do have juveniles come down with their  
19 mom or dad and do different -- research items with their mom  
20 and dad there, yes, we do have that.

21 Q.   What's the rationale for restricting your access of it to  
22 minors who are, let's say, unaccompanied by an adult?

23 A.   The rationale is I don't want to have to supervise a bunch  
24 of juveniles.  I have my Seventh Step Foundation.  I operate a  
25 juvenile class where we teach inner city kids how to stay away

1 from crime and drugs, and that's too much of a handful to let  
2 it go unregulated in a place like that. So I don't allow them  
3 in there.

4 Q. Okay. But you do -- you testified you do have security  
5 staff at your business, though; correct?

6 A. I do, but my security staff isn't there to babysit kids.

7 Q. Okay, fair enough. But they are -- you testified that  
8 they are there to spot illegal behavior of some loitering?

9 A. Yes.

10 Q. Smoking?

11 A. Yes.

12 Q. Okay. And you indicated that your security staff -- are  
13 they also clients of your Seventh Step Program?

14 A. Some of them are.

15 Q. All right. And these are not state-certified security --

16 A. No.

17 Q. -- folks; correct?

18 A. Yes, that's correct, they are not certified.

19 Q. Sure. Do they wear anything that indicates that they are  
20 security personnel for your establishment?

21 A. Not at that location any longer. In the beginning we had  
22 them wear a shirt that said "Security." We've since changed  
23 that. We tell them not to do that.

24 Q. Okay. What's the purpose of that?

25 A. It looks nicer.

1 Q. Okay. More inviting to customers?

2 A. I don't have a reason other than that's just a decision we  
3 made that we thought it would look nicer and they would look  
4 better.

5 Q. Sure.

6 A. There was a concern about the appearance, so I wanted to  
7 upgrade the appearance.

8 Q. What is the process for requesting free entries? You  
9 indicated that a customer can come in and get free entries.  
10 Can I just walk into your store in Hayward and say, "I'd like  
11 some -- you know, 100 free entries, or whatever it is, for the  
12 day"?

13 A. Yes. Yes.

14 Q. And how would I go about redeeming them? Would I be able  
15 to use the computer as well?

16 A. Yes.

17 Q. But because I didn't -- because I didn't buy any Internet  
18 time, I wouldn't be able to use all the services, though;  
19 correct?

20 A. I'm not sure I'm following your question.

21 Q. If I or some other customer comes into your store to  
22 request a hundred free entries, my understanding is, you know,  
23 you don't have to purchase any type of service to get those  
24 free entries; correct?

25 A. That's correct.

1 Q. So, of course, I wouldn't be able to use the computer or  
2 any other service, or at least for the Internet; right?

3 A. The free entries give you the hundred free credits for the  
4 sweepstakes. It doesn't give you free Coca-Cola, free coffee,  
5 free candy bars --

6 Q. Okay.

7 A. -- free copying, free faxing. It doesn't give you that.  
8 It gives you a hundred free credits.

9 Q. Okay. And could I go on the computer and reveal my free  
10 credits that way?

11 A. Yes.

12 Q. And can a customer win more sweepstakes points?

13 A. Yes.

14 Q. Okay. And can they win more computer time or is that  
15 something that has to be bought?

16 A. They can win sweepstakes points which they can redeem that  
17 for cash or redeem that for more time, whichever they prefer --

18 Q. All right.

19 A. -- at their option.

20 Q. And is there a mail-in option where a customer can write  
21 to the Capital Sweepstakes?

22 A. Yes. Yes.

23 Q. And do you provide forms for --

24 A. Yes.

25 Q. -- customers to do that?

1 A. Yes.

2 Q. How often does that occur?

3 A. I don't believe it's happened yet.

4 Q. Okay. Now, do you know how many points they would be  
5 entitled to if they mailed it in?

6 A. A hundred.

7 Q. And if they received those points in the mail, how would  
8 they -- they'd get to reveal them in any way at the store?

9 A. They would come into our place with whatever they received  
10 from Capital Sweepstakes, and bring it into our place, and we  
11 would put it on their computer for them.

12 Q. Is there a certain time period that a customer has to play  
13 those points that they've received? Like if a customer comes  
14 in today and receives his hundred points, does he have to  
15 play -- are they only good for that day?

16 A. No. There's -- you're given -- no. There's unlimited  
17 time. Once you receive the points, you still have the points.

18 Q. Okay.

19 A. If you have the time, you still have the time.

20 Q. Okay.

21 A. If you redeem them or don't, you still have that time.

22 Q. How about if I win -- if a customer wins a prize, wins  
23 points, is there a time limit on the customer redeeming his  
24 prize?

25 A. No.

1 Q. Can he go to any Net Connection location and redeem his  
2 prize?

3 A. No. At that one location.

4 Q. Okay. Now, with respect to obtaining your business  
5 license, did you have to fill out some sort of application?

6 A. Sure. Yes.

7 MR. VIGILIA: Your Honor, I've premarked this as  
8 Defendant's Exhibit 1.

9 THE COURT: All right.

10 (Defendant's Exhibit 1 marked for identification)

11 MR. VIGILIA: And may I approach the witness,  
12 Your Honor?

13 THE COURT: Surely.

14 BY MR. VIGILIA:

15 Q. Mr. Doyle, I've handed you what's been premarked as  
16 Plaintiff's Exhibit -- or, excuse me, Defense Exhibit 1. Do  
17 you recognize it?

18 A. Yes.

19 Q. What do you recognize it to be?

20 A. What do I what?

21 Q. How do you -- what do you recognize it as?

22 A. As a form that the City of Hayward wanted me to fill out.

23 Q. Okay. And at the bottom of the first page do you see a  
24 signature there?

25 A. Yes.

1 Q. And is that your signature?

2 A. Yes.

3 Q. And with respect to Item Number 5, it asks to describe in  
4 detail the nature of the business, and it looks like the  
5 business is described as "Internet Service/Business Center"; is  
6 that right?

7 A. Yes.

8 Q. Now, you indicated when you spoke with Mr. Patenaude that  
9 he had some difficulty understanding the nature of the  
10 business; is that right?

11 A. Yes.

12 Q. And in order to assist him, you submitted a letter by  
13 email that attempted to describe in more detail --

14 A. Yes.

15 Q. -- what the business was; correct?

16 . How exactly did you describe it in your conversations with  
17 Mr. Patenaude? How did you describe the nature of your  
18 business?

19 A. I described the nature of the business as an Internet  
20 slash business center where we would sell and rent computer  
21 time. We would have fax machines, copy machines, scanning  
22 machines. We would sell incidental items in there, packaging  
23 supplies, so on and so forth. The primary thrust of our  
24 business would be the selling of computer time.

25 Q. And did the term "Internet cafe" ever get used either by

1 yourself or Mr. Patenaude?

2 A. I don't recall.

3 Q. Are you familiar with the term "Internet cafe"?

4 A. Yes.

5 Q. Are you familiar with the term "sweepstakes cafe"?

6 A. I'm familiar with the term "sweepstakes," and I'm familiar  
7 with the term "cafe," but I'm not familiar with "sweepstakes  
8 cafe."

9 Q. Okay.

10 A. We don't use that term. I don't know who uses it.

11 Q. All right. Are you -- in your experience running this  
12 business, have you seen that term "sweepstakes cafe" used to  
13 refer to similar businesses as yours?

14 A. No, I don't believe they've been called that, no. On the  
15 Internet they may be, but the locations I researched prior to  
16 starting the business, no.

17 Q. All right. And you indicated that you have five total  
18 locations in the state; correct?

19 A. Yes.

20 Q. And how many were in existence before you opened the  
21 Hayward location?

22 A. I believe three.

23 Q. And where were they located?

24 A. It would be San Lorenzo, Milpitas, and Hacienda Heights.

25 Q. And Hacienda Heights is in Southern California?

1 A. Southern California.

2 Q. And for those other locations, did you have to fill out  
3 some more business license applications?

4 A. Yes.

5 Q. And how did you describe your business on those  
6 applications?

7 A. The same way, Internet slash business center.

8 Q. And are you aware -- you indicated that it's your  
9 understanding Mr. Patenaude visited your San Lorenzo location?

10 A. Yes, he did.

11 Q. Are you aware if the staff from any other -- from  
12 Hacienda Heights or San Lorenzo or Alameda County conducted  
13 similar visits to understand the nature of your business?

14 A. I really don't understand your question.

15 Q. Let's take your San Lorenzo location.

16 A. Yes.

17 Q. When you filled out your business license application with  
18 the county, did the staffer have similar uncertainty about the  
19 nature of your business as Mr. Patenaude did?

20 MR. GRIFFIN: Objection. Relevance.

21 THE COURT: Sustained.

22 BY MR. VIGILIA:

23 Q. Did you describe the promotional component of your  
24 business to Mr. Patenaude? Did you describe the promotions of  
25 your business?

1 A. Yes.

2 Q. And did you specifically describe how the sweepstakes  
3 would work?

4 A. I believe so.

5 Q. Did you offer to show him on a computer how a sweepstakes  
6 system would operate?

7 A. No. I offered him to go to my San Lorenzo location and  
8 look at it and research it as much as he wanted to.

9 Q. Are there other promotional programs that you utilize in  
10 conjunction with your business? Other than the sweepstakes, do  
11 you do other types of promotions?

12 A. I'm not sure I know when you refer to the word  
13 "promotions." That means one thing to me. It may mean  
14 something different than what it means to you.

15 Q. Sure. Sure.

16 Recalling I believe it was Plaintiff's Exhibit 1, which  
17 was the letter that you sent to Mr. Patenaude --

18 THE COURT: Exhibit 1.

19 MR. VIGILIA: Exhibit 1. Thank you, Your Honor.

20 Q. Plaintiff's Exhibit 1 is the letter you sent  
21 Mr. Patenaude; correct?

22 A. Yes.

23 Q. And in that letter you describe that you will offer  
24 promotions to customers; correct?

25 A. Yes.

1 Q. And it's described, at least at one point, they'll have  
2 the opportunity to win cash prizes related to usage of computer  
3 time?

4 A. Yes.

5 Q. And is that different from the sweepstakes where they  
6 don't have to use any type of computer time to be able to win  
7 the prize in a sweepstakes?

8 A. I'm sorry, I don't understand what you're asking me.

9 Q. My understanding is that if you purchase a product like  
10 computer time, you don't have to use it in order to play the  
11 sweepstakes and win a prize; is that right?

12 A. You don't have to use what, the computer?

13 Q. The computer time, yeah, the Internet time you bought.

14 A. The computer time clock doesn't tick while you're using  
15 the sweepstakes.

16 Q. Okay. I think what I'm trying to get at is: Is there a  
17 separate promotional program where the more time you use, you  
18 could win some other prize, like a frequent buyer card or a  
19 frequent-diner-type card the more you use the product, the more  
20 you would be entitled to some sort of benefit?

21 A. No.

22 Q. Okay.

23 A. If I'm understanding your question correctly, no.

24 Q. Okay. And in speaking with Mr. Patenaude in obtaining  
25 your business license, did you mention to him that you

1 researched other businesses before deciding to open your own?

2 A. No.

3 Q. And, so, you didn't discuss with him some of the concerns  
4 you had about behavior you'd seen at these locations?

5 A. About the what?

6 Q. About behavior you'd seen at the locations.

7 A. No. No.

8 Q. And, so, you didn't discuss that there might be a security  
9 demand on your staff to police behavior?

10 A. No.

11 (Pause in proceedings.)

12 MR. VIGILIA: Can I have one moment, Your Honor?

13 THE COURT: Sure.

14 (Pause in proceedings.)

15 MR. VIGILIA: And I have one more question, then I'll  
16 be finished, Your Honor.

17 Q. Going back to the concerns you had about the appearance of  
18 the games at the other establishments, can you describe how  
19 your games are different?

20 A. Can I describe how our games are different?

21 Q. Right. If they don't -- if you don't have a slot-machine  
22 looking game or games called Keno or Bingo, how have you -- or  
23 how does your system, I guess, not push the line, so to speak?

24 A. Well, they don't have those type of games that appear that  
25 have Keno, Bingo, poker, Roulette, slot machines. They don't

1 have those games. Our software doesn't have those type of  
2 games. Our software is much tamer than that. Better graphics,  
3 brighter colors but, nevertheless, doesn't have those games  
4 that I'm concerned about.

5 MR. VIGILIA: Nothing further at this time,  
6 Your Honor.

7 THE COURT: Thank you.  
8 Anything further?

9 MR. GRIFFIN: Very quick redirect, Your Honor.

10 THE COURT: What's that?

11 MR. GRIFFIN: Very quick redirect.

12 THE COURT: Sure.

13 MR. GRIFFIN: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. GRIFFIN:

16 Q. Mr. Doyle, in response to counsel's questions, I believe  
17 you indicated you weren't sure the rates for faxes and copies.  
18 Do you recall that?

19 A. Yes.

20 Q. Okay. You have a manager --

21 A. Yes.

22 Q. -- for your businesses?

23 And what's her name?

24 A. Keyawie Hernandez.

25 Q. And you talked about her earlier today?

1 A. Yes.

2 Q. You have a full-time job with Seventh Step Foundation?

3 A. Yes.

4 Q. Do you delegate those sorts of things to your manager?

5 A. Yes.

6 Q. So she can tell us when she testifies?

7 A. Yes.

8 Q. Mr. Vigilia asked you a few questions about minors, and I  
9 just wanted to make sure a few things were clear.

10 If a minor comes in with an adult, that minor can use the  
11 computer for purchased Internet time; correct?

12 A. Right.

13 Q. Under any circumstance can that minor under 18 years old  
14 play sweepstakes?

15 A. No.

16 Q. Can a minor unaccompanied by an adult either use the  
17 Internet or play sweepstakes?

18 A. No.

19 Q. Mr. Vigilia asked you a few questions about word  
20 processing, PowerPoint, and you weren't sure.

21 A. Yes.

22 Q. Do you know what Google is; correct?

23 A. Yes.

24 Q. Do you know what Google Docs is?

25 A. What?

1 Q. Google Docs?

2 A. No.

3 Q. So you don't know what types of things you can do through  
4 Google Docs?

5 A. I've never used Google Docs. I don't even know what that  
6 is.

7 Q. Mr. Vigilia also asked you about your business license  
8 application.

9 A. Yes.

10 MR. GRIFFIN: Madam Clerk, do you have a copy of that  
11 exhibit that was marked Defense Exhibit 1?

12 THE CLERK: I do not.

13 MR. VIGILIA: I have it here. I was going to ask that  
14 it be moved in evidence after you're finished, so....

15 MR. GRIFFIN: May I approach, Your Honor?

16 THE COURT: Surely.

17 MR. GRIFFIN: Thank you.

18 Q. I've handed you again what's been marked as Defense  
19 Exhibit 1, and you had indicated that, correctly on this  
20 application, you identified the nature of your business as  
21 "Internet Service/Business Center" in line 5; correct?

22 A. Yes.

23 Q. Does it appear to you that the space provided on line 5  
24 allows you to fully describe your business?

25 A. No.

1 Q. Is that why you had further discussions with Mr. Patenaude  
2 of the City Attorney for the City of Hayward in this case?

3 A. Yes.

4 Q. Is that why you wrote him the one-page letter describing  
5 your business?

6 A. Yes.

7 Q. And you invited him to visit your other location?

8 A. Yes.

9 MR. GRIFFIN: Thank you. No further questions,  
10 Your Honor.

11 THE COURT: Anything further, Counsel?

12 MR. VIGILIA: No, Your Honor.

13 I would ask that Defense Exhibit 1 be moved into evidence.

14 THE COURT: I beg your pardon?

15 MR. VIGILIA: I would ask that Defense Exhibit 1 --

16 THE COURT: Yes, it's in evidence.

17 (Defendant's Exhibit 1 received in evidence)

18 MR. VIGILIA: Thank you.

19 THE COURT: All right. Thank you. We'll take a short  
20 recess then. We'll take about a five-minute recess.

21 (Recess taken at 11:32 a.m.)

22 (Proceedings resumed at 11:38 a.m.)

23 THE COURT: All right. Your next witness?

24 MS. POPE: Your Honor, the plaintiffs call Azalea  
25 Hernandez.

1           **THE CLERK:** Raise your right hand.

2                           **AZALEA KEYAWIE HERNANDEZ,**

3 called as a witness for the Plaintiff, having been duly sworn,  
4 testified as follows:

5           **THE WITNESS:** I do.

6           **THE CLERK:** Please be seated.

7           State your full name and spell your last name.

8           **THE WITNESS:** Azalea Keyawie Hernandez;

9 H-E-R-N-A-N-D-E-Z.

10           **THE REPORTER:** Can you spell your middle name, please?

11           **THE WITNESS:** K-E-Y-A-W-I-E.

12           **THE COURT:** Are you okay?

13           **THE WITNESS:** Yep, I'm fine.

14                           **DIRECT EXAMINATION**

15 **BY MS. POPE:**

16 **Q.** Good morning, Ms. Hernandez.

17 Are you currently employed?

18 **A.** Yes, I am.

19 **Q.** And who's your employer?

20 **A.** Net Connection, Ron Doyle.

21 **Q.** What's your job with Net Connection?

22 **A.** Assistant manager.

23 **Q.** And can you tell the Court what your job duties are?

24 **A.** I manage the stores. I make sure that they're stocked  
25 with the stuff that we sell. I do the schedule for the

1 employees, make sure everything is done as far as the cleaning;  
2 and if we have any problems, I take care of them; customer  
3 service, that kind of stuff.

4 Q. Which stores?

5 A. Hayward, San Lorenzo, and Milpitas.

6 Q. Okay. I'd like to talk to you about specifically  
7 Net Connection's Hayward store. What types of products does  
8 the store sell?

9 A. We have candy bars, hard candy, like lollypops, chips,  
10 beef jerky. We also have sodas, different flavors. We also  
11 have office supplies, staplers; notepads, different sizes;  
12 envelopes, different sizes as well; Post-its; calculators;  
13 pencils, mechanical pencils; pens; erasers; correctors; glue;  
14 some coloring books; crayons; color pencils; staples; stuff to  
15 clean the monitors, the computer monitors and the keyboards;  
16 and a few other things that I might have forgot. But, yeah,  
17 most of that stuff.

18 Q. And then how about services, what services does the store  
19 sell?

20 A. We have faxing, scanning, computer time. In some of our  
21 stores we also have bill payment and we have mailboxes, but not  
22 in Hayward. So, sorry.

23 Q. Okay. How many computers do you have in the Hayward  
24 store?

25 A. You know what? We just added some, so I believe it's 30

1 or 40. I'm not --

2 Q. 30 to 40?

3 A. It was 30. Yeah, 30 to 40. We added a few.

4 Q. Okay. And what software is available on the computers?

5 Not talking at the moment about the sweepstakes, what's on the  
6 computers; you know, Word, Excel, that kind of stuff?

7 A. I believe we have Word and I believe we -- some people  
8 download different kinds of software onto whatever they need.  
9 They can download it depending on what they want to do. So on  
10 different computers, we have different software.

11 Q. So things like Facebook?

12 A. Oh, on all the computers they can Google. They can go on  
13 eBay, Facebook, Twitter, gmail, Yahoo!, YouTube, which is  
14 really popular. Anything you can pretty much do on the  
15 Internet, we have available.

16 Q. Are there certain things that the customers aren't allowed  
17 to do on the Internet?

18 A. Yes. They have -- well, they can't be on pornographic  
19 sites, stuff like that.

20 Q. Okay. You mentioned earlier that you sell faxes. Taking  
21 these one at a time, do you know what the -- how much you  
22 charge for faxes?

23 A. 25 -- well, it depends. It's, like, 35 cents per page.  
24 You have a cover page, so it's not much.

25 Q. And how about copies, what's the charge for making copies?

1 A. Ten for a dollar, and then for -- or you can go 15 cents  
2 at for each; and if it's color, it's 20 cents, I believe.

3 Q. Okay. So it's slightly cheaper if you buy more copies?

4 A. Right. Right.

5 Q. How about printing, if you want to print something from  
6 the computer?

7 A. Same, same as copies.

8 Q. Same as copies?

9 A. Yeah.

10 Q. And how do your customers -- if a customer comes in and  
11 wants to purchase a product or Internet time on the computer,  
12 how do they do that?

13 A. They go to the counter.

14 Q. Is there a counter -- is the counter in the back of the  
15 store?

16 A. It's in the middle of the store I would say.

17 Q. Okay.

18 A. If I had to describe it, I would say in the middle.

19 Because there's the two bathrooms and the counter is right in  
20 between those, and then there's the long space.

21 Q. Okay. And then there's that cashier who would be behind  
22 the counter?

23 A. Correct.

24 Q. Do customers who purchase products or Internet time  
25 receive sweepstakes points?

1 A. Yes. For any purchase they receive sweepstakes points,  
2 any purchase, not just Internet time.

3 Q. And how many points do customers receive for -- so for  
4 every \$2, how many points do they receive?

5 A. A hundred.

6 Q. A hundred points for \$2?

7 A. Yes.

8 Q. If people come into the Hayward store and ask for free  
9 entries, are they given free sweepstakes points?

10 A. Yes.

11 Q. And how many is that?

12 A. A hundred per day per customer; and for first-time  
13 customers, they get 500. So the first time they come in, they  
14 get 500; and for each time -- each day after that, it's a  
15 hundred.

16 Q. Are the sweepstakes odds posted on the wall of the store?

17 A. Yes.

18 Q. And does it say on the poster that no purchase is  
19 necessary?

20 A. Yes.

21 Q. Can you please describe the customers' options for  
22 revealing their sweepstakes entries?

23 A. They have two options. When they come in and they make  
24 the purchase and we give them the points, we offer to give them  
25 their results right then; or we tell them that they can go to

1 choose a computer, and they can reveal the results there.

2 Q. And if the customer chooses to go to the computer to  
3 reveal their sweepstakes entries, what do they need to do?

4 A. They put in -- well, we have two different stores. They  
5 have a pin system and -- they have two options on the computer.  
6 On the monitor they have two options. One option gives them to  
7 go directly to the Internet, and the other option is the  
8 sweepstake games --

9 Q. So then they would --

10 A. -- and then they choose where -- if they want to go to the  
11 Internet first, they click on that. If they want to reveal  
12 their sweepstakes first, they click on that. And then they  
13 choose what they want to do, and they just -- it peels back.

14 Q. Talking about -- I'd like to talk to you about some of the  
15 general rules of the Hayward store.

16 Do you allow drinking of alcohol inside the store?

17 A. Not at all. Not at all.

18 Q. How about drug use?

19 A. Not at all. Not when we're aware of it, obviously, you  
20 know. We don't, no, not at all. Even if sometimes it looks --  
21 it appears if somebody just comes in and they're acting funny  
22 or different or outside of what the normal person acts like, if  
23 they're fidgety or falling asleep on the computer, we approach  
24 them and we ask them to leave. If they need to get some rest  
25 or whatever, we ask them nicely. But, no, we don't allow it at

1 all.

2 THE COURT: You say that a person has an option either  
3 to go on the computer or to go on the sweepstakes.

4 THE WITNESS: Right.

5 THE COURT: Do you have any way of calculating and  
6 retaining information on how much time they spend on the  
7 computer as opposed to the sweepstakes? Do you keep that  
8 information?

9 THE WITNESS: I do not.

10 THE COURT: You don't?

11 THE WITNESS: No.

12 THE COURT: Do you have a way of doing that?

13 THE WITNESS: Not that I'm aware of.

14 THE COURT: Okay. Fine. Thank you.

15 BY MS. POPE:

16 Q. Generally speaking, have you observed that -- the  
17 customers at the Hayward store using the computers, have you  
18 observed them using the computers for activities other than the  
19 sweepstakes?

20 A. Yes, all the time.

21 Q. What kind of activities do you see customers doing?

22 A. Most customers are on Facebook. That's really popular.  
23 That's really they're looking at pictures, posts, people. And  
24 then they want to print it out, that's what we have the  
25 printers there for, they want to print pictures people send

1     them or they have these E-cards that are really popular. A lot  
2     of people are on Instagram. A lot of people are messaging.  
3     They have this site where you can text directly to a phone so  
4     they're just, like, text talking through the computer. So,  
5     yeah.

6     Q.    And then going back to some of the general issues with the  
7     store, have you had any problems in the store with drug use,  
8     with people using drugs in the store?

9     A.    Not at all.

10    Q.    How about prostitution, you know --

11    A.    Not at all.

12    Q.    -- or --

13    A.    We have a staff that constantly walks through just to see  
14    what's on the monitors, just to make sure that there's nobody  
15    looking at inappropriate stuff because we don't want other  
16    customers to have to see that. So we're constantly walking  
17    through making sure that things are appropriate. So, no, I  
18    haven't seen nothing like that.

19    Q.    Have you had to call the police to come to the Hayward  
20    store?

21    A.    Not at all, no.

22    Q.    I'd like to talk to you about the day that Richard  
23    Patenaude visited the Net Connection San Lorenzo store. Were  
24    you at the San Lorenzo store that day?

25    A.    I was.

1 Q. Is the store in San Lorenzo similar to the store in  
2 Hayward?

3 A. Yes.

4 Q. How so?

5 A. It's set up the same way. We have the same products.

6 Q. So computers, fax machines?

7 A. Computers, fax machine, counter, shelves. It looks the  
8 same.

9 Q. Was a guard working at the San Lorenzo store the day  
10 Mr. Patenaude came?

11 A. Yes.

12 Q. And who was that?

13 A. Carnell Rogers.

14 Q. Is he a normal guard for Net Connection?

15 A. Yes.

16 Q. Can you tell us about Mr. Patenaude's visit?

17 A. Yes. I first noticed that he was there when Carnell  
18 pointed him out to the counter. I just seen him sending him  
19 towards the counter.

20 And the counterperson approached -- when he approached the  
21 counter, the guy at the counter got up; and then I was sitting  
22 at the computer, so I was paying attention. And he came in and  
23 asked -- Carnell told the guy, "They can tell you how it  
24 works." Because apparently he had asked Carnell how this  
25 worked. So Carnell just referred him to the counterperson.

1           Then the counterperson proceeded to explain to him what he  
2 needed to do: When you come in, you fill out this application.  
3 You're issued this card. You choose your computer, and so on  
4 and so forth.

5           And he just shook his head. He was with another gentleman  
6 who never introduced himself. And he did a walk-through. He  
7 walked back and forth; and he said something to the gentleman  
8 and the guy asked him, "Would you like to try it? Would you  
9 like to see how it works?"

10          He said, "No, that was fine."

11           **THE COURT:** Did he operate the machine?

12           **THE WITNESS:** Did he --

13           **THE COURT:** Did he operate it?

14           **THE WITNESS:** No, he didn't. He watched a few  
15 customers that were there.

16           **THE COURT:** Did you give him some points?

17           **THE WITNESS:** He didn't want any. The counterperson  
18 offered to him, and he said, "No," and he just watched the  
19 customers as they were revealing their results.

20           **THE COURT:** So he watched the customers?

21           **THE WITNESS:** Yes.

22           **THE COURT:** Okay.

23 **BY MS. POPE:**

24 **Q.** So do you recall how many customers were on the computers  
25 in the store that day or at the time Mr. Patenaude --

1 A. At the time? I would say about 10.

2 Q. And were some of them playing sweepstakes?

3 A. Yes.

4 Q. And, so, Mr. Patenaude did see -- did appear to observe  
5 some of them playing sweepstakes?

6 A. Yes.

7 Q. How long would you estimate Mr. Patenaude was inside the  
8 store?

9 A. From time of entry, I would say about 8 -- 8 to 12  
10 minutes.

11 Q. Did Mr. Patenaude speak to any of the customers?

12 A. Not that I seen.

13 Q. How about you, did he talk to you?

14 A. No.

15 Q. How about did he -- you said there was a second person  
16 with him. Did that person talk to anybody?

17 A. No. He didn't say anything. The only time I seen him  
18 interact is with Patenaude, when the gentleman said something  
19 to him.

20 When the customers were playing, he pointed out -- like,  
21 he pointed towards the monitor. I couldn't really hear what he  
22 said, so I can't say. He made a gesture towards one of the  
23 monitors, and turned to the guy and said something; and, you  
24 know, that's it.

25 Q. And then he left?

1 A. Yes, he walked away. He walked out.

2 Q. I'd like to actually go back to the Hayward store now.  
3 You said that you've never had to call the police to the  
4 Hayward store. Have the police ever come out to the Hayward  
5 store when you were there?

6 A. Yes.

7 Q. Can you describe -- well, let's talk about the first time  
8 that happened. Do you remember approximately when that was?

9 A. Date? I don't remember the date.

10 Q. How about the month?

11 A. It was soon after we opened. So it would have had to have  
12 been in that same month.

13 Q. Maybe December?

14 A. I would say.

15 Q. And what happened during that first visit?

16 A. The first visit I was called by an employee who was at the  
17 counter at the time, and they told me, "The police are here and  
18 they want to speak to you."

19 I said, "Okay. What about?"

20 And he goes, "I don't know. They just want to talk to a  
21 manager."

22 And I said, "Okay. I'm five minutes away. I'll be there  
23 really quick."

24 So when I got there, they asked me if I owned the place.

25 And I said, "No. I just work here."

1           And he said, "Well, what is this?"

2           I said -- I proceeded to explain what we did and stuff.

3           And I said, "Would you like me to show you how it works?"

4           And he said, "Yeah."

5           And then I had called Ron Doyle, my boss, at the time,  
6           which he also happened to be in the area, and he said, "Well,  
7           I'll be there."

8           And I told the police that. I said, "Well, Ron, the boss  
9           is coming. If you want to wait for him, we can wait."

10          They said, "No, no, no. Go ahead and explain to us how it  
11          works."

12          So I did. I showed them how to put the points on the  
13          card. I showed them the application that needs to be filled  
14          out before for new customers. I showed it to him.

15          And at the time Mr. Doyle came, so we came -- I had to  
16          come out to the car to get him because he's in a wheelchair.  
17          So I brought him in, and then they proceeded to ask him the  
18          same questions that they asked me

19          Q.    What happened after that?

20          A.    At that time nothing else happened. They just were like,  
21          "Okay." They didn't say nothing else.

22          One of the gentlemen -- one of the officers that was there  
23          didn't really say anything. He was on his phone I'm assuming  
24          taking notes because he just was texting away or doing  
25          something to his phone. The other guy, the other officer was

1 the one that asked the questions.

2 THE COURT: You say you showed him the computer. Did  
3 you show him how the sweepstakes works?

4 THE WITNESS: Yes.

5 THE COURT: You did, okay.

6 THE WITNESS: Yes.

7 BY MS. POPE:

8 Q. How about the next time the police came out that you were  
9 there?

10 A. They came in to do a walk-through. They came in through  
11 several times. Like, the same thing they used to do in our  
12 San Lorenzo store, which is just show up and pick people  
13 randomly or people that they knew to be on probation or parole,  
14 and ask them to step outside.

15 So they had been -- between times they've come in and say,  
16 "Oh, can I speak to you outside?" And then they would take a  
17 person outside just to talk to them. So it happened a few  
18 times after that.

19 THE COURT: Tell me, when you showed him the  
20 sweepstakes, did he say anything?

21 THE WITNESS: No. He just asked questions. Like,  
22 "What is this?" Or, "What's the difference between the games?"

23 "Nothing really. You just pick the entry level."

24 He goes, "Oh, okay."  
25

1 BY MS. POPE:

2 Q. So the police came through a few times doing general  
3 walk-throughs?

4 A. Yes.

5 Q. Did they ever get more -- did they ever come through when  
6 you were there, I guess, more aggressively?

7 A. Yes. That's after we -- they had the meeting at City Hall  
8 for the emergency ordinance. I don't recall what it's called,  
9 but they came in and they told me to close. They said, "You're  
10 not closed?"

11 "No."

12 He said, "Why not?"

13 I said, "Well, I wasn't told to close."

14 He said, "Well, you need to right now.

15 "Well, let me call my boss because I can't close without  
16 his permission. You know, I can't just close."

17 He goes, "Well, you're supposed to."

18 And I said, "Okay, okay. I don't know. Let me call Ron  
19 Doyle."

20 So at that time I was calling Ron, and while I was on the  
21 phone trying to get him on the phone, they proceeded to ask all  
22 the employees to come from behind the counter and put their IDs  
23 on the table; and asked if anybody was on probation or parole,  
24 come from behind the counter.

25 It so happened that one of our guys is on parole. They

1 escorted him outside, cuffed him, and started to check him.

2 And then I went outside, and then I told the officer, "Ron  
3 is on the phone. Would you like to talk to him?"

4 He said, "No, I'm doing this first."

5 I said, "Okay. Sorry."

6 So I told Mr. Doyle, "Well, he's here but he doesn't want  
7 to talk to you right now. I'll call you back when he's ready  
8 to talk to you."

9 So I hung up the phone with him, and I ran outside to see  
10 what was going on with Robert, which is the guy they had  
11 outside. And he's telling me, "I got a ticket, a traffic  
12 ticket, an 85-dollar traffic ticket."

13 And I said, "Okay. So what does that mean?"

14 And the guy said, "Do you want to go to jail?"

15 I said, "No, I don't. I'm just trying to figure out  
16 what's going on. He's an employee. He's working right now."

17 He said, "Go inside or you're going to jail."

18 "Okay. I don't want to go to jail."

19 So I went back inside, stood by the door; and then when I  
20 came back out, the guy said, "Well, they're taking him to jail  
21 because he has a traffic warrant."

22 I said, "Okay."

23 So when he came back in, he spoke to Ron. I don't know  
24 what the conversation was said, but then he left.

25 Q. Did they come back after that?

1 A. They came back, but I wasn't there.

2 Q. Okay.

3 A. And then they came back in the morning, and I wasn't  
4 there.

5 And the next time I seen the same officers was after we  
6 closed the store, and I was actually -- because we were closed,  
7 I was using that time to clean the chairs, to have the chairs  
8 shampooed, because they're upholstery. So we were in there  
9 early that morning.

10 And I'm not sure if he just happened to drive by and seen  
11 the doors open. And he came in, "What are you doing? You're  
12 not supposed" --

13 I said, "No, no, no. We're just here cleaning."

14 And he goes, "Well, did he get the letter?"

15 I said, "I don't -- I don't deal with the legal stuff, you  
16 know. I don't know what letter you're talking about."

17 And, so, he was going to give me another one or I don't  
18 know what he was going to do. He went in his trunk to get a  
19 letter and he said, "Oh, this is not addressed to him."

20 I said, "I could call him right now and find out if you  
21 want me to."

22 He said, "Yeah. Yeah."

23 So I called my boss and I said, "Officer Augustus is here.  
24 He wants to know did you get the letter."

25 And he said, "Yeah," or, "I believe."

1           And he said -- so I told him, "Yeah, he's having his  
2 lawyer -- they're dealing with that. You know, I don't have no  
3 dealings with that."

4           So he goes, "Okay. All right. Well, as long as you guys  
5 aren't open."

6           I said, "No, we're not open for customers. We're just  
7 here cleaning."

8 Q.       Going back to the first time they came in, did they tell  
9 you why they were there? Had anyone from the store -- going  
10 back a bit.

11           Had anyone from the store called them to come in?

12 A.       No. No, no, no. Like I said, they randomly just came in  
13 to do walk-throughs. This is typical. They would just come in  
14 or they would see people that they know and, like I said, they  
15 say, "I know that guy. Come on."

16 Q.       So someone maybe they know is on parole or probation?

17 A.       Yes.

18 Q.       Did the first time that they came in where you showed them  
19 how the sweepstakes worked, did they tell you why they were  
20 there?

21 A.       No. Oh, well, one of the officers just said, "I'm just  
22 doing what my boss told me to do. So it's not for me to say."

23           I said, "Okay. Well, I can show you how it works." I  
24 showed them everything that we do. Here's the options. This  
25 is what you do. I proceeded to point out different things in

1 the computer -- bless you -- in the computer and stuff.

2 And he said, "Well, I'm here doing my job. I was told to  
3 come in here, so that's what I'm doing."

4 I said, "Okay."

5 Q. Have the police officers been back since the store  
6 reopened?

7 A. No. Just -- last night just the officer, he didn't come  
8 in the store, though. He was outside.

9 Q. Okay. So the visits were generally between maybe December  
10 of 2012 and when the store closed?

11 A. Yes.

12 Q. And as time went on, did they get more aggressive when  
13 they were there?

14 A. Yes. Yeah.

15 MS. POPE: All right. I have no further questions at  
16 the moment.

17 THE COURT: I'd like to ask you, do you keep any  
18 records on how much cash you dispense to the people that win on  
19 the sweepstakes each day?

20 THE WITNESS: Do I keep record?

21 THE COURT: Yes.

22 THE WITNESS: No, I don't.

23 THE COURT: You're the assistant manager. Who's the  
24 manager of the store?

25 THE WITNESS: Ron.

1           **THE COURT:** Ron's the manager.

2           **THE WITNESS:** Yeah.

3           **THE COURT:** Okay. Do you know whether there are any  
4 records as to what the payout is? When you pay somebody out  
5 and you're at the store, do you make a marking down how much  
6 you paid out?

7           **THE WITNESS:** No. No. I don't do that. I don't do  
8 the financial stuff.

9           **THE COURT:** Well, who does that at the store?

10          **THE WITNESS:** It's not done at the store.

11          **THE COURT:** What's that?

12          **THE WITNESS:** Ron does it.

13          **THE COURT:** Oh, he's at another store. How does he --  
14 I've won some money on this promotion, points, which I can turn  
15 into cash.

16          **THE WITNESS:** Correct.

17          **THE COURT:** Who do I turn it into?

18          **THE WITNESS:** Oh, the counter.

19          **THE COURT:** The counter.

20          **THE WITNESS:** When you come up to the counter, you do  
21 it.

22          **THE COURT:** And does he make a marking down, "I paid  
23 out \$200"?

24          **THE WITNESS:** Well, it's on the computer. The  
25 computer keeps a record.

1           **THE COURT:** So the computer keeps --

2           **THE WITNESS:** Yes.

3           **THE COURT:** -- a record of how much cash has been --

4           **THE WITNESS:** Yes. And at the end of the shift, a  
5 receipt is printed out with the information, which we turn in.

6           **THE COURT:** That doesn't indicate how much -- if I won  
7 10 or \$15, that doesn't -- that won't show I paid it in cash,  
8 will it, or will it show that I bought merchandise or more time  
9 on the computer?

10           **THE WITNESS:** It will just say -- the receipt says  
11 money in and money out.

12           **THE COURT:** Oh, okay. So you would have an indication  
13 how much money was paid out?

14           **THE WITNESS:** Correct.

15           **THE COURT:** Okay, fine. Thank you.

16           Anything further on redirect?

17           **MR. VIGILIA:** Actually, Your Honor, I have not had the  
18 chance to cross-examine the witness yet.

19           **THE COURT:** Wait a minute.

20           Okay, fine. Proceed. Okay.

21           How much time do you think you need on cross-examination?  
22 Because it's five after 12:00.

23           **MR. VIGILIA:** I'll keep it brief, Your Honor.

24           **THE COURT:** Okay, fine. I don't want to cut you  
25 short.

1 MR. VIGILIA: No problem.

2 CROSS-EXAMINATION

3 BY MR. VIGILIA:

4 Q. With respect to the fax and scanning and copying services,  
5 was that equipment already in place on the date that the  
6 business in Hayward opened?

7 A. Yes. From day one, everything's been there.

8 Q. And where's the fax machine located?

9 A. The counter, I don't know if you have how our store's set  
10 up, the counter is right here (indicating). Exactly, like, say  
11 your desk right here (indicating), and the machine is like on  
12 that side (indicating) by the wall. The bathroom to the wall  
13 is right there (indicating), and it's right on that side of the  
14 counter.

15 Q. All right. If a customer wants to use the fax machine,  
16 does an employee have to do the faxing for them or can --

17 A. No.

18 Q. -- the customer access?

19 A. Not at the Hayward location. The customer can access it.

20 Q. And is that the same way with the fax and the scanning  
21 machine or the copy machine?

22 A. The copiers. And also when we print anything out, out of  
23 the computer, we just tell them you can go up there and get --  
24 you know, it's right there for them to walk and get.

25 Q. And how is it that -- is there some sort of mechanism that

1 won't allow you to operate the fax machine unless you pay? Do  
2 you have to slide a card or enter some code?

3 A. No. Not for the fax machine, no.

4 Q. Okay. How about for the copy machine?

5 A. Well, it's the same machine. The answer is no.

6 Q. So I don't have to enter a code to operate it?

7 A. No.

8 Q. So if I went in to make copies, I could say, "I'd like to  
9 make a copy. Here's my \$10 for however many pages"?

10 A. Well, first you would make the copies and then come to the  
11 counter and pay for the amount of copies you made.

12 Q. Ah, okay. I understand.

13 A. That's why it's right next to the counter, so that we can  
14 view what a customer does while they're doing it.

15 Q. Sure. Got it.

16 Do you post your rates anywhere?

17 A. Yes.

18 Q. Where are the rates posted?

19 A. When you walk through the door, there's a wall right there  
20 and we post a big poster right there.

21 Q. It sounds the way you've described it like the business is  
22 similar to a Kinko's or a Fed Ex. Are you familiar with those  
23 kinds of stores?

24 A. I've heard of them. Never been inside one.

25 Q. Okay. You know, they sell office supplies and copy/fax

1 service and things like that as well. So you're not familiar  
2 with those types of businesses?

3 A. No. I've never been inside of them, no.

4 Q. All right. What types of games are available to someone  
5 who wants to use the computer to reveal their sweepstakes  
6 entries? What kinds of games can they choose from? I know you  
7 don't have slot machine games. You don't have Keno or Bingo.  
8 What types of games are there?

9 A. I'm not sure I understand. Like, they reveal. Do you  
10 want, like, which theme?

11 Q. Sure, theme, okay. What are the themes that you can have?

12 A. We have one that's called Gem It Up and it just has  
13 different, like, rubies. It has grapes.

14 Is that the answer you're looking for?

15 Q. Yeah. Yes.

16 A. Grapes, watermelons, apples.

17 Q. Okay. So is it basically the theme shows you some symbols  
18 and whether or not they match lets you know if you won or not,  
19 something like that?

20 A. Correct.

21 Q. Now, I'm sorry, how many computers did you say you have  
22 now? Was it 40?

23 A. I believe so.

24 Q. And where do -- if a customer drove to the location, where  
25 would they park their car? Do you have a parking lot that they

1 can use?

2 A. We have -- there's a Lucky's and we were told that that  
3 was part of our parking as well. Then we also have a parking  
4 directly not across the street, but there's -- like  
5 kitty-corner to us there's a big parking lot there.

6 Q. Okay.

7 A. Also, BART is a block from us, if that, and people also  
8 can park there.

9 Q. All right. Have you received complaints from customers  
10 that they have problems finding parking, and is that a  
11 complaint you've got?

12 A. No.

13 Q. And you indicated with respect to the word processing that  
14 some places might have Microsoft Word, some places might have  
15 something else because people will download various things.

16 When you say "people," does that mean the customer can  
17 download the type of software they want to use on the computer?

18 A. It depends on the software, yes. Obviously some software  
19 they can't. Free Word, Excel, and if they want to use it, it's  
20 all right to download. Certain -- but we monitor what they're  
21 downloading, obviously.

22 Q. Okay. Did you have some sort of function in your software  
23 that prevents them from downloading certain things?

24 A. I'm not sure, so I don't --

25 Q. Are you more concerned about that someone might download

1 something with a virus that might infect all your computers?

2 A. That is a concern, but I leave it up to the people, the  
3 techs. I'm not really computer literate. I'm not too good on  
4 computers, so I don't -- I always call a tech or somebody who  
5 knows computers because I don't want to mess stuff up. I'll  
6 probably make it worse, so I don't get involved.

7 Q. Okay. And with respect to when you were in San Lorenzo  
8 and saw Mr. Patenaude there, what time of day was it, if you  
9 remember?

10 A. I didn't look at the time, but it was before 4:00 o'clock  
11 because I leave at 4:00.

12 Q. Okay. What time did you open in San Lorenzo?

13 A. At 10:00 o'clock in the morning.

14 Q. And in Hayward how often are you at the Hayward store?

15 A. Every day.

16 Q. And what times do you work there?

17 A. Well, I come -- I'm on call. So if they have a problem  
18 and they call me, I'm there. So I'm there any time, morning,  
19 night. I'm there all the time.

20 Q. Okay. So you would be there at 2:00 in the morning on any  
21 particular business day?

22 A. Sometimes, yes. Yes.

23 Q. And how many days a week are you open?

24 A. Seven days a week.

25 MR. VIGILIA: Nothing further, Your Honor.

1 THE COURT: Any redirect?

2 MS. POPE: Yeah, very briefly.

3 REDIRECT EXAMINATION

4 BY MS. POPE:

5 Q. Ms. Hernandez, do you keep a separate cash register for  
6 the purchases, you know, money you receive from purchases of  
7 products or Internet time versus the money that is paid out for  
8 the sweepstakes?

9 A. No.

10 Q. So it's just in the same cash register?

11 A. Yes.

12 Q. All right. And have any neighboring businesses ever  
13 complained that you're aware of in Hayward about the store?

14 A. Not that I'm aware of. As a matter of fact, to the  
15 contrary. The Los Pericos, the Mexican restaurant on the  
16 corner, they actually like that we're there. Also, they have a  
17 Wing Fiesta, and they say their business has grown since we've  
18 been there.

19 Q. So it would be --

20 A. If there's complaints, I'm not aware of them at all.

21 MS. POPE: Thank you very much.

22 MR. VIGILIA: Nothing further, Your Honor.

23 THE COURT: Nothing? Fine. Thank you, ma'am.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 THE COURT: We'll take our recess until 1:30.

2 MR. GRIFFIN: Thank you, Your Honor.

3 (Luncheon recess taken at 12:11 p.m.)

4 Afternoon Session

1:30 p.m.

5 THE COURT: All right. You may be seated.

6 MR. GRIFFIN: Thank you.

7 THE COURT: Your next witness?

8 MR. GRIFFIN: Your Honor, before we call our next  
9 witness, I thought -- opposing counsel and I had conferred,  
10 we're fairly certain, given the time estimates we have, that we  
11 will not be finishing today.

12 THE COURT: That's a great surprise.

13 MR. GRIFFIN: Yes, and we had hoped, but --

14 THE COURT: Oh, I looked at your witness lists. I  
15 knew you weren't going to finish today.

16 MR. GRIFFIN: Okay. Fair enough. Maybe we were more  
17 optimistic than we should have been.

18 THE COURT: Oh, no.

19 MR. GRIFFIN: So with respect to scheduling, we have  
20 two witnesses, Your Honor, one is our expert, Mr. Russ Grey,  
21 who has a plane flight out late tonight; and then Mr. Vigilia  
22 has Mr. Patenaude, who is now retired from the City of Hayward,  
23 who we would like to finish today.

24 So with, first of all, the Court's permission, after -- we  
25 have two witnesses left, after we call Mr. Grey, I would permit

1 Mr. Vigilia to call Mr. Patenaude out of order.

2 THE COURT: Out of order, yeah, sure.

3 MR. GRIFFIN: And in terms of the remainder of the  
4 witnesses, what's the -- assuming we're not going to finish  
5 today, what then would be the schedule for conclusion?

6 THE COURT: I get paid by the year, not by the case.

7 (Laughter)

8 THE COURT: So take as much time as you need.

9 MR. GRIFFIN: Well, I mean, in terms of --

10 THE COURT: Well, how about tomorrow? We can do it  
11 tomorrow.

12 MR. GRIFFIN: It would be tomorrow?

13 THE COURT: If you don't finish tomorrow, then you'll  
14 be in on Wednesday.

15 MR. GRIFFIN: Okay. I just wanted to know whether it  
16 was tomorrow or --

17 THE COURT: No, no, no. You'll finish by two more  
18 days after today?

19 MR. GRIFFIN: Yes, Your Honor.

20 THE COURT: Okay, fine.

21 MR. GRIFFIN: And I will try to get a new suit for  
22 tomorrow so I don't have to show up in the same attire.

23 THE COURT: No, I want you to both present your full  
24 case.

25 MR. GRIFFIN: Okay.

1           **THE COURT:** So no skimping or anything like that  
2 because it helps me.

3           **MR. GRIFFIN:** I didn't know if it was tomorrow or next  
4 week, Your Honor, what your other schedule was.

5           **THE COURT:** Yes.

6           **MR. GRIFFIN:** Okay, fair enough. Then we'll proceed  
7 with our next witness.

8           **MR. VIGILIA:** Actually, I have one more question,  
9 Your Honor. At what time would the Court be adjourning this  
10 evening so that I know which witnesses --

11           **THE COURT:** Well, let's wait until we finish. Do you  
12 think you can finish by 4:30, 5:00 o'clock?

13           **MR. GRIFFIN:** I think we can get these two witnesses  
14 finished by that time, Your Honor.

15           **THE COURT:** Okay, fine.

16           **MR. VIGILIA:** I have -- the reason I ask is I have  
17 three other witnesses who are waiting, and it doesn't look like  
18 we'll get to them.

19           **THE COURT:** Why don't you have them go home?

20           **MR. VIGILIA:** Okay. We'll do that.

21           **MR. GRIFFIN:** And we have our witness that we can  
22 call, our last witness.

23           **MR. VIGILIA:** I'll let them know, Your Honor.

24                           (Pause in proceedings.)

25           **THE COURT:** Counsel, on the time, you have -- if you

1 don't finish -- you won't finish today, you have tomorrow and  
2 the next day. Thursday, I can't do it on Thursday; and Friday,  
3 due to the sequestration and the furlough days, the Federal  
4 Court is closed. So the government runs out of money on  
5 Friday, so we'll have to wait until we get a little more money,  
6 and then we'll start up on Monday.

7 MR. GRIFFIN: I have every reasonable expectation that  
8 we can finish tomorrow, Your Honor.

9 MR. VIGILIA: I think tomorrow we'll be able to wrap  
10 everything up, Your Honor.

11 THE COURT: Okay. Thank you.

12 MR. GRIFFIN: Our next witness, Your Honor, is Russ  
13 Grey.

14 THE COURT: All right.

15 MR. GRIFFIN: And, Your Honor, while Mr. Grey is  
16 making his way up, I want to alert the Court that we have  
17 actually set up at counsel table computers and computer systems  
18 that Mr. Grey will explain, and we've got it set up for your  
19 monitor as well.

20 THE COURT: Would it be better for me to be down  
21 there?

22 MR. GRIFFIN: You'll be able to see it on your  
23 monitor, too, Your Honor.

24 THE COURT: Okay. If I can't, then I'll come down.  
25



1 A. I test the various systems that come in for the different  
2 types of testing that we perform, whether it be for compliance  
3 testing, evaluating the system operation, composing a report on  
4 that, various types of equipment.

5 Q. So what types of systems or equipment does Eclipse test?

6 A. We test gaming equipment, whether it be Class III,  
7 Class II; amusement devices, some market string like those, we  
8 test those for compliance primarily; and then we've also tested  
9 quite a few sweepstakes systems, raffle systems. We do random  
10 number generator evaluations. We've done several of those for  
11 several states, lottery agencies and such.

12 Q. You mentioned Class III and Class II games, among other  
13 things. What were you referring to there?

14 A. Class III would be what you would typically think of as a  
15 slot machine. Class II would be a Bingo-based type game, which  
16 is allowed in tribal casinos typically.

17 Q. So through your work with Eclipse, you're familiar with  
18 how slot machines work?

19 A. Yes.

20 Q. And you're familiar with how Bingo games work?

21 A. Yes.

22 Q. And you also mentioned that you had tested various  
23 sweepstakes systems?

24 A. Yes.

25 Q. And can you please describe briefly for me what type of

1 testing you've done on sweepstakes systems?

2 A. With regard to sweepstake systems, we typically evaluate  
3 the entire operation. We look at the source code so that we  
4 can actually see what's happening below the surface so that we  
5 know the mechanics of how outcomes are determined.

6 Q. Okay. And what is the, based on your understanding and  
7 experience, the primary difference between a sweepstakes system  
8 and something like a slot machine that you just described?

9 A. Sweepstake systems typically have a finite pool of entries  
10 or game pieces, the outcomes of which are known ahead of time;  
11 whereas, a slot machine relies on a random number generator  
12 typically to generate random outcome. The outcome would not be  
13 known ahead of time for any given play.

14 In other words, as an example, a player might hit the  
15 jackpot, another player might walk up and hit that jackpot  
16 again; whereas, with the sweepstakes, if there's only one  
17 jackpot in the pool, only one player will hit it.

18 Q. We'll talk a lot more about, in a few minutes, in the  
19 context of the demonstration, differences between sweepstakes  
20 and slot machines, but I did want to ask that question  
21 initially.

22 Mr. Grey, is your exclusive job at Eclipse Compliance  
23 Testing to do testing of these types of systems, the  
24 sweepstakes, the Class II, Class III? Is that what you  
25 primarily do?

1 A. Primarily, yes.

2 Q. And you've primarily done that for the past six years?

3 A. Yes.

4 Q. And what sort of training or education do you have that  
5 allows you to be qualified to do that type of work?

6 A. I have a Bachelor of Science in information technology. I  
7 previously have worked in the field with computers and computer  
8 equipment and other gaming equipment, and for the past six  
9 years now it's been pretty much exclusively looking at game  
10 systems.

11 Q. Now, the testing that you do, are you the only one that's  
12 doing the actual testing?

13 A. No. No. We have several other engineers in the lab. We  
14 usually work together. Someone may perform one task, another  
15 may perform another task for any given project.

16 Q. So through that process of doing the testing, you've  
17 become familiar with actual not only the software and the  
18 behind the scenes, but you've also become familiar with how the  
19 games are played, for lack of a better term?

20 A. Yes.

21 MR. GRIFFIN: If I can have this marked, Madam Clerk,  
22 as Plaintiff's Exhibit 3, please.

23 (Plaintiff's Exhibit 3 marked for identification)

24 MR. GRIFFIN: May I approach the witness, Your Honor?

25 THE COURT: Yes.

1           **MR. GRIFFIN:** Thank you.

2           **Q.** Mr. Grey, I've handed you what's been marked as  
3           Plaintiff's Exhibit 3. Do you recognize this document?

4           **A.** Yes.

5           **Q.** What is it?

6           **A.** It's my CV.

7           **Q.** Is this a current CV?

8           **A.** Yes.

9           **Q.** And does this reflect, accurately reflect, your training  
10          and education?

11          **A.** Yes, it does.

12          **Q.** And do you believe this experience and your experience for  
13          the past six years allows you to testify competently with  
14          respect to the operation of the sweepstakes system in this  
15          case?

16          **A.** I do.

17          **Q.** Thank you.

18                   **THE COURT:** Counsel, any voir dire?

19                   **MR. VIGILIA:** No, Your Honor.

20                   **THE COURT:** All right. Proceed.

21                   **MR. GRIFFIN:** Thank you, Your Honor.

22          **Q.** Mr. Grey, before I -- let me ask you this: You have  
23          tested and your lab has issued a report with respect to the  
24          sweepstakes system used by my client, Net Connection; is that  
25          correct?

1 A. That's correct.

2 Q. And before I get into that, I want to, by way of a little  
3 bit of background and comparison, ask you a few questions, and  
4 then there's a PowerPoint that you created that I want to  
5 briefly go through. Okay?

6 If we could turn to the PowerPoint, please.

7 Describe for me briefly, Mr. Grey, before we get to the  
8 PowerPoint, how a slot machine works.

9 A. A slot machine typically would be played, a player would  
10 approach it, insert cash, something of value, pull a lever,  
11 press spin. The random number generator inside will be queried  
12 for some random numbers. Those numbers will be used to  
13 determine the reel stop positions in a slot machine,  
14 essentially the symbol combinations that come up, and that  
15 determines the game outcome.

16 Q. It should be on your screen now in front of you, Mr. Grey.

17 A. Yes.

18 Q. Now, you prepared a PowerPoint describing a traditional  
19 three-reel slot machine. The first slide of that, can you  
20 describe what's there, please?

21 A. Sure. In here I've got a photograph of some reel strips  
22 that --

23 THE COURT: I don't have anything on my screen.

24 MR. GRIFFIN: Oh.

25 THE COURT: My technician is coming.

1           MR. GRIFFIN: I checked it before lunch, Your Honor,  
2 to make sure it's working, so....

3                           (Pause in proceedings.)

4           THE COURT: I got it.

5           MR. GRIFFIN: Great. Thank you.

6           THE COURT: Tell me, I want to ask you a preliminary  
7 question. You said that the difference between the two, one is  
8 the winner is preknown on the sweepstakes and on the slot  
9 machine they're not known. Why is it when you're playing a  
10 slot machine you get more cherries than you do winners?

11                           (Laughter)

12          THE WITNESS: Well, it's designed to take your money.

13          THE COURT: What's that?

14          THE WITNESS: It's designed to take your money.

15          THE COURT: I know it's designed to take my money, but  
16 it's supposed to be a random selection. Why does that come up  
17 so often?

18          THE WITNESS: Well, depending on what the slot machine  
19 is, if it's a low-paying combination or no-paying combination,  
20 they'll usually have more of those on there.

21           Like, for example, if you look at the photo in here,  
22 you'll see more of the single bars than the triple bars. So  
23 it's more likely that you'll get these lower payouts than a  
24 higher payout.

25          THE COURT: Does the slot machine have so many awards,

1 pay-off awards, so many first prizes?

2 THE WITNESS: A slot machine?

3 THE COURT: Yeah.

4 THE WITNESS: There's -- they can have any sort of  
5 designation -- designated combination of symbols that will  
6 award a given value.

7 THE COURT: Well, you see some signs along the freeway  
8 that say 90 percent return on your money on a slot machine,  
9 90 percent. Well, if you played that continuously, you'd end  
10 up with zero.

11 THE WITNESS: Yes. Essentially, yes, you would  
12 have -- for every dollar you play, in theory you get 90 cents  
13 back; but every time you reinvest into it, you lose 10 percent.

14 THE COURT: But if it was random, wouldn't it be  
15 something like a better percentage than that? If it was  
16 random.

17 THE WITNESS: Well, it's designed such that it is  
18 random and you're going to win 90 percent of your money back on  
19 average, but you're going to lose 10 percent of it. So as you  
20 keep playing, you keep losing that 10 percent.

21 THE COURT: Zero, yeah.

22 THE WITNESS: Until, right, until you have nothing  
23 left.

24 THE COURT: Okay.

25 THE WITNESS: Now, in between you may have a win and

1 be ahead.

2 THE COURT: Okay.

3 BY MR. GRIFFIN:

4 Q. Let me ask this maybe helpful question along those lines:  
5 Mr. Grey, if you pulled a -- you're describing the three-reel  
6 slot machine and I'll let you continue in a minute; but if you  
7 pulled the lever on a three-reel slot machine a thousand times,  
8 would you be able to accurately predict ahead of time how much  
9 you would win?

10 A. No, not -- not precisely, let's put it that way.

11 Q. Okay. Now, in a traditional sweepstakes system where  
12 there was a pool of a thousand entries, could you accurately  
13 predict ahead of time what the total payouts would be after  
14 those thousand entries are revealed?

15 A. Absolutely.

16 Q. Why is that?

17 A. You know the value of all thousand outcomes ahead of time;  
18 whereas, with a slot machine, you don't know for sure. Slot  
19 machines have so many volatility and you may hit a jackpot in  
20 there, which causes the payout to go out and you may be ahead  
21 of the game. It's a good time to quit. And then if you keep  
22 playing, the law of large numbers, if you play it enough,  
23 you'll end up at the advertised return player amount.

24 THE COURT: Who puts in the jackpots? Do they program  
25 the jackpots or somebody at the machine can change the payout?

1           **THE WITNESS:** For a slot machine or --

2           **THE COURT:** No. For the sweepstakes.

3           **THE WITNESS:** For a sweepstakes, the game pieces with  
4 the associated prize values are created by the manufacturer  
5 ahead of time.

6           **THE COURT:** I buy a program and say one of the main  
7 jackpot is a thousand dollars.

8           **THE WITNESS:** Okay.

9           **THE COURT:** Now, do I buy a program that says there's  
10 only going to be one 1000-dollar jackpot during the course of  
11 five hours?

12           **THE WITNESS:** Essentially, yes.

13           **THE COURT:** So it's programmed in that regard?

14           **THE WITNESS:** Yes. Within the internal workings of  
15 it, there are -- any given win amount there are only so many  
16 winners. It might be only one winner for the thousand, maybe,  
17 you know, 20 10-dollar winners. Who knows?

18           **THE COURT:** If I wanted three winners of a thousand  
19 dollars, I'd get a different program?

20           **THE WITNESS:** Yes. You would have to change the  
21 contents of the board.

22           **THE COURT:** Who does the changing?

23           **THE WITNESS:** That would be controlled by the  
24 manufacturer typically.

25           **THE COURT:** Oh, okay. So the program itself does the

1 changing, the manufacturer?

2 THE WITNESS: Well, the manufacturer has to program it  
3 to do that.

4 THE COURT: All right.

5 THE WITNESS: The game program, the software on the  
6 system, those do not change the contents of the pools. They  
7 merely distribute them.

8 THE COURT: So if I'm ordering a program, I would  
9 order, "I want one payoff every 50, every 500 pulls"? Is that  
10 how I order? How do I know what I'm getting when I order one,  
11 how many payouts?

12 THE WITNESS: By the pool construction and typically,  
13 and I have -- are you asking me from the perspective like an  
14 operator?

15 THE COURT: No. I mean as a purchaser. I'm a  
16 business like the gentleman here, and I don't want too many big  
17 payouts because I'm going to go broke, so maybe I want one  
18 payoff every 500 pulls.

19 THE WITNESS: You would have to communicate that to  
20 the manufacturer. They would make a pool set.

21 THE COURT: And your program would be customized to  
22 your need?

23 THE WITNESS: It could be.

24 THE COURT: Oh, okay.

25 THE WITNESS: Generally they wouldn't tell you what

1 the order would be. Just say, "Okay. Within the pool, we've  
2 got this many winners. It's going to pay this much, you  
3 know" --

4 THE COURT: Okay.

5 THE WITNESS: -- "during the course of the promotion."

6 MR. GRIFFIN: I think we're going to by visual  
7 demonstration hopefully answer all Your Honor's questions in  
8 that regard.

9 THE COURT: Oh, okay.

10 BY MR. GRIFFIN:

11 Q. So getting back, Mr. Grey, you were talking about the slot  
12 machine. I now want to move through this somewhat quickly just  
13 as a compare and contrast.

14 I don't know if you finished your answer to my question  
15 about this typical three-reel slot example and what that is.

16 A. Well, it's a shot of three reel strips from a three-reel  
17 Bally's machine actually, and there are 11 symbols on each  
18 strip. There's also 11 spaces in there, which are valid stop  
19 positions for this particular game. So they're numbered.  
20 Internally the machine numbers those 1 through 22, I think it  
21 is.

22 Q. Next slide, please.

23 And what do we see now on this slide? What are you trying  
24 to depict here?

25 A. Well, essentially what I'm trying to show here is that if

1 you look at the top of each column, you'll see the symbol 7 and  
2 it has a position associated with it, number one. So the  
3 number one position on each reel strip displays a 7, and then I  
4 just made up a pay table for our example here. Three 7s pays  
5 \$777. If you get three triple bars, you get 250, and so on.

6 You'll see positions that correspond to spaces, single  
7 bar. These are -- again, match up with what was in the  
8 previous photo.

9 Q. Next slide, please.

10 So you've got some points in here. How are payouts  
11 determined in a typical three-reel slot machine example that  
12 you've given?

13 A. Well, like I said, the symbols correspond to a position,  
14 which is numeric, so you can use an RNG to determine an  
15 outcome.

16 Q. You said "RNG." What is that?

17 A. I'm sorry. Random number generator.

18 Q. Is that a term of art or is that a technical term?

19 A. Yeah, it's industry standard terminology there.

20 Q. And what do you mean by "random number generator"? That's  
21 important. I want everybody to be clear about that.

22 A. It's the piece of software that would be responsible for  
23 randomly generating a number. Typically it's a short piece of  
24 code that the game program will ask for a random number within  
25 a range, and it will return a random number within that range.

1 Q. All right. I'm sorry to cut you off, but that was an  
2 important side note.

3 A. That's all right.

4 Q. Thank you.

5 A. So inside the game, it's all based on the numbers. So,  
6 again, in our example machine that we're creating here with 22  
7 stop positions, it's going to ask the RNG, or random number  
8 generator, for three numbers, each number being a number from  
9 1 to 22.

10 THE COURT: Now, this number three here, each play a  
11 random number generator, is that for each reel or is that for  
12 the three reels?

13 THE WITNESS: It's for both, actually. So --

14 THE COURT: What's that?

15 THE WITNESS: For both. The random number generator  
16 would be used to determine the position for each independent  
17 reel and it will happen on each play.

18 THE COURT: Is there any correlation between reel one  
19 and reel three.

20 THE WITNESS: No.

21 THE COURT: No. Reel one and two? No?

22 THE WITNESS: No.

23 THE COURT: Okay. All right.

24 BY MR. GRIFFIN:

25 Q. Now --

1 A. So, as an example, if the game program were to go query  
2 the RNG and that RNG returns the number -- the numbers 1, 1  
3 and 1, which I think are on the next slide, that would then  
4 correspond to the three 7 outcome which would then pay \$777.

5 Q. The jackpot, if you will?

6 A. In this case, yes, the top prize.

7 Q. So just to make sure I'm clear, then, every time somebody  
8 spins the wheel or pushes the button to spin the wheels in a  
9 slot machine example, is there a random number generator that's  
10 applied to determine the outcome of that particular spin?

11 A. Yes.

12 Q. Each and every time?

13 A. Each and every time.

14 Q. So the outcome of any particular spin in that regard is  
15 completely random?

16 A. Yes, it is.

17 Q. Theoretically there could be three jackpots in a row;  
18 correct?

19 A. Yes. However unlikely, it is a possibility that you could  
20 walk up to a machine, play it, hit the jackpot; I could walk up  
21 right after you, play it, and hit the jackpot. Because every  
22 outcome is just as likely to occur on any given play.

23 Now, random jackpots are rare, so you've got two rare  
24 things happening at once, it's a little more rare, but it still  
25 can happen.

1 Q. And I think that's what -- my question may have gotten  
2 ahead of it a little bit, but I think that's what you may be  
3 depicting in this next slide presentation.

4 A. Yes. So, briefly, the player would deposit money into the  
5 machine, pull the handle to initiate play. The RNG is queried.  
6 RNG responds back again here on the slide; 1, 1, 1 comes up.  
7 The game program looks up that outcome, determines that they  
8 won \$777, and then pay the credit meter on the machine.

9 Q. And if you win a prize, if you win a jackpot or whatever  
10 you do win, that then adds your prize to --

11 A. It adds the prize to the credit meter, which you can  
12 either cash out or continue to play.

13 Q. We'll stop there.

14 So the key thing about, as I understand it, the key thing  
15 about a slot machine is the random number generator that is  
16 utilized every single time somebody spins the reel or pushes  
17 the button to spin the wheel. Is that an accurate  
18 summarization?

19 A. Yes.

20 Q. Now, you --

21 **THE COURT:** Now, that's the definition of a slot  
22 machine.

23 Now, just on the side, it has nothing to do with the case  
24 probably, some slot machines can be programmed, though; can't  
25 they? Because you read in the paper once in awhile some

1 casino's being charged in Nevada of programming a slot machine.

2 THE WITNESS: Given that these are -- most of the slot  
3 machines these days are computer-driven and they run software  
4 written by people, it is possible to build code that does  
5 things that should not happen. This is the way a slot machine  
6 should work.

7 THE COURT: Yeah, if it's -- yeah.

8 THE WITNESS: Yes, it's entirely possible someone  
9 could build a mechanism to --

10 THE COURT: When we're talking about a slot machine,  
11 we're talking about what you just testified to?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 MR. GRIFFIN: Now, just by way of comparison, if you  
15 will, we'll get to that, Your Honor, with the sweepstakes  
16 system.

17 And a couple additional questions before I get there,  
18 Mr. Grey.

19 If I could have this marked as Plaintiff's Exhibit 4,  
20 please.

21 (Plaintiff's Exhibit 4 marked for identification)

22 MR. GRIFFIN: Thank you.

23 May I approach the witness, Your Honor?

24 THE COURT: Yes.

25 MR. GRIFFIN: Thank you.

1 Q. Mr. Grey, I've handed you what has been marked as  
2 Plaintiff's Exhibit 4. Do you recognize this document?

3 A. Yes, I do.

4 Q. And what is this document, Mr. Grey?

5 A. This is a report of the Capital Sweepstakes system.

6 Q. When you say "a report," as a result of a test that you  
7 did of the Capital Sweepstakes system?

8 A. Yes.

9 Q. Forensic test, is that an accurate term?

10 A. Well, it was an evaluation, a reevaluation of the system.  
11 This is where we've reviewed all the software, looked at the  
12 source code, observed play; and then, you know, came up to  
13 findings and conclusions in answer to a specific set of  
14 questions that were posed to us.

15 Q. In this specific context, Mr. Grey, what were you testing  
16 for with respect to the Capital Sweepstakes system?

17 A. Well, with any sweepstakes system, you generally look to  
18 determine the pool structure that the prizes reside in, how  
19 that is presented, how it's delivered, what means there are for  
20 participants to obtain entry into it, what rules it may have;  
21 and, you know, the source code to determine how the outcome of  
22 any reveal of any game piece occurs.

23 Q. Are you looking, for example, for the existence of random  
24 number generators or lack thereof?

25 A. Yes.

1 Q. And why is that important when evaluating a sweepstakes  
2 system?

3 A. It's key to know if it's being used; and if so, where  
4 because in many cases that can change how the machine gets  
5 defined.

6 Q. Legally you mean?

7 A. Legally, yes.

8 Q. And you're testing the actual operation of the software as  
9 opposed to forming an opinion as to whether the software is  
10 legal or not in any particular jurisdiction; is that correct?

11 A. Correct.

12 Q. So before I -- I'm going to, obviously, get into a number  
13 of your conclusions in this report, but I would like if you  
14 could turn to page 12 of this report, please.

15 A. (Witness complies.)

16 Q. Are you with me?

17 A. Yes.

18 Q. Do you see a signature there?

19 A. Yes, I do.

20 Q. By Nick Farley, president?

21 A. Yes.

22 Q. And who is Nick Farley?

23 A. Nick is the owner of Nick Farley & Associates.

24 Q. Is he your boss?

25 A. My boss, yes.

1 Q. Okay. Did you assist in preparing this report that has  
2 been marked as Plaintiff's Exhibit 4?

3 A. Yes, I did.

4 Q. Now, after page 12, there is an Appendix A. Do you see  
5 that?

6 A. Yes.

7 Q. And there are a number of pages attached to that.

8 Briefly describe to me what those pages represent.

9 A. These represent the software signatures of the system that  
10 we had in the lab that we actually tested. This would be used  
11 for verification purposes if it became necessary to verify that  
12 some other system was identical to what we looked at in the  
13 lab.

14 Q. So these signatures, then, in order to cross-check  
15 reference, you're able to indicate or conclude that the  
16 software that you tested is the actual software that's being  
17 utilized at the location?

18 A. Yes. As a matter of fact, with regard to the location in  
19 question, I did, via remote connection, go in and check  
20 software signatures and they matched with our report.

21 Q. Okay. So let me make sure that we're clear on that point.

22 You said you went in by remote connection to check. When  
23 did you do that?

24 A. This morning.

25 Q. And what was the purpose of you doing that?

1 A. To verify that the software on site is identical to the  
2 software that we tested in our lab.

3 Q. And did you conclude that it was the same?

4 A. Yes.

5 Q. And just to be clear, the software that -- the check you  
6 did this morning was the software being utilized by  
7 Net Connection in Hayward; is that right?

8 A. Yes.

9 Q. So this report, then, reflects the conclusions of Nick  
10 Farley & Associates for Eclipse Compliance Testing for software  
11 currently being utilized by Net Connection Hayward; is that  
12 right?

13 A. It would.

14 Q. Does this report, as it appears in front of you, Mr. Grey,  
15 does it reflect a true and correct copy of the report that was  
16 issued by your employer, Nick Farley & Associates, on  
17 April 28th, 2013?

18 A. It does.

19 MR. GRIFFIN: And I'm going to get into, again, some  
20 specifics in the report through more testimony, Your Honor, but  
21 at this point I'd like to offer Plaintiff's Exhibit 4 into  
22 evidence?

23 THE COURT: Received.

24 (Plaintiff's Exhibit 4 received in evidence)

25 MR. GRIFFIN: Thank you.

1 Q. Mr. Grey, we went through the PowerPoint that you created  
2 explaining a traditional three-reel slot machine. Can you tell  
3 me what -- strike that.

4 Can you tell me how that traditional three-reel slot  
5 machine compares to the sweepstakes system that you tested in  
6 this case?

7 A. There's really not very many similarities at all.  
8 There's -- they both utilize a visual display of symbols.  
9 Other than that, how outcomes are determined and just general  
10 operation is much different.

11 Q. Is there anything in the sweepstakes system utilized by  
12 Net Connection that utilizes a random number generator to  
13 determine outcomes?

14 A. No.

15 Q. Is there -- in the slot machine example, you testified  
16 that the results of any particular spin are completely random  
17 and unpredictable; right?

18 A. Yes.

19 Q. How does that differ from the sweepstakes system in this  
20 case?

21 A. The sweepstakes system will reveal electronic game pieces  
22 from a finite pool, which all have a known value; and knowing  
23 what the construction of the pool is, we know what all the  
24 outcomes are going to be.

25 Q. So a construction of the pool, can you give me an example

1 that may be more commonly known to everybody in terms of  
2 predetermined outcomes in a pool?

3 A. Sure. Like a lottery scratcher ticket. If we had a  
4 printed roll of tickets, the value of the ticket, the outcome  
5 isn't known to the person buying it because it's obstructed by  
6 the material that you have to scratch off, but the value of the  
7 roll is known ahead of time. It's already printed.

8 Q. And not only is the roll preprinted, but the sequence is  
9 already predetermined in the lottery scratcher example?

10 A. Yes. In that regard, it's the same as well. This --

11 Q. So -- I'm sorry. Excuse me.

12 A. Yeah, this system here delivers the game, the electronic  
13 game pieces, in order. They're sequential in delivery.

14 Q. So the sequence is already predetermined?

15 A. Yes.

16 Q. And how is that sequence predetermined? How does that  
17 happen within the software?

18 A. In this particular case for this system, there are several  
19 game types. They're finite pools associated with each game  
20 type and play level, and each one of those is put into one of  
21 four orders, shuffles if you will. They're known ahead of time  
22 and delivered sequentially.

23 So there will be, like, shuffle one. All of those would  
24 be delivered. Then it will go to shuffle two and deliver all  
25 of those, so on and so forth. When it exhausts all of those,

1 it will go back to one again.

2 Q. And where are those -- where do those shuffles take place?

3 A. Those are made by the manufacturer.

4 Q. And how are they -- how are those shuffles as  
5 predetermined orders then transferred to the business location?

6 A. The order is set by the manufacturer, and that is then  
7 distributed to the system at each location. So it will follow  
8 that sequence.

9 Q. So let me see if I can -- if I understand. For each --  
10 there are different games, sweepstakes games, a person can  
11 play?

12 A. Yes.

13 Q. And within each of those games, the person will have an  
14 option of different play levels; is that right?

15 A. Yes.

16 Q. So, for example, somebody can play -- for one game they  
17 can play 25 points, 50 points, 75 points, or a hundred points,  
18 or more, and the play levels for a different game might be  
19 different; is that right?

20 A. Yes.

21 Q. Now, is it -- so for each game and each play level is  
22 there a different finite pool of entries?

23 A. With regard to this system, you'll notice that there are  
24 several different game themes and there's also a game. We  
25 grouped them by game types. The game types share pools, but

1 each pool for each play level within that type is unique. Now,  
2 it may be used across several game themes, just to be clear.

3 Q. I think we'll clear that up when we actually see them on  
4 screen.

5 A. Okay.

6 Q. But when you were referring to -- I think you were looking  
7 at page 5 of your -- 5 and 6 of your report, is that what you  
8 were looking at?

9 A. (Witness examines document.) Yes.

10 Q. Okay.

11 A. Yes. So within the report, you'll see that there's a  
12 25-pay-line game type, Tropical Treasures, Deluxe, and Fat Cat  
13 are a couple themes there. They would share the same set of  
14 pools; in other words, pools specific to them and within there  
15 are play levels of 25, 50, 75, 100, 200, and 300. Each one of  
16 those play levels represents a single finite pool of electronic  
17 game pieces with a predetermined order and value.

18 Q. And the same would be true for the other three game types  
19 listed on page 5 and 6 of your report?

20 A. Yes.

21 Q. And those finite pools for each of those game types and  
22 play levels, once they're delivered by the manufacturer to the  
23 business location, is there anything that can be done at the  
24 business location either by the owner or the customer that's  
25 playing the sweepstakes that would change the order of those

1 entries?

2 A. No. The location, the participants, they have no ability  
3 to change the order or alter the value. There's nothing they  
4 can do to affect the outcome of any particular electronic game  
5 piece.

6 Q. So when a customer's sitting down at a terminal and pushes  
7 a button to reveal the next entry and the next entry is  
8 revealed, what is the customer then seeing? I mean, how is  
9 that next entry determined?

10 A. The electronic game pieces that are being revealed at the  
11 terminal are stored electronically in a database. When the  
12 patron or participant presses the reveal button, the electronic  
13 game piece is sent to the terminal, the viewing terminal or the  
14 cashier terminal, wherever it's being revealed at, and then the  
15 value of that piece is displayed as corresponding symbol --  
16 symbolic outcome.

17 Q. Is it -- so it's essentially displaying whatever the next  
18 entry in line is for that particular play level in the game?

19 A. Yes, uh-huh.

20 Q. Is that right?

21 A. Yes.

22 Q. And nothing the customer does can affect what pops up as  
23 the next entry?

24 A. No, other than by selecting the game theme and play level.  
25 They determine what pool is being -- you know, an entry will be

1 revealed from; but as far as affecting the value of a game  
2 piece or entry from that pool, they can do nothing.

3 Q. So there's no random number generator that is applied that  
4 influences what the results of the next entry revealed is going  
5 to be; is that correct?

6 A. That's correct. The system does not utilize random number  
7 generator.

8 Q. Now, let me digress just briefly, and then we're going to  
9 get into the system and demonstrating how the actual game play  
10 works.

11 But you -- through your work and testing, are you  
12 generally familiar with other sweepstakes promotions that are  
13 utilized or may be employed --

14 A. Yes.

15 Q. -- by other operators?

16 All right. And did I ask you in this case to take a look  
17 at the rules and how a couple of sweepstakes in particular are  
18 played?

19 A. Yes, you did.

20 Q. And which ones did I ask you to take a look at?

21 A. The sweepstakes that's offered by McDonald's, which is  
22 currently over right now, and then one that's being offered by  
23 Carl's Jr./Arby's.

24 Q. Now, and you -- you know, with respect to that, the  
25 sweepstakes system that you tested with respect to

1 Net Connection, were you able to determine whether or not the  
2 system is designed to allow anyone to participate for free, get  
3 free entries without purchase?

4 A. Yes. The system is designed to allow participants to  
5 participate without any purchase. They may obtain free  
6 entries.

7 Q. Does your company have any sort of internal policy with  
8 respect to testing the sweepstakes systems, whether it requires  
9 that there be a free entry option or not?

10 A. We do. Thus far we have not issued a report for any  
11 system that does not permit issuance of entries without  
12 purchase. It's a pretty common characteristic of the  
13 sweepstakes that there be a no purchase necessary method. I  
14 suppose if someone were insistent on it, we could issue a  
15 report, but we would have to disclose that in the report.

16 Q. You didn't have to grapple with that issue in this case  
17 because --

18 A. No, we didn't. There's a free entry method.

19 Q. Again, I turn your attention now to your monitor,  
20 Mr. Grey. Can you show me or can you tell me what is displayed  
21 on the screen, please?

22 A. I'll be honest with you, I can't actually read what's on  
23 the screen right now.

24 Q. Well, you don't have to read it, but can you tell me what  
25 it is?

1 A. Oh. It's the rules, officials rules, for this system.

2 Q. "For this system" meaning the system --

3 A. The -- yes, the sweepstakes system, the  
4 Capital Sweepstakes system.

5 Q. The one that is reflected in the report, Plaintiff's  
6 Exhibit 4?

7 A. Yes, the one in the report.

8 Q. Thank you.

9 And next slide, please.

10 And this is a -- if you could look at the screen now,  
11 maybe that will help you read that portion of the image.

12 A. Yes, I can read that now.

13 Q. What is that, Mr. Grey?

14 A. That's the statement, "There is no purchase or payment  
15 necessary to play Internet Zone sweepstakes."

16 Q. Now, I asked you also to look at the, as I said,  
17 McDonald's and Carl's Jr. sweepstakes games. Did I ask you to  
18 do an analysis of the software of those games?

19 A. No. I can't. We do not have access to what would be  
20 necessary to do that.

21 Q. We called McDonald's and they didn't answer; right?

22 A. Yeah.

23 Q. Okay. But can you -- but you were able to look at the  
24 games and generally describe, based on your experience, how  
25 those games worked; is that correct?

1 A. Yes. I was able to look at them, see how they operated on  
2 the outside and, you know, how things are presented to the  
3 participant.

4 Q. And, go ahead, next slide, please.

5 And were you able to examine the rules of the McDonald's  
6 monopoly game and the Carl's Jr. game?

7 A. I was.

8 Q. The official rules?

9 A. Yes.

10 Q. And where did you obtain those?

11 A. Online.

12 Q. At the McDonald's site?

13 A. Yeah, at McDonald's Web site and at the Carl's Jr. Web  
14 site.

15 Q. Now, with respect to on the screen now, can you describe  
16 for me what is shown there?

17 A. That's the official rules for the McDonald's monopoly  
18 sweepstakes highlighting the "No purchase necessary to play or  
19 win a prize."

20 Q. So in McDonald's case, you were able to confirm that there  
21 was no purchase necessary in order to enter that sweepstakes?

22 A. Yes.

23 Q. Next slide, please.

24 And did you also examine the official rules for the  
25 Carl's Jr. game?

1 A. Yes, I did.

2 Q. And were you able to determine, based on your review of  
3 those official rules, whether Carl's Jr. also has the  
4 no-purchase-necessary option?

5 A. They do.

6 Q. And is that what's reflected on your screen?

7 A. It is.

8 Q. Now, let's start with -- I'd like to just fairly quickly  
9 walk through how this McDonald's game works, because I think  
10 it's -- for purposes of comparison with how the Net Connection  
11 sweepstakes system works. So if you could please use these  
12 slides to describe for me how the McDonald's system works.

13 A. Sure. On this slide here it's showing the page that a  
14 participant in the McDonald's sweepstakes would see if they had  
15 a code obtained with the purchase of a product. They can go  
16 online and enter a code through this page here by clicking the  
17 "Enter Code" button.

18 Q. Okay. Next, please.

19 THE COURT: So when you buy a product, you get a code  
20 number?

21 THE WITNESS: Yes.

22 THE COURT: If it's for free, what happens?

23 THE WITNESS: I'm sorry?

24 THE COURT: If it's free, suppose you don't want to  
25 buy anything but you want to play the game? Suppose I don't

1 want to buy a hamburger, but I want to play the game. Do I get  
2 a code?

3 **THE WITNESS:** With the McDonald's one, honestly I  
4 cannot remember where you get the code. I think they have a  
5 method for obtaining a code without purchase. In general, most  
6 of their codes are given out, you know, with fries or what have  
7 you.

8 **THE COURT:** Okay.

9 **MR. GRIFFIN:** I believe the answer to that question,  
10 Your Honor, is we have the official rules from McDonald's  
11 attached as one of our exhibits.

12 **THE COURT:** I assume you're going to go through those.  
13 I assume you're going to go through those rules?

14 **MR. GRIFFIN:** McDonald's rules, this is for  
15 illustration purposes. My intent was not to go --

16 **THE COURT:** I mean, what happens? When you get a  
17 code, are you going to explain what happens? You get  
18 hamburgers or you get money?

19 **MR. GRIFFIN:** We are going to explain what happens,  
20 yes.

21 **THE COURT:** All right. Go ahead.

22 **BY MR. GRIFFIN:**

23 **Q.** So you get a code with the purchase or free entry option  
24 in McDonald's, and then what happens next?

25 **A.** You would enter the code as in the top portion of the

1 screen; and then upon entering that code, it will bring you to  
2 the game string.

3 Q. Do you need a computer to do this?

4 A. You would.

5 Q. So you can't -- this is not something that you can do  
6 without a computer?

7 A. You would not be able to.

8 THE COURT: Whose computer? Your computer or their  
9 computer?

10 THE WITNESS: Any computer that has an Internet  
11 connection and a --

12 THE COURT: So your own computer. You use your own  
13 computer?

14 THE WITNESS: You can use your own computer, yes.

15 THE COURT: Do they have a computer in the shop, do  
16 you know?

17 THE WITNESS: I do not know if McDonald's provides a  
18 computer at the location for this purpose.

19 THE COURT: All right.

20 BY MR. GRIFFIN:

21 Q. Please proceed. So you entered the code, and then?

22 A. Upon entering the code, then it will display the screen  
23 below, "Ready. Set. Spin," where you can click on the "Click  
24 to Spin" button.

25 Q. And then what happens?

1 A. When you click that, there will be an animated scene  
2 depicting the Monopoly board spinning as in the top, although  
3 you can't see it spinning here; and then it will come to rest  
4 on a space, and then reveal an outcome.

5 Q. And were you able to determine what types of outcomes  
6 might be possible in this particular example?

7 A. I was not.

8 Q. Now --

9 THE COURT: I don't know -- what happens after you  
10 spin the wheel? Have you got a slide on that?

11 MR. GRIFFIN: Yes. Right here (indicating).

12 THE COURT: How do you know whether you won or lost?

13 MR. GRIFFIN: Well, go back one.

14 Q. So the second-to-the-bottom slide or the bottom portion of  
15 the slide, what does that show you, Mr. Grey?

16 A. This is showing a losing outcome. You may not have landed  
17 on an instant win prize, but you're still entered -- you still  
18 earned a virtual house, which is another portion of the game --

19 Q. Okay.

20 A. -- which earns you participation in yet another drawing.

21 Q. So after you spin, it tells you you've won or you've  
22 lost --

23 A. Yes.

24 Q. -- at that point?

25 And this slide you depicted here is a losing entry, the

1 code related back to a losing entry; is that right?

2 A. I can only say that the code entered allowed you to  
3 participate, the result of which was a losing outcome. I don't  
4 know if a value was associated with that code because that  
5 would require looking at the code behind the scenes,  
6 essentially.

7 THE COURT: But you lost but you can still continue?

8 THE WITNESS: If you have additional codes, you can go  
9 and enter more codes.

10 THE COURT: The thing says here: (reading)

11 "You may not have landed on an instant win prize, but  
12 you still earned a virtual house."

13 And then it says, "Continue." What do you do here? You  
14 press "Continue," then what happens?

15 THE WITNESS: I think that's the next slide here.

16 MR. GRIFFIN: Next slide.

17 THE WITNESS: And it will show you that you've got  
18 these spaces for four houses. In this particular case this  
19 participant has got two of them with two more to go, and that  
20 will get them the hotel piece, which I believe then gets them  
21 into another drawing.

22 BY MR. GRIFFIN:

23 Q. The other drawing being a secondary sweepstakes or  
24 something along those lines?

25 A. Yes. You have a choice of a thousand dollar -- or \$10,000

1 cash, beaches resorts vacation, U.S. Soccer family trip in this  
2 case.

3 THE COURT: I don't understand this. I don't  
4 understand what's going on.

5 Do you still continue on after you got your one house?

6 MR. GRIFFIN: Yes, Your Honor. I believe what we're  
7 trying --

8 THE COURT: You continue till you win or what?

9 MR. GRIFFIN: No, no, no. There are -- maybe I'm not  
10 doing a very good job here. I'm trying to do it by  
11 illustration.

12 You have a code you enter in the computer for an instant  
13 win option; and then if you don't have an instant win option,  
14 then you're also entered into a secondary sweepstakes where  
15 you're eligible to win one of the prizes that are shown on the  
16 screen; the vacations, the houses, and so forth.

17 So there's essentially two options. There's an  
18 instant-win option where you may win food items, free  
19 hamburgers, Cokes, that sort of thing. And then if you don't  
20 get that, you're still eligible to have your number put into  
21 the sweepstakes for the vacations and the larger prizes.  
22 That's what we're attempting to demonstrate by way of  
23 illustration.

24 THE COURT: Is there a place where you lose and you  
25 don't get anything?

1           MR. GRIFFIN: Yes. If you don't get the instant win  
2 and then you go into the secondary sweepstakes, and if you  
3 don't win one of those grand prizes, then you're not winning  
4 anything in that case.

5           THE COURT: So on this screen that I'm looking at,  
6 I've got two houses; right? Do I have two houses?

7           MR. GRIFFIN: Yes, Your Honor.

8           THE COURT: And then it says "Continue." I continue.  
9 Now do I pick below the \$10,000, the beach resorts, or the  
10 soccer whatever it is, U.S. Soccer?

11          MR. GRIFFIN: Essentially, yeah. The customer then  
12 would choose which of those --

13          THE COURT: He would like to win?

14          MR. GRIFFIN: -- he would like to win.

15          THE COURT: All right. So then you continue on?

16          MR. GRIFFIN: Yes, you continue on from there.

17          THE COURT: And then now I happen to have four houses.  
18 What does that mean? (reading)

19                 "You've entered into win a 2013 Fiat."

20          MR. GRIFFIN: So the customer in this case chose to  
21 enter the sweepstakes to win a car, and that's what's depicted  
22 here.

23          THE COURT: So then he continues on.

24          MR. GRIFFIN: Right, you can continue, and that's the  
25 end of the --



1 when the contest period is over, then they do the drawing or  
2 figure out which of those entries has won.

3 THE COURT: Well, wait a minute. You're losing me  
4 here.

5 MR. GRIFFIN: Okay.

6 THE COURT: I'm down here, it says "Continue."

7 MR. GRIFFIN: Yes.

8 THE COURT: What happens when I press that "Continue"  
9 button?

10 MR. GRIFFIN: I believe it just says, "Thank you for  
11 your participation."

12 THE COURT: I'm almost winning the -- it doesn't tell  
13 me whether I lost or not.

14 MR. GRIFFIN: Not immediately at that point. The only  
15 instant gratification, or lack thereof, that you get in this  
16 game is with respect to the instant win, the first screen after  
17 you've entered the code.

18 And then what McDonald's does, which is not what, as  
19 you'll hear in a minute, what Net Connection does in this case,  
20 is it has, "Well, you didn't win instantly, but you might win a  
21 big prize in the end." So --

22 THE COURT: Well, when do I win the \$10?

23 MR. GRIFFIN: That would be instant.

24 THE COURT: Instant.

25 MR. GRIFFIN: Yes.

1           **THE COURT:** So I'm not -- that has nothing to do with  
2 my dream?

3           **MR. GRIFFIN:** Correct.

4           **THE COURT:** All right.

5           **MR. GRIFFIN:** Yes.

6           **THE COURT:** So I win the \$10. Then if I win the \$10,  
7 I'm all through with the game?

8           **MR. GRIFFIN:** Yes.

9           **THE COURT:** But if I don't win the \$10, I continue on?

10          **MR. GRIFFIN:** Yes.

11          **THE COURT:** And below here then this last continue  
12 says, "Thank you for playing the game," and I don't win  
13 anything?

14          **MR. GRIFFIN:** That's right.

15          **THE COURT:** Okay. All right.

16 **BY MR. GRIFFIN:**

17 **Q.** So let's talk about -- let's talk about Net Connection's  
18 system since that's what --

19          **THE COURT:** Well, wait. Before we get off this, in  
20 this McDonald's is there cash awarded? I know I got the \$10.  
21 Is there any other cash you know of? Any other cash awards?

22          **THE WITNESS:** I don't know the exact values, but I  
23 know McDonald's typically advertises, you know, the large sums  
24 of money that they've awarded in the past Monopoly games. I  
25 think I even saw on their Web site something to the effect of,

1 you know, how many million-dollar winners and then photos of  
2 them. So they do award cash.

3 THE COURT: Okay.

4 MR. GRIFFIN: Your Honor, in the interest of brevity  
5 on this issue, or to satisfy the Court's curiosity, there  
6 are --

7 THE COURT: I don't want brevity. I want clarity.

8 MR. GRIFFIN: Sure. I understand, Your Honor.

9 And we have attached in our pleadings that we submitted  
10 initially with our Temporary Restraining Order papers as  
11 Exhibit C to my declaration a copy of the official McDonald's  
12 rules.

13 Actually we had submitted a copy of official rules for a  
14 number of sweepstakes games, including the one by Carl's Jr.  
15 referred to a few minutes ago. And the rules are 33 pages  
16 long, the official rules; and I'm happy to go through them  
17 tonight and when we return tomorrow, you know, answer some of  
18 the Court's questions with respect to when you can actually  
19 win.

20 THE COURT: I want to know whether you win cash and  
21 how much cash do you win. You don't have to tell me now.

22 MR. GRIFFIN: Yes, understood. I will -- instead of  
23 going through the 33 pages right now, I'll be able to answer  
24 that for you in the morning, Your Honor.

25 THE COURT: Okay. Your illustration of this was to

1 give a comparison to what your client has.

2 MR. GRIFFIN: I understand that, Your Honor.

3 THE COURT: So he passes out cash. I want to know how  
4 much cash this passes out.

5 MR. GRIFFIN: Understood, Your Honor. I'll answer  
6 that question.

7 THE COURT: It may be relevant, it may not, but it's  
8 one of those things I need.

9 MR. GRIFFIN: Okay.

10 Q. Mr. Grey, let's turn to the system utilized by  
11 Net Connection.

12 Within the place of operation itself, what type of  
13 computer terminals exist there?

14 A. Those would be Windows-based PC.

15 Q. Let me ask a more precise question then. We've talked  
16 about -- some witnesses testified this morning, I'll represent  
17 to you, that when a person wants to purchase something or  
18 obtain free entries, they walk into the business and they go to  
19 the cashier and they ask for their entries or they purchase a  
20 product, and they get sweepstakes entries as a result of that  
21 purchase. And then one of their options is to go over to one  
22 of the computers and reveal the results of those sweepstakes.

23 Does that all sound right?

24 A. Yes.

25 Q. Let me ask my question now. Is there a difference between

1 the computer that is behind the desk that the cashier accesses  
2 and the computers that are available to the customers?

3 A. Yes, there is. They utilize different software.

4 Q. Okay. So can you tell me what you call those two  
5 different computers or terminals?

6 A. Cashier terminal that would be utilized by the operator of  
7 the store; and then viewing terminal, which would be if you  
8 were to get entries, that's where you could reveal them using  
9 the entertaining game themes.

10 Q. Those are the ones, the viewing terminals that can be  
11 accessed by the customers?

12 A. Yes.

13 MR. GRIFFIN: Your Honor, just by way of explanation  
14 ahead of time, as we get into this, we have set up here, and I  
15 have run through with Mr. Vigilia, we have essentially mirrored  
16 those two terminals so, the cashier terminal, so the Court can  
17 see exactly what the cashier sees in the play of the game; and  
18 then we also have the terminal, the viewing terminal, that  
19 Mr. Grey has explained so you can see --

20 THE COURT: What is the cashier looking at?

21 MR. GRIFFIN: We're going to explain that.

22 THE COURT: Okay.

23 MR. GRIFFIN: I just want to tell you that we have two  
24 computers set up. One would be identical to what the cashier  
25 would be looking at and one that would be identical to what the

1 customer would be looking at, and I just wanted to offer that  
2 explanation as we go through this.

3 THE COURT: You've got 40 computers in the place.  
4 What's she looking at, 40 computers or one computer?

5 MR. GRIFFIN: No, no, no. It's completely different  
6 altogether.

7 THE COURT: Okay. You're going to explain that, all  
8 right.

9 MR. GRIFFIN: Okay. If you could toggle to the  
10 cashier terminal, please.

11 Q. Okay. So I have on a screen. Mr. Grey, can you please  
12 describe what that is for me?

13 A. That's the cashier terminal. What we're seeing here is  
14 the software where a cashier would operate the cashier  
15 terminal.

16 Q. Okay. So the judge asked what does the cashier see. Is  
17 this what a cashier sees?

18 A. Yes, this is what a cashier would actually see.

19 Q. And if a person comes up and says, "I want my free entries  
20 today," how would the cashier process that?

21 And I believe, again, your screen has -- you can touch the  
22 screen and arrows will show up for illustration purposes.

23 A. This button right there (indicating), "Free Entries," so  
24 if you click on that --

25 Q. Okay.

1 A. -- then the cashier can enter without limit any quantity  
2 of free entries to award. Well, in this case points,  
3 entitlements to reveal electronic game pieces.

4 Q. Okay. So let's run through this example. The cashier --  
5 let's say this is -- there was testimony this morning that a  
6 customer comes in, the first time a customer comes in, they can  
7 obtain 500 free sweepstakes points. So on this system, what is  
8 the equivalent of that?

9 A. It would be this button right there (indicating).

10 Q. That button meaning --

11 A. The button labeled with the "\$5."

12 Q. Okay. So let's press that. And then what is that, you  
13 hit "Accept" at that point?

14 A. And then "Accept" will commit the transaction or, I  
15 think -- oh, no, I'm sorry. Go ahead. Yeah, the "Accept"  
16 button.

17 THE COURT: Is that the money you go in and pay?

18 MR. GRIFFIN: Okay. That's right.

19 THE COURT: You ask for their first name and their  
20 last name and their cell phone and their email. Is that what  
21 they ask for?

22 MR. GRIFFIN: Sometimes they -- some customers are  
23 repeat customers, they will provide that information.

24 Q. Mr. Grey, is that necessary in order to play the game?

25 A. No. As a matter of fact, the example that we were just

1 walking through, none of that information was present in the  
2 form. It's not mandatory.

3 THE COURT: Oh, okay.

4 THE WITNESS: But if they wanted to, they could have  
5 put it in.

6 THE COURT: Okay. So when I go back, when I go in and  
7 I put \$10 down, does that give me so many points, or so much  
8 time on the computer, or both?

9 THE WITNESS: You're purchasing Internet time, and  
10 that would be done with the deposit button on here  
11 (indicating).

12 THE COURT: So I see it has a dollar. How much  
13 Internet time do I get for a dollar?

14 THE WITNESS: I'm trying to remember what it --

15 THE COURT: How much was it a minute?

16 MR. GRIFFIN: I believe the testimony was 30 cents a  
17 minute.

18 THE COURT: 30 cents a minute, so I get three minutes.

19 MR. GRIFFIN: Right. Your Honor, there are --  
20 there's --

21 THE COURT: The purpose of my question: Are you  
22 coming in to play the game or are you coming in to do the  
23 Internet?

24 MR. GRIFFIN: Right.

25 THE COURT: I assumed all of this was to encourage

1 people to come in and play the Internet and, as a consequence  
2 of getting them to play the Internet, they get a chance to make  
3 some points.

4 MR. GRIFFIN: Right; but there are -- as we've  
5 outlined in our papers, one of the key legal elements of a  
6 sweepstakes under California law, is the availability to obtain  
7 free entries.

8 THE COURT: To what?

9 MR. GRIFFIN: To obtain free entry into the game. To  
10 obtain a free entry.

11 THE COURT: Yeah.

12 MR. GRIFFIN: In other words --

13 THE COURT: No, I understand. Yeah.

14 MR. GRIFFIN: Okay. So I'm just trying to explain the  
15 options, what happens and to demonstrate what happens when a  
16 player walks up and wants to do free entries. And then, which  
17 I think the Court will see, doesn't result in, when the  
18 customer logs on, doesn't result in any Internet time showing  
19 up because the customer hasn't purchased Internet time.

20 THE COURT: Well, the thing that bothered me with this  
21 exhibit, it has his cell phone, his email, and everything else,  
22 everything but his blood pressure.

23 (Laughter)

24 BY MR. GRIFFIN:

25 Q. But that's not a necessary in order to play the game, is

1 it, Mr. Grey, the way the software is designed?

2 A. No, it would not be.

3 THE COURT: Okay.

4 BY MR. GRIFFIN:

5 Q. All right. So in this particular example we were  
6 demonstrating, somebody walks in. They want -- they're a  
7 first-time customer, and they want their free entries. They  
8 get 500 free entries and you hit "Accept," and what happens at  
9 that point?

10 A. Upon hitting "Accept," a pin number is created, and that  
11 pin number is associated with the entitlements to reveal the  
12 electronic game pieces that are stored in the finite pools.

13 MR. GRIFFIN: All right. So, Your Honor, the one  
14 thing that you can't see on the monitors that we have down here  
15 is an actual -- and I've shown to opposing counsel -- is the  
16 printer that sits beside the cashier terminal that actually  
17 prints out then a pin number. If the customer wants their free  
18 entries, they get a pin number.

19 THE COURT: Are you going to put that in evidence?

20 MR. GRIFFIN: I am, Your Honor.

21 THE COURT: Okay.

22 MR. GRIFFIN: So in this case I have a pin number.  
23 Can I have this marked?

24 THE CLERK: Sure.

25 MR. GRIFFIN: I only have one copy because we can't

1 make duplicates.

2 (Plaintiff's Exhibit 5 marked for identification)

3 (Pause in proceedings.)

4 THE COURT: Now, this is one where they actually  
5 received cash?

6 MR. GRIFFIN: No. This is as a result of going  
7 through the free entry.

8 THE COURT: It says, "Cash received, \$10."

9 MR. GRIFFIN: It does say that, but that's just how  
10 the system spits it out.

11 THE COURT: How do I understand these exhibits? They  
12 don't and they do.

13 MR. GRIFFIN: I think we'll see when we enter the pin  
14 code what happens physically on the computer.

15 THE COURT: Well, that one represents somebody that  
16 paid \$10; is that right?

17 MR. GRIFFIN: It doesn't, Your Honor.

18 THE COURT: It doesn't?

19 MR. GRIFFIN: No. That would be --

20 THE COURT: I know my eyesight is not very good, but  
21 it's still better than that.

22 MR. GRIFFIN: Well, that would be if someone came in  
23 and purchased \$10 worth of --

24 THE COURT: All I'm asking, what does that receipt  
25 represent? It's not a flaming-gun issue but, I mean, I'd like

1 to know what you're receiving.

2 MR. GRIFFIN: All that receipt represents is the pin  
3 number, the pin number on there that there has been a --  
4 whether it be free entries or a purchase for a specific amount,  
5 that results in -- correlates to a number sweepstakes --

6 THE COURT: Free entry or purchase; right?

7 MR. GRIFFIN: The receipt itself doesn't show that.  
8 It's when you log in the pin number into the system, which is  
9 the next step, which will delineate between whether it's a free  
10 entry or a purchase; and I intended to demonstrate that.

11 THE COURT: What happens when the IRS comes around and  
12 sees a receipt like this that says, "Receipt, \$10," you say,  
13 "No, I didn't"? Are they going to believe you?

14 MR. GRIFFIN: Well, the system is designed so it keeps  
15 track with the pin numbers that are associated with free  
16 entries and the pin numbers that are associated with deposits.

17 THE COURT: Okay.

18 MR. GRIFFIN: Maybe we'll be here next year.

19 THE COURT: It seems to me that if you're receiving no  
20 cash, you put no cash.

21 MR. GRIFFIN: The system, when we enter it in the  
22 system, that, as we just demonstrated, that ticket is a result  
23 of entering using the "Free Entries" button; and it happens to  
24 say "Deposit Receipt," but it's not reflected of a receipt of  
25 cash, and I think you'll see that when we get to the next step,

1 which is --

2 THE COURT: All right.

3 MR. GRIFFIN: May I approach the witness, Your Honor?

4 THE COURT: Sure.

5 MR. GRIFFIN: Thank you.

6 Q. Mr. Grey, I've handed you what has been marked as  
7 Exhibit 5. Is that -- what is that?

8 A. It's the receipt with the pin number and showing the  
9 quantity in dollars for the electronic game pieces, the  
10 entitlements to them.

11 Q. Now, the judge just asked a series of questions of me  
12 about why does it say "Cash Deposit," and I attempted to  
13 explain that pin number corresponded to free entries.

14 From a software perspective --

15 A. If I may, I wanted to point out that the system doesn't  
16 differentiate between entries obtained with a purchase or  
17 without a purchase.

18 Okay. Entitlement to reveal the electronic game pieces,  
19 they're all --

20 THE COURT: To get into the game, you need the pin  
21 number. So if --

22 THE WITNESS: You need the pin number --

23 THE COURT: That's all you need, yeah.

24 THE WITNESS: -- to get into the terminal to review  
25 them or to even reveal them at the cashier terminal.

1           **THE COURT:** Yeah.

2           **THE WITNESS:** The system doesn't differentiate between  
3 whether you've obtained them with purchase or without a  
4 purchase. So if you're getting a free entry, so to speak, it  
5 doesn't keep track of it in that regard. It just simply says,  
6 "Okay. You've got entitlement to reveal this many," and then  
7 you can choose in what way you want to reveal them.

8           **THE COURT:** Plain and simple, what confused me is you  
9 have a receipt that says, "I received \$10," but you haven't  
10 received \$10.

11           **THE WITNESS:** Correct.

12           **THE COURT:** Why don't they say, "Receive \$1"? I mean,  
13 I don't understand that, but that's all right.

14           Proceed.

15 **BY MR. GRIFFIN:**

16 **Q.** Once a customer receives -- well, that pin number  
17 corresponds to what, Mr. Grey, a number of sweepstakes entries;  
18 in other words, a defined number of sweepstakes entries?

19 **A.** It will correspond to an account which will have any  
20 entitlements to reveal entries, which would be points.

21           **THE COURT:** Does the 10 represent points?

22           **THE WITNESS:** In this case, yes.

23           **THE COURT:** Would it be 10 points?

24           **THE WITNESS:** 1,000 in this case.

25           **THE COURT:** A thousand.

1           **THE WITNESS:** Because what happened was when they were  
2 demonstrating it, they gave 500 free twice resulting in a  
3 thousand altogether.

4           **THE COURT:** So if I receive that, I'd be entitled to a  
5 thousand points?

6           **THE WITNESS:** Yes. You'd have 1,000 points you could  
7 use to reveal the entries.

8           **THE COURT:** All right.

9 **BY MR. GRIFFIN:**

10 **Q.** Now, what are the customer's options once they have a pin  
11 number and they have their entitlement to a thousand points?

12 **A.** Well, they can ask the cashier to reveal the sweepstakes  
13 entries at the cashier terminal, which --

14 **Q.** Let's go through the other option first.

15 **A.** And the other option would be they could go to one of the  
16 viewing terminals and enter their pin number at the viewing  
17 terminal, and then reveal them.

18           **THE COURT:** If I get in free and I don't want to buy  
19 anything and I get that thousand points, I could only use that  
20 on the gaming part, not on the computer part, or can I?

21           **THE WITNESS:** You could not use it to --

22           **THE COURT:** To access the Internet.

23           **THE WITNESS:** You could not access the Internet, no.

24           **THE COURT:** It's just to play the game?

25           **THE WITNESS:** Correct, just to reveal entries in the

1 sweepstakes.

2 THE COURT: Okay. And then when I play the game, do I  
3 win points for the Internet or do I win cash?

4 THE WITNESS: Assuming that you win, it would be cash.

5 THE COURT: Cash, okay.

6 BY MR. GRIFFIN:

7 Q. Okay. Let's demonstrate the question that the judge has  
8 had.

9 Say the person wants to go over and use one of the viewing  
10 terminals, one of the computers in the facility, to reveal  
11 those entries. What does the customer do? The customer goes  
12 to one of the computers?

13 A. Yeah, the customer would go to an available viewing  
14 terminal.

15 Q. Okay. So now up on the screen, is that what one of the  
16 computers would look like that the customer sees?

17 A. Yes, an available viewing terminal would typically have  
18 this displayed on it, this background. And then as you can  
19 see, the "Free Sweepstakes Games," "Browse the Internet" are  
20 present. When a pin number with entitlements or Internet time  
21 is entered, one or both will highlight that.

22 So at the moment you couldn't do either one. So the next  
23 thing to do would be to enter the pin number. So we would want  
24 to click the "Enter a Pin" button.

25 Q. Okay. So the customer goes in there; and when the

1 customer sits down at a computer, that's the screen the  
2 customer sees --

3 A. Yes.

4 Q. -- that I just had up there?

5 Okay. And in order to access either the Internet or play  
6 the games, the customer has to enter the pin number that they  
7 obtained; is that right?

8 A. That's correct.

9 Q. So let's enter that pin number. What is it?

10 A. And that number is 292675.

11 Q. And then what do they click?

12 A. Well, as you -- I'll just point out you can see that these  
13 were the free entries. There's no Internet time available.  
14 The "Browse the Internet" button is not highlighted at all.

15 Q. Okay. So we'll --

16 A. So we can click on the "Free Sweepstakes Games."

17 Q. Okay. Hold on. Just stop there for a second because  
18 that's an important point.

19 The customer in our example now received free entries.  
20 They didn't pay for anything; is that right?

21 A. Yes.

22 Q. So when a customer entered that pin number into the  
23 terminal and entered that pin number, the only option available  
24 to the customer at that point was to play the free sweepstakes;  
25 right?

- 1 A. Correct.
- 2 Q. And there's no option on the screen that's not highlighted  
3 that allows the customer to browse the Internet, and why is  
4 that again?
- 5 A. They didn't purchase any Internet time.
- 6 Q. And on that screen, then, if a customer did purchase  
7 Internet time, would the browse Internet portion be  
8 highlighted?
- 9 A. It would.
- 10 Q. And is there a place on that screen that indicates how  
11 much Internet time that particular customer has available to  
12 him or her?
- 13 A. Yes. If you look in the red box right here  
14 (indicating) -- that's bad -- Internet time is displayed right  
15 there.
- 16 Q. And in this case it reads zero.
- 17 A. Correct.
- 18 Q. Because there was no purchase of Internet time?
- 19 A. Correct.
- 20 Q. Okay. So the only option available to the customer that  
21 has received free entries and wants to use the computers to  
22 show results of his entries is to select the other option,  
23 which is play the sweepstakes; correct?
- 24 A. That's correct.
- 25 Q. Okay. So let's do that. What happens next?

1 A. They're presented with the official rules where they  
2 either agree and proceed to sweepstakes games or they do not  
3 agree, in which case they'll be returned to the menu you saw  
4 previously.

5 Q. So they have to agree to these rules?

6 A. If they wish to participate, they have to agree.

7 Q. Okay. So let's say a customer, because at this point they  
8 want to play a game, they're going to accept the rules. Let's  
9 click on "Accept." And what happens next then?

10 A. Now they're presented with a menu where they can select a  
11 game theme.

12 Q. Okay. When you say "game theme," what do you mean by  
13 that?

14 A. These are various game themes. There's, again, you know,  
15 the report mentioned these different game types. You'll see,  
16 for example, Sugar Shack, 20 pay line; Super Lucky 20 pay line.  
17 Behind the scenes they're mechanically the same, let's say.  
18 They have a different visual representation, different sound  
19 effects maybe associated with them; but they utilize same  
20 pools, they have the same options in them, but the visual  
21 display's different.

22 And then there's also the other types in here. Like Bling  
23 it Up is a scatter game, along with Lucky Buck, Prospector's  
24 Paradise is a 16-pay-line game. These are just different  
25 options that the participant would have.

1 Q. So how many different game -- you've got a number of  
2 different themes, but how many different game types are there?

3 A. I believe there were four in this one.

4 Q. So when it says -- how does a 20-pay-line game differ from  
5 a scatter game?

6 A. Just in the style of the game, how it's visually  
7 presented. And they do draw from different pools, so the prize  
8 pools are unique to each one; but pay line games are what you  
9 might have seen where, you know, symbols have to line up in a  
10 row or on a line of some type. It could be a zigzag line,  
11 diagonal line, horizontal line. A scatter game is one where  
12 the symbols just need to appear. They don't have to be on a  
13 particular line, so to speak.

14 Q. So on this screen we see, at the top left, we see two  
15 games, Sugar Shack and Super Lucky. Do you see those?

16 A. Yes.

17 Q. And they both indicate that they are 20-pay-line games?

18 A. Yes.

19 Q. So do those two games then draw from the same finite pool  
20 of entries?

21 A. They do, assuming that they're both being played at the  
22 same play level.

23 Q. Right. So within each of those games there's differing  
24 play levels a customer has?

25 A. Yes.

1 Q. So the difference between those two is simply the theme,  
2 visual depiction?

3 A. Yeah, graphics and sounds.

4 Q. So let's say the player wants to play Sugar Shack in this  
5 example.

6 A. They would click on "Sugar Shack."

7 Q. And then what does this screen demonstrate?

8 A. This screen is showing the various controls here. There's  
9 a "Help/Odds" button which would give information about the  
10 game.

11 There's a "Purchase Time" button, which would not -- is  
12 not available right now because there is no winnings yet to be  
13 used. If there were winnings, they could be used to purchase  
14 time, Internet time.

15 The "Game Menu" button will return them back to the game  
16 selection screen.

17 The up icon will increase the play level and "Max" entry  
18 will take it to the maximum play level.

19 Q. So we've been talking about play levels. Let's do an  
20 example or demonstrate how those play levels come into play  
21 here.

22 A. Sure.

23 Q. So if I'm a customer and I see this -- oh, incidentally,  
24 before I do that, now, on the screen there's a "Help/Odds"  
25 button down at the bottom. Do you see that?

1 A. Yes.

2 Q. What happens if I press that?

3 A. That will display information pertaining to this  
4 particular game.

5 Q. Does that then go through the rules and/or odds of the  
6 particular game?

7 A. Yeah. It displays some information on how this game  
8 operates; and then if you continue to click the right arrow  
9 button, it will take you through other gauges of the rules --

10 Q. So ultimately --

11 A. -- and ultimately to the odds.

12 Q. Okay. Can we click the arrow? So if we keep clicking  
13 through that right arrow, we're going to get to the odds page.  
14 Do you now see the "Prize Odds" page?

15 A. I do.

16 Q. Okay. And what is that page going to depict?

17 A. I'm sorry?

18 Q. What does that show?

19 A. It shows the odds of winning any of the given prize  
20 amounts listed on the left and a one-in format. So, as an  
21 example, a prize of five, you have one-in-five would, you know,  
22 result in a reveal of five.

23 Q. Now, what's the top prize in this particular example?

24 A. That would depend on the play level or, as it's called  
25 here, an "Entry 30," "Entry 60." For "Entry 30," the top prize

1 is 35,000.

2 Q. 3500? I'm sorry. I don't have the screen in front of me.

3 A. It is showing 35,000.

4 Q. Okay. Oh, is that points?

5 A. Yes.

6 Q. Okay.

7 A. Well, I'm sorry, yes. When we review this, what's being

8 displayed is essentially equivalent to pennies. So this is

9 35,000 pennies.

10 Q. Okay. Thank you.

11 So at the different play levels, the higher the play level  
12 gets, the more quickly, perhaps, the customer might get through  
13 their sweepstakes, utilize the sweepstakes points, but the  
14 available prizes, pool prizes, are different; is that correct?

15 A. That's correct. As the play level increases, any of the  
16 given prize values are larger.

17 Q. Okay. Let's go back to the actual play screen. There's a  
18 button that says what to get back to the game?

19 A. "Return to Game."

20 Q. Now let's choose a play level. What play level in this  
21 particular case?

22 A. Well, if we hit the up arrow, you'll see where it says  
23 "Entries," and now it displays "30." If the up arrow is hit  
24 again, it will go to "60," so on and so forth.

25 So why don't we just play at 60. If you hit the "Reveal"

1 button, we'll expend 60 of our entitlement points and reveal  
2 one entry from the pool.

3 Q. Why don't we hit "Reveal" then.

4 And what does that then reveal?

5 A. In this case an electronic game piece with no winning  
6 value.

7 Q. And how do you know it's no winning value?

8 A. The "Win" right here (indicating) shows zero.

9 Q. Okay.

10 A. Now, over here (indicating), the sweepstakes points,  
11 that's been decremented to 940 showing that we expended the 60  
12 points out of the play. Had there been a win, it would have  
13 showed up in that "Win" and also on the "Total Win." It would  
14 have been added to the "Total Win."

15 Q. Now, that particular entry gets revealed from where?

16 A. That entry is drawn from the server which houses all of  
17 the electronic entries. It is sent to the terminal, the  
18 viewing terminal, that requested it and then revealed by the  
19 viewing terminal.

20 Q. If I had -- you mentioned before, so once I selected this  
21 game and I selected play level, that accesses a finite pool of  
22 entries; is that right?

23 A. That's correct.

24 Q. Okay. So is it fair on a different scale to sort of  
25 analogize that finite pool of entries to a deck of cards say?

1 A. Yes.

2 Q. And, so, using that analogy, those -- is that -- when the  
3 next entry is revealed, is that entry drawn anywhere from the  
4 deck of cards or is it drawn from the top?

5 A. It's drawn from the top.

6 Q. And what happens to that card that's drawn from the top  
7 once it gets revealed? Is it placed back in the deck or is it  
8 discarded until all the cards have been revealed?

9 A. In this case it's used, it's marked as such, and is not  
10 reused. It will be set aside electronically, but it is no  
11 longer a valid game piece for the remainder of the sweepstakes.

12 Q. Now, does each game piece have a separate serial number  
13 attached to it?

14 A. They do.

15 Q. And it may be hard to read in this particular example, but  
16 can you show where that serial number is?

17 A. It is rather difficult in this one.

18 Q. Can you kind of generally point to where it is? Maybe we  
19 can, if we need to, use another example later.

20 A. Yeah, there's a number there. It looks like -- well, the  
21 construction of the serial number is the game type, the play  
22 level, and then an actual number designating that value of that  
23 entry.

24 Q. And that refers to whatever the place that ticket holds  
25 within that finite pool of entries?

1 A. Well, it's a serial number, and remember these are  
2 shuffled. So it may be that at one time that all of these were  
3 in order; but if we're not in that shuffle that has them in  
4 order, other ones would have them coming at different points.

5 So it doesn't refer to a place in the deck, so to speak.  
6 It's referring to a number, a unique number, associated with  
7 that entry in that pool.

8 Q. So each pool, as I understand it, has a hundred thousand  
9 entries; is that correct?

10 A. Correct.

11 Q. And then there are -- the manufacturer will shuffle that  
12 same pool four different times; is that correct?

13 A. Well, each shuffle becomes its own pool, just to be clear.

14 Q. Okay.

15 A. Only one will be active at any given time. The pool  
16 that's in effect could be in shuffle order one, two, three, or  
17 four.

18 Q. But each of the four pools, then, contain the same exact  
19 100,000 game pieces just in a different order?

20 A. Yes. Yes. If we were -- looking at this one here, we  
21 could not tell if we were in shuffle order one pool or shuffle  
22 order two because they're the same.

23 Q. Okay. Let's click "Reveal" again and see if we can  
24 demonstrate what happens when we get a winner.

25 A. Okay. So now there's a win of 40 shown by the "Win," and

1 you'll also notice that "Total Win" has also gone up to 40; and  
2 our sweepstakes points, again, has decremented by another 60 as  
3 we've expended those.

4 Q. So now we've got two numbers showing up on the screen  
5 here. Your remaining sweepstakes points to be played, that's  
6 on the left-hand corner; correct?

7 A. Correct.

8 Q. And then on the right corner you've just won 40, which has  
9 a cash equivalent of 40 cents; correct?

10 A. Correct.

11 Q. Now, the one on the right, the 40, the customer has the  
12 option with those winnings to do what?

13 A. They can cash them out, collect their 40 cents, or they  
14 can use the "Purchase Time" button and purchase Internet time.

15 Q. Okay. The number on the bottom left, the remaining  
16 sweepstakes points, can a customer cash those out?

17 A. No, they cannot. A key feature here is the sweepstakes  
18 points, the entitlement to reveal entries.

19 **THE COURT:** Wait a minute. Just a moment. You say  
20 the number on the bottom left.

21 **MR. GRIFFIN:** The remaining sweepstakes points.

22 **THE COURT:** When do you cash out; at the end of the  
23 game? When do you cash out?

24 **THE WITNESS:** You can cash out, so to speak, any time  
25 you wanted. Like, say, for example, if you were to do it right

1 now, you would still have 880 sweepstakes points. You could  
2 only go to the cashier now and get 40 cents.

3 THE COURT: Yes.

4 THE WITNESS: Okay.

5 THE COURT: Or I could -- could I use them --

6 THE WITNESS: Or you could continue to play.

7 THE COURT: Or could I transfer that over to Internet?

8 THE WITNESS: The 40 cents, the total win value, that  
9 can be used to purchase Internet time or it could be cashed  
10 out. Your choice.

11 THE COURT: It can be used for the Internet, too?

12 THE WITNESS: Yes, it can.

13 THE COURT: Okay.

14 THE WITNESS: The sweepstakes points, however, that's  
15 only for revealing entries. That cannot be cashed out.

16 THE COURT: Sweepstakes. Well, aren't you winning  
17 sweepstakes points?

18 THE WITNESS: The sweepstakes points, the number at  
19 the left of the screen represents your entitlements to reveal  
20 entries. The win on here, it's "Win 40," that shows what you  
21 just won.

22 THE COURT: Yes, I know.

23 THE WITNESS: And "Total Win" is how much have you won  
24 since you've sat down at this terminal, and in this case we've  
25 only had the one win, so it also shows 40.

1 THE COURT: So the 800 -- what does the 880 represent?

2 THE WITNESS: That's how many points are left. So we  
3 can continue playing. Every time you play, that 880 will be  
4 decremented. On the next play, if we play at the same level,  
5 it will become 820.

6 THE COURT: But you can only cash in the win?

7 THE WITNESS: Correct.

8 THE COURT: Okay. So if they give you a thousand  
9 points, you can't do anything with that?

10 THE WITNESS: They have no value.

11 THE COURT: No.

12 THE WITNESS: It's only for revealing.

13 THE COURT: It's only when you play the game and you  
14 win, then you can cash in for computer time or cash?

15 THE WITNESS: Correct.

16 THE COURT: Okay.

17 BY MR. GRIFFIN:

18 Q. Let's see if he can with get -- if we can click through  
19 it, before we go back and do a different demonstration, see if  
20 we can't get another win and demonstrate what happens when we  
21 purchase Internet time.

22 Is that a winner?

23 A. It is. This has one 10, 10 cents. So our total win is  
24 now 50 cents. So at this point we could either collect 50  
25 cents from the cashier or we could purchase additional time.

1 Q. Okay. So let's see what happens if we purchase additional  
2 time. What would you press there?

3 A. The "Purchase Time" button.

4 Now, in this display, because we've only got 50 cents  
5 available, there are other buttons up there that you'll see are  
6 1-dollar, 2-dollar, 5-dollar, 10-dollar. If we had enough  
7 winnings to allow purchase in that amount, they would become  
8 highlighted and available, but we don't have enough, so all we  
9 can do right now is use all 50 cents to purchase.

10 So if we press the "All" button, you'll see --

11 Q. What happens now?

12 A. -- the total win has now gone to zero because we've  
13 essentially cashed in our win and used it to purchase Internet  
14 time, which if we were back out of the game now, we should see  
15 Internet time being displayed on our Internet time meter.

16 Q. So let's go back to the game. What do I press to go back  
17 to the game?

18 A. "Game Menu," and then you'll see here "Internet Time" is  
19 at 50.

20 Q. 50 seconds?

21 A. I believe so.

22 Q. So, now, if a customer wanted to then continue to reveal  
23 the rest of his or her sweepstakes through one of these games,  
24 would that Internet time be deducted or would it be counted?

25 A. It will not.

1 Q. If a customer chose to use those 50 seconds on the  
2 Internet, when the customer switches over to the Internet, does  
3 that then --

4 A. That will begin deducting time.

5 Q. Is there a way we can demonstrate that here?

6 A. Yes. If you click on "Internet Browser," as soon as that  
7 browser starts up, you'll see that the "Time Left" center of  
8 the screen at the bottom is starting to count down now.

9 Q. We don't actually have Internet access in here, but the  
10 computer doesn't know that, so the time is counting down; is  
11 that right?

12 A. Correct.

13 Q. So, now, how do I get out of the Internet if I want to go  
14 back to the sweepstakes?

15 A. The "Close" button on the lower right.

16 Q. Let's do that.

17 And then what happens to the Internet time available at  
18 that point?

19 A. It stops decrementing.

20 Q. Now, there's also a button on here which says "Internet  
21 Radio." Can you explain to me what that is?

22 A. Sure. The "Internet Radio" allows listening to several  
23 different Internet radio stations, so to speak, different  
24 genres. It consumes Internet time using it.

25 Q. Can a customer listen to Internet radio while they're

1 playing a sweepstakes game?

2 A. They can. If they choose to listen to the Internet radio  
3 and reveal sweepstakes entries, it will consume their available  
4 Internet time.

5 THE COURT: If I put \$20 in the machine or go up to  
6 the counter and I say \$20, and they give me \$20 VIP -- a code  
7 number and I put it in the machine, at that time I have an  
8 option, don't I, an option either to play the Internet or play  
9 the game?

10 THE WITNESS: You do.

11 THE COURT: That's what I understood, I have an option  
12 at that point.

13 THE WITNESS: Yes.

14 THE COURT: Now, suppose I take the option to play the  
15 game, I play the game -- and I play the game and I only use \$10  
16 to play the game, can I switch at that point back over to get  
17 the Internet?

18 THE WITNESS: You wouldn't --

19 THE COURT: Is that an irrevocable option?

20 THE WITNESS: You wouldn't be using \$10 to play the  
21 game. The purchase gets you Internet time. The only way to  
22 consume that is through the use of the Internet radio or  
23 through the Web browser. Playing the game consumes sweepstakes  
24 points, which those are awarded for free.

25 THE COURT: I mean, suppose I'm a neophyte. I come

1 into the establishment and I say, "Okay. Here's \$20."

2 THE WITNESS: Okay.

3 THE COURT: And, so, I'm going to play the game. So I  
4 make the option to play the game, then I don't like the game.  
5 This is a terrible game; and I've only used, say, \$8. Can I  
6 transfer the balance of that over to play the Internet?

7 THE WITNESS: It wouldn't -- playing the game won't  
8 decrement the value of the Internet time that you've purchased.  
9 If you bought \$20 worth of Internet time, you would be given a  
10 certain amount of free sweepstakes points with it.

11 THE COURT: Oh, I see.

12 THE WITNESS: Playing the game will decrement those  
13 points. If you don't care for that portion of the game and you  
14 just want to browse the Internet, all of the time you purchased  
15 is still available. All \$20 worth of it would still be there.

16 THE COURT: Well, let me see if I got that straight.  
17 I give you \$20 and I get so many points; right?

18 THE WITNESS: Yes.

19 THE COURT: I get so many points, credits. So I play  
20 the game with the credits, but I've still got \$20 to use on the  
21 Internet?

22 THE WITNESS: Yes. You'd have the corresponding  
23 amount of Internet time that goes with the 20-dollar purchase,  
24 which was 30 cents a minute.

25 THE COURT: I want to be absolutely -- I want to be

1 clear on this. I'm giving you \$20 and you're giving me a  
2 thousand points, a thousand credits. I take the thousand  
3 credits and I play the game with the thousand credits; right?

4 THE WITNESS: You would be using sweepstakes points to  
5 play the game.

6 THE COURT: Yeah, points. I use the thousand points  
7 to play the game, but then do I still have my \$20 to use the  
8 computer?

9 THE WITNESS: Yes, you do.

10 THE COURT: So I don't lose that by playing the game  
11 with my points?

12 THE WITNESS: No. No.

13 THE COURT: Oh, okay. Okay. I got that.

14 BY MR. GRIFFIN:

15 Q. And to follow up on that, Mr. Grey, does the customer have  
16 the option of going back and forth between the Internet and  
17 playing the game at any point in time?

18 A. They do.

19 Q. And when they switch to play the sweepstakes game, does  
20 the clock on their remaining available Internet time stop  
21 counting down; in other words, it's preserved?

22 A. It does, unless they have the Internet radio playing,  
23 which, again, the Internet radio consumes time because it's  
24 using the Internet.

25 Q. So if they're just doing sweepstakes, say in the judge's

1 example, if they're just doing -- they pay their money for the  
2 Internet time, they sit down and they say, "Hey, I'm going to  
3 play some sweepstakes games, and then I'm going to get on the  
4 Internet and do some stuff on the Internet," and they play half  
5 their sweepstakes points and then they toggle over to the  
6 Internet. Their full Internet time that they purchased is  
7 going to still be available there; correct?

8 A. Correct.

9 Q. And if that customer in the system leaves and comes back  
10 later that day or the next day and logs on with a pin number,  
11 is that Internet time still there?

12 A. Yes.

13 Q. And, so, that customer won't lose that Internet time?  
14 It's not a use-it-or-lose-it sort of option; is that correct?

15 A. That's correct.

16 THE COURT: If I buy \$20 worth of Internet time and I  
17 only use \$10 of it, do I get a refund on the 10 or is that  
18 other 10 banked for me? If you know. You may not know.

19 THE WITNESS: That would be operational. I don't know  
20 if they -- if they do refund purchases or not.

21 THE COURT: I'll ask someone else that.

22 THE WITNESS: The system is certainly capable of  
23 maintaining a count of how much Internet time you still have.

24 THE COURT: I'll ask someone about that because it  
25 seems to me that if they -- maybe there are no refunds. Maybe

1 you put \$10 to play the game, you play the game for \$10. Even  
2 if you've only played it for \$5, is the other 5 banked  
3 someplace so you can play tomorrow or do you get the \$5 in cash  
4 back?

5 THE WITNESS: You mean if you use -- you buy, like,  
6 \$10 worth of Internet time and you use \$5 of it?

7 THE COURT: Yes.

8 THE WITNESS: I don't know if they would offer a  
9 refund on that or not.

10 THE COURT: Yeah, okay.

11 MR. GRIFFIN: That's an operational issue.

12 THE COURT: Yes.

13 MR. GRIFFIN: That would be up to the business.

14 Q. But there's nothing in the software that would deduct from  
15 a customer's available Internet time unless the customer were  
16 actually using the Internet; is that right?

17 A. That's correct.

18 Q. Okay. So at least the way, from the software perspective,  
19 if the customer leaves and comes back tomorrow and they left  
20 and they had 20 minutes remaining of Internet time, they could  
21 sit down the next day and log on and still have that same  
22 Internet time available?

23 A. It would still be available to them, yes.

24 Q. Now, we started this by the one example of how a customer  
25 can reveal entries by going to the viewing terminal and playing

1 the game like we just demonstrated.

2 Before I do that, on the screen where we have a number of  
3 different game themes --

4 A. That's the screen saver.

5 Q. And there's a second page with additional game themes; is  
6 that correct?

7 A. Yes.

8 Q. If we click on the right button, you see it; right?

9 A. Uh-huh.

10 Q. Now, do any of those game themes as utilized by  
11 Net Connection contain spinning reels?

12 A. As configured for our test, no. When we reviewed this,  
13 they did not. They have a peel-type reveal.

14 Q. That simulates the peeling back of something?

15 A. Right, much like a peel-open ticket or, you know.

16 Q. Okay. Like a ticket on the side of a cup or something?

17 A. Right.

18 Q. You remember when McDonald's used to do that, you peel  
19 back?

20 A. Yeah, peel to win.

21 Q. On the side of the merchandise or whatever it was?

22 A. The side of the fries or the drink, or what have you.

23 Q. So that's what this is designed to sort of simulate, is  
24 the peeling back?

25 A. Yeah. It's a visual representation of being revealed.

1 Q. Just so I'm clear on this, when a customer is, before we  
2 go to the other method, when a customer is playing a game,  
3 there's nothing the customer can do that is going to impact the  
4 probability of that customer winning the prize; is that  
5 accurate?

6 A. That is correct.

7 Q. And, again, just to be clear, there's no random number  
8 generation that takes place when the sweepstakes entries are  
9 revealed?

10 A. Correct. Revealing entries does not invoke a random  
11 number generator at all.

12 Q. It's just revealing the next one in the stack?

13 A. It just goes to the very next one.

14 Q. Now let's talk briefly about the other option available to  
15 the customer, and that is you mentioned the customer can choose  
16 to have it revealed directly from the cashier at the time of  
17 purchase. Did I hear you correctly on that?

18 A. Yes.

19 Q. Let's go back, then, to --

20 A. Well, let's -- why don't we log out here because we've got  
21 some points left on this pin number. We'll use another one.

22 Q. Okay. So we're logging out.

23 A. Now we would switch over to the cashier terminal.

24 Q. Yeah. Let's switch back to the -- and this is what the  
25 cashier is seeing; right?

1 A. Correct.

2 Q. So this time let's say somebody comes in and wants to buy  
3 \$10 worth of Internet time and they hand the cashier \$10. What  
4 would happen here? What would the cashier do?

5 A. For the initial purchase now, they would hit the "Deposit"  
6 button.

7 Q. So not the "Free Entry" button but the "Deposit" button?

8 A. The "Deposit" button.

9 Q. Okay. And what's the difference between those two from a  
10 software perspective?

11 A. The "Deposit" button is going to award Internet time.  
12 You're making a purchase now. The system is viewing this as a  
13 purchase of product, and the product being specifically  
14 Internet time in this case.

15 Q. So that's, then, what triggers the option for the customer  
16 of browsing the Internet and an allocation of Internet time  
17 when the customer logs on?

18 A. Yes.

19 Q. Okay. So in this case in our example we're purchasing \$10  
20 worth of Internet time. So 10 and then what happens?

21 A. And then now -- well, if you look, it will show "To  
22 Drawer" \$10. There's 1,000 points associated with it and 33  
23 minutes, 20 seconds, of Internet time now. And then clicking  
24 "Accept" will commit that transaction and a receipt should be  
25 printed with a pin number.

1 Q. Okay. So now we have a receipt with a pin number.

2 MR. GRIFFIN: If I can mark this, please.

3 (Plaintiff's Exhibit 6 marked for identification)

4 MR. GRIFFIN: Would you like to see this, Your Honor,  
5 before I hand it to the witness?

6 THE COURT: I'd like to take a look at it just for a  
7 minute.

8 (Pause in proceedings.)

9 THE COURT: This is just the opposite of the other  
10 one. The other one was for free and this is for pay; right?

11 MR. GRIFFIN: This is for pay, Your Honor, yes. So  
12 this is Plaintiff's Exhibit 6 for pay.

13 THE COURT: It's received.

14 (Plaintiff's Exhibit 6 received in evidence)

15 MR. GRIFFIN: Thank you.

16 May I approach the witness, Your Honor?

17 THE COURT: Surely.

18 BY MR. GRIFFIN:

19 Q. Mr. Grey, I've handed you what's been marked as Exhibit 6,  
20 which is the printout after we entered the pin number for the  
21 deposit through the "Deposit" button at the cashier terminal  
22 for purchase of \$10 worth of Internet time. And do you then  
23 have a pin number on there?

24 A. I do.

25 Q. Okay. So, now, in this example the customer says, "I

1 don't want to play the games on the computer." The customer  
2 would have the option of having the cashier just simply tell  
3 the customer right there whether the customer won or lost; is  
4 that right?

5 A. That is correct, if they --

6 Q. How does that work with the cashier terminal that you're  
7 seeing here?

8 A. Okay. The person would ask the cashier to reveal all the  
9 entries for them, so the cashier would then enter the pin by  
10 clicking the "Pin" button and then in this case the pin is  
11 078789.

12 And now you will see a button available that says "Play  
13 Points." The cashier would click that, and then the cashier  
14 can ask the participant what games they would like to play. So  
15 we were doing before Sugar Shack. For example, they can click  
16 "Sugar Shack," and then at what reveal level do we want to play  
17 at.

18 Q. So at this stage, in this option, the customer would have  
19 to say, "I want to play all my entries at a certain play  
20 level"?

21 A. Right. It's important to note from the cashier terminal,  
22 going through this is going to play out all available points  
23 provided it doesn't -- you know, there's an adequate amount.  
24 So, for example, there's a thousand right now. If we click the  
25 300, it's not going to be evenly divisible. It will leave a

1 remainder. But it will display a screen prior to doing that as  
2 to how many are going to be played.

3 Q. So how many entries -- or how many game pieces the person  
4 gets will depend on how many points the person wants to play  
5 per entry; is that right?

6 A. I'm sorry?

7 Q. How many -- well, so how many entries will be revealed  
8 depends on the chosen play level by the customer; correct?

9 A. Correct.

10 Q. Okay. So let's choose -- the person has a thousand points  
11 available. Let's choose 240 here. So click on -- the person  
12 says, "Let me play 240 points."

13 And each one of those would be a different pool of  
14 entries; is that right?

15 A. Right. So now it's going to go to the pool associated  
16 with that play level. Each entry is going to deduct 240  
17 points. So it shows here that four tabs at an entry level of  
18 240, remaining credit of 40. So the 40 will be the remainder.  
19 If you hit "Done," then it will print out.

20 Q. Hit "Accept"?

21 A. Hit "Accept."

22 Q. And then what gets printed out at this point from the  
23 cashier?

24 A. Now the electronic game pieces are printed visually from  
25 the receipt printer with the symbols and outcome. If any of

1       them are winners, it should show the win value.

2               **MR. GRIFFIN:** So I have here the printout that I'd  
3 like to mark as Plaintiff's 7; is it?

4               **THE CLERK:** 7, yes.

5               (Plaintiff's Exhibit 7 marked for identification)

6               **THE COURT:** All right.

7               **MR. GRIFFIN:** May I approach the witness, Your Honor?

8               **THE COURT:** Surely.

9               **MR. GRIFFIN:** Thank you.

10       **Q.** Mr. Grey, I've handed you Exhibit 7, Plaintiff's  
11 Exhibit 7. Can you tell me what that is, please?

12       **A.** These are the printouts from the receipt printer of each  
13 of the electronic game pieces showing their symbolic outcome.  
14 It also shows how many entries were expended for each one and  
15 how much was won on each one.

16               So in this particular case the first one won zero; the  
17 second one won 320 pennies, \$3.20; the third one won zero; and  
18 the fourth one won 40 or 40 cents.

19       **Q.** Now, that exhibit that you have in front of you with the  
20 printouts that has symbols on it; right?

21       **A.** It does.

22       **Q.** Now, at the bottom of each one of those four game pieces,  
23 is there a serial number?

24       **A.** Yes, there is.

25       **Q.** And in that case if that -- if a customer -- if nobody

1 else was playing the game and the customer decided to sit down,  
2 the computer can play the Sugar Shack game at that play level  
3 and reveal four entries, would they be the same four entries  
4 that were printed out right in front of you from the cashier  
5 terminal?

6 A. Assuming that they hadn't done it at the cashier terminal  
7 and they went to the player terminal, yes, they would have  
8 gotten the same four provided no one else was, you know,  
9 actively playing and drawing entries out of the pool at the  
10 same time. But, yes, it would have been visually displayed  
11 either on the viewing terminal or here on the receipt.

12 Q. So that what you have in front of you, Plaintiff's  
13 Exhibit 7, is just a miniature printout of what would otherwise  
14 have shown on the screen at one of the computers at the place  
15 of business?

16 A. Correct.

17 Q. And, again, each one of those serial numbers, they're  
18 easier to see on the printout there, each one of those are  
19 distinct serial numbers; is that right?

20 A. Yes.

21 Q. And they'll identify the game and the play level and then  
22 the actual number within the pool of 100,000?

23 A. Yes.

24 Q. Now, what can a customer do once, in your case, there it  
25 shows winnings of 360 points or \$3.60? What can the customer

1 do with that at that point in time?

2 A. That is associated with their pin number again. So they  
3 can cash it out or they could log into a viewing terminal,  
4 purchase Internet time with it or, like I said, ask the cashier  
5 to cash them out and collect their winnings.

6 Q. Okay. Now, just to be clear on this, the entries that are  
7 revealed from the cashier, as we just demonstrated, and the  
8 entries that are revealed from the -- at the viewing terminal,  
9 the computers at the place of business, they are the same game,  
10 the same level of play, they draw off of the same pool; is that  
11 right?

12 A. Correct. They're the same electronic entry. The only  
13 thing that's changing is how it's being presented.

14 Q. Are the odds of winning at all impacted using the cashier  
15 terminal versus one of the viewing terminals?

16 A. No, it is not.

17 Q. And are all the entries -- so all the entries when using  
18 the cashier terminal to reveal entries and receiving a printout  
19 like that, they are predetermined in the same way as the  
20 entries at the viewing terminal are predetermined?

21 A. Yes.

22 Q. So there's nothing different about the cashier terminal  
23 that contains a random number generator?

24 A. Correct. No random number generator is used to select  
25 entries or determine the game outcome.

1           **MR. GRIFFIN:** Your Honor, I think I am -- I think, I'm  
2 not positive, I'm done with my questioning. I notice the Court  
3 has been going for about two hours. Can we maybe take a  
4 five-minute break just to confirm I am, in fact, done?

5           **THE COURT:** All right.

6           **MR. GRIFFIN:** Thank you, Your Honor.

7                           (Recess taken at 3:31 p.m.)

8                           (Proceedings resumed at 3:38 p.m.)

9           **THE COURT:** All right. You may be seated.

10           Before you start, in your testimony how do you evaluate or  
11 define predetermined vis-a-vis the instrument we have here? I  
12 mean, the one that's in issue in this case. What's  
13 predetermined about it?

14           **THE WITNESS:** The pools of entries, the objects that  
15 are being revealed, if you were to sit down and play the  
16 reveal, whether it be at the cashier terminal or the viewing  
17 terminal, those are revealing entries that are stored  
18 electronically. They're created before the promotion begins.  
19 They all have a known value before anyone ever reveals  
20 anything. The values are known for each and every one of them.  
21 The order --

22           **THE COURT:** So you know how many hundred dollar  
23 bills -- hundred points, 500 points, 600 points, whatever they  
24 are, 5 points, are going to be awarded?

25           **THE WITNESS:** Yes, you do.

1           **THE COURT:** And no matter who's at the machine, it's  
2 going to come in that particular order?

3           **THE WITNESS:** It's going to come in the order in the  
4 deck. Imagine if I had a deck of playing cards. Whatever's on  
5 the top, if you're the next person to request play, you get the  
6 top card. If I'm the next one, I get the next card.

7           **THE COURT:** Well, on a slot machine how many, on each  
8 reel, how many spots are there there?

9           **THE WITNESS:** Slot machines are constructed in very  
10 different ways nowadays. The example I gave, that had 22  
11 positions on each reel. Okay. They've got games that can do  
12 256 or more.

13           **THE COURT:** There they have 22 positions on each reel;  
14 but here we have, what, three banks, in our case here we have  
15 three banks and they each have a hundred thousand cards in them  
16 or slots in them?

17           **THE WITNESS:** You've got multiple pools. Each pool  
18 contains 100,000.

19           **THE COURT:** How many pools? There's three pools?

20           **THE WITNESS:** No. There's one pool for each play  
21 level per game style. I believe it's 32 in this case  
22 altogether.

23           **THE COURT:** 32 pools and a hundred thousand a pool?

24           **THE WITNESS:** Yes.

25           **THE COURT:** What's so predictive about that one

1 preprogrammed?

2           **THE WITNESS:** Well, part of our review I sat down and  
3 went and looked into the database the way these are stored. I  
4 found out where the game had revealed the entry from, and I  
5 looked at what's the next one. Now I can predict what the  
6 next -- if we were in my lab, for example, and you were helping  
7 me with it, I'd have you sitting there revealing entries. I  
8 could see where we're at. I could see what's coming next. I  
9 could tell you what you're going to win.

10           **THE COURT:** So what you're saying, if there's, say,  
11 50,000 pulls on the machine you're talking about here, you can  
12 predict how many winners are going to be and what those winners  
13 are; is that what you're saying?

14           **THE WITNESS:** Oh, beyond that. I can tell where  
15 they're going to occur.

16           **THE COURT:** Where they're going to occur. But in a  
17 slot machine, you can have 50,000 pulls and you don't know who,  
18 maybe nobody will ever win or somebody can win or how many  
19 wins; is that what you're saying?

20           **THE WITNESS:** Exactly. All we could do is say in  
21 theory the probability is that this is going to happen. Like,  
22 for example, you brought up about the return to player. That's  
23 based on a very large number of plays. When we evaluate a game  
24 of that type, we have to sample a huge number of plays if we  
25 want to do a simulation to obtain a return to player because

1 all we can do is the probability of it. We can do it either  
2 through simulation or mathematical probability calculations.

3 THE COURT: As you say, in a slot machine there's  
4 probability of winning and in the machine we have here, there's  
5 a definiteness of winning?

6 THE WITNESS: Yes.

7 THE COURT: There's an order, is that what you're  
8 saying?

9 THE WITNESS: Yes.

10 THE COURT: Okay. All right.

11 BY MR. GRIFFIN:

12 Q. I think let me take a simple example to illustrate this  
13 point. We've been talking about pools of entries in this  
14 particular sweepstakes system. Let's use the example that you  
15 mentioned, Mr. Grey, of a deck of playing cards. Now, assume  
16 that each one of those 52 cards in that deck, they're 52  
17 different cards, represented a different outcome.

18 Okay. In the slot machine example, when does the shuffle  
19 occur in order to determine what's on top and what's the next  
20 result?

21 A. Within a slot machine it's going to be shuffled every  
22 time.

23 THE COURT: In a slot machine?

24 THE WITNESS: In a slot machine.

25 THE COURT: All right.

1           **THE WITNESS:** So if we were to say a card example  
2 being operated as a slot machine, I would shuffle the deck of  
3 cards, fan them out, and pick a card. You don't know what  
4 you're going to get and I don't know what you're going to get.

5 **BY MR. GRIFFIN:**

6 Q. And what happens to the -- so you pick a card, and then  
7 for the next spin you put that card back in?

8 A. I'm going to shuffle it again.

9 Q. But do you put that card back in the deck?

10 A. Oh, yes. I take the card that you drew before, I put it  
11 back into the deck, I shuffle it again, fan them out, pick a  
12 card. And now it's -- every outcome has the same likelihood of  
13 occurring on any given play that it's designed for.

14 Q. Now let's talk about the sweepstakes and, again, using the  
15 analogy of a deck of cards. Let's say each of the 52 cards  
16 represents a different game piece or a different result win or  
17 lose. Where does the shuffle occur in order to put those game  
18 pieces in order?

19 A. In this system that's done at the manufacturer and the  
20 deck is already composed, and in this example it would be  
21 roughly equivalent to me asking you to take the top card off  
22 the deck. The next play, that card does not go back in. You  
23 get the next card off the top of the deck, and so forth, until  
24 that deck is exhausted.

25 Q. So there's no reshuffling of the cards in that example; is

1 that right?

2 A. Correct.

3 Q. So --

4 THE COURT: I was going to say, sometimes you hear in  
5 some of these casinos that a machine hasn't been paying and  
6 people say, "That's a hot machine that's about ready to pay  
7 off." So according to that shuffle theory, that wouldn't be  
8 applicable.

9 THE WITNESS: If -- well, let's put it this way: With  
10 the sweepstakes where it's a finite pool and it's coming out of  
11 a deck that doesn't get shuffled, it will have a certain number  
12 of outcomes, and they're all going -- all the winners are going  
13 to get delivered and all the losers are going to get delivered  
14 until the pool is exhausted, and we know how many winners there  
15 will be and how many of each value.

16 THE COURT: Say you have 20 pulls on a slot machine  
17 and nothing happens and you say, "It's hot, it's about ready to  
18 pay off," that is not applicable; is it? Because you're  
19 shuffling new every time.

20 THE WITNESS: Exactly.

21 THE COURT: But in the sweepstakes, if you have 20  
22 times, your chances of getting a winning is bigger because it's  
23 not been preprogrammed for predictability? Do you see what I'm  
24 trying to say?

25 You can say a machine is hot in a slot machine, but that's

1 not correct; but you can say a machine is hot in a sweepstakes,  
2 but that's correct?

3 THE WITNESS: You could.

4 THE COURT: Because nothing's been paid off and it's  
5 preprogrammed, then there's some other cards in there that  
6 would pay off.

7 THE WITNESS: A lot of what I do is, you know, with  
8 the random number generator analysis and that, is looking to  
9 see if these RNGs are, indeed, random looking at probability  
10 and things like that.

11 If you were to flip a coin 10 times, you expect to have  
12 probably five heads, five tails, but that doesn't mean that's  
13 what you're going to get. You might get all heads. You might  
14 get all tails. But, by and large, if you do it enough times,  
15 you're going to have roughly half.

16 THE COURT: Is there predictability in your machine  
17 you have here?

18 THE WITNESS: Only inasmuch as how the shuffle was put  
19 together at the manufacturer. As a participant, they wouldn't  
20 have the information that was available to me by looking into  
21 the database to see the construction.

22 THE COURT: What I'm trying to get clear is, when they  
23 put this predictability in their shuffle, in the machine we  
24 have that we're talking about here, is there so many winners in  
25 various categories in that particular shuffle?

1           **THE WITNESS:** Yes.

2           **THE COURT:** So that when you complete the whole  
3 shuffle, then you know how many winners you're going to have  
4 and how many of various degrees? You know that?

5           **THE WITNESS:** Yes.

6           **THE COURT:** Okay.

7           **THE WITNESS:** It would be --

8           **THE COURT:** But in a slot machine you don't know that?

9           **THE WITNESS:** Right. In a slot machine you don't know  
10 how -- if I played a slot machine 10 times, I don't know what  
11 those outcomes might be. I can take a guess based on the  
12 probabilities of what they are. Like, for example, in that  
13 little example I made up of the 22 positions, half of them are  
14 space -- are just spaces that aren't going to win anything.  
15 So, you know, right on the very first reel half of the outcomes  
16 preclude you from winning anything right from the get-go in  
17 that example that I put together.

18           The sweepstakes, if your pool were only the size of 10  
19 that had, you know, maybe two 5-dollar winners and it would  
20 say, "I know that after 10 plays I'm going to be awarded \$10 in  
21 the form of two individual 5-dollar winners."

22           **THE COURT:** Okay. Thank you.

23 **BY MR. GRIFFIN:**

24 **Q.** Let's use another example and then I'll conclude.

25 How does -- the system that you analyzed for

1 Net Connection, can you make any comparisons between you  
2 mentioned earlier the lottery scratcher tickets --

3 A. Yes.

4 Q. -- what can you say about the similarities between this  
5 system and how the results are revealed and preprinted lottery  
6 scratcher tickets?

7 A. It would be very much like a lottery ticket dispenser  
8 other than the fact that, mind you, lottery tickets you have to  
9 purchase. These entries are free. You can't purchase them.  
10 They come with a purchase or upon request of a free entry. You  
11 get entitlement to reveal them.

12 But once you've gotten that entitlement to reveal it, or  
13 in the case of the lottery machine, the money has been inserted  
14 in it, the mechanism is pretty much the same. Now you're  
15 picking out, "Where do I want to play?" So, you know, you've  
16 got the different lottery tickets. They're coming off of a  
17 roll being dispensed by a machine. The outcomes are already  
18 known. I can't tell the machine, "I want to play the last  
19 ticket in the roll." I have to take the next ticket in the  
20 roll. I don't know what it is until I scratch it off.

21 The same thing happens here. I get the next entry in that  
22 roll I've selected electronically displayed or printed on the  
23 receipt; and my selection of rolls, so to speak, is done by  
24 picking the game theme and the play level much like you've got  
25 the different value lottery tickets, you know, 1-dollar ticket,

1 2-dollar ticket, what have you.

2 Q. So in the lottery scratcher example, within a particular  
3 game, whatever it may be, there's a finite number of scratcher  
4 tickets for that particular game?

5 A. Correct.

6 Q. And they're preprinted by whatever manufacturer preprints  
7 those?

8 A. Correct.

9 Q. And then they're ordered in spools so they come out a  
10 dispenser, a vending machine, in order; is that right?

11 A. Yes.

12 Q. So what you're saying is that when I buy a lottery ticket  
13 or a scratcher ticket and I pay my money, I'm just going to get  
14 the next one in line, scratch it off, determine whether or not  
15 it's a winner?

16 A. Exactly.

17 Q. And that's similar to this because I'm getting a  
18 sweepstakes entry and I pick a game and a theme and a play  
19 level, and I'm going to get the next one off the top whatever  
20 that is?

21 A. Yes.

22 Q. And it's a winner or loser; is that right?

23 A. You'll find out when you reveal it.

24 Q. And in the case of the lottery, within that universe of  
25 tickets for that particular game, let's say there's one winner

1 that's a hundred thousand dollars, the grand prize for whatever  
2 game that is, it's a hundred thousand dollars. If half of the  
3 tickets have been sold in whatever state is selling them but  
4 nobody has hit that hundred thousand dollars yet, then any  
5 customer walking up to buy one of those tickets has a greater  
6 chance of winning that hundred thousand dollars than did the  
7 first person to buy one of those tickets; is that right?

8 A. Just to be clear on the terminology there --

9 Q. Sure.

10 A. -- you're going to have one chance in how many? Assuming  
11 you're buying one ticket?

12 Q. Right.

13 A. Now, given the fact that if half of them have been  
14 revealed and known to be nonwinners, now you know because half  
15 is gone, that your odds have gone up. Your chance is actually  
16 still the same but your odds have gone up because we know the  
17 outcome of half of the pool already; but, you know, you still  
18 have one chance at it.

19 So, yes, all remaining players have better odds at hitting  
20 that big prize.

21 Q. And when the lottery spool is printed, no customer knows  
22 where in that spool or multiple spools is the grand prize  
23 winner; correct?

24 A. Correct.

25 Q. And is the same true here with Net Connection's system,

1 nobody knows where certain payoffs are in the line?

2 A. Correct.

3 Q. And, again, the ticket you get is just the one right off  
4 the top just like the lottery scratcher ticket?

5 A. Yes.

6 Q. So what's the difference between this and a lottery then?

7 A. Well, chiefly the tickets are obtained free; whereas, the  
8 lottery, you have to pay for those.

9 Q. So lottery you have to pay. That's the way a lottery  
10 works, you have to pay for your chance to win?

11 A. Right. You're paying for your entry, you're paying for  
12 that ticket; whereas, this, you know, you may qualify in  
13 purchase or you ask for a free entry, but they're given out  
14 freely.

15 MR. GRIFFIN: Thank you, Your Honor. I have no  
16 further questions.

17 THE COURT: Cross?

18 CROSS-EXAMINATION

19 BY MR. VIGILIA:

20 Q. Thank you. Good afternoon, Mr. Grey.

21 A. Good afternoon.

22 Q. With respect to the shuffling of the entries, you  
23 testified that it occurs at the manufacturer's facility? Does  
24 it occur on the computer by the manufacturer?

25 A. I would presume that's how they do it. They come up with

1 the sequence. It's delivered to either the location, or in our  
2 case our lab, but that's how it's presented to us.

3 Q. Okay. And you said they determine the sequence. In your  
4 analysis, have you analyzed how that sequence was determined in  
5 this case?

6 A. No. They've -- like I said, the manufacturer determined  
7 the shuffle orders, the four of them that are used.

8 Q. Okay. I guess what I'm trying to ask you is that, how is  
9 it -- do you know how the shuffle order is determined by the  
10 manufacturer?

11 A. I do not.

12 Q. In other sweepstakes systems that you've analyzed, have  
13 you had an opportunity to determine how the manufacturers  
14 determine their shuffling order?

15 A. In some other systems, I have.

16 Q. Are they based on some sort of computer program or  
17 mathematical formula, or something like that?

18 A. The other manufacturers have, where we can determine, it  
19 is usually where that shuffle is done at a machine at the  
20 location, so that becomes part of the software at the location.  
21 So we have to see that.

22 Q. Okay. So in other circumstances the shuffling action  
23 occurs at the business, in machines at the business; is that  
24 what you're saying?

25 A. In some of the other manufacturers' systems that we've

1 reviewed, we've seen software that will shuffle the entries at  
2 the location.

3 Q. Okay. And that's how you were able to analyze that  
4 particular feature, because you were privy to that software?

5 A. Correct.

6 Q. And in this case I guess my understanding is that you  
7 haven't been provided access to that particular part of the  
8 software?

9 A. Well, I don't know that it was software that did it. I  
10 would presume it probably was, but it could have been created  
11 by hand just as well. It's a sequence of how they want the  
12 order of the tickets to come out, and that could have been  
13 created by a person or by a machine. I do not know that.

14 Q. Okay. So in this case you don't know, it could have been  
15 machine generated; and if it's machine generated, it could have  
16 been based on some sort of random, you know, random formula  
17 that sort of gives them a sequence that's predetermined because  
18 they know what it is, but it's generated by some mathematical  
19 formula or algorithm?

20 A. It could be.

21 Q. Okay. So as far as this particular system's concerned,  
22 you don't know if the sequence was generated randomly to create  
23 your shuffle, so to speak, or if someone, to use the card  
24 analogy, took every single card and arranged them in specific  
25 sequence that they wanted and then sent it off to the store?

1 A. I do not know. In all likelihood they probably have some  
2 influence as to where entries that have certain prize values  
3 can occur. So it's unlikely that it's all -- it would be all  
4 random, but it is possible.

5 Q. All right. And my understanding is you haven't analyzed  
6 that aspect of it so you don't know for sure how the sequence  
7 was generated?

8 A. Correct. That portion of it is done at the manufacturer  
9 and outside the scope of our review.

10 Q. Okay. But with respect to how the manufacturer transmits  
11 the shuffle or the pools of entries, that's done electronically  
12 between manufacturer and any particular business; is that  
13 right?

14 A. With regard to this system?

15 Q. Sure.

16 A. The shuffles are programmed into -- in the shuffle orders  
17 in the system. As far as transmitting a pool, I'm not sure  
18 what their distribution scheme is as to how they turn on those  
19 or enable or disable those.

20 I have -- in general terms, not speaking to this  
21 manufacturer, but in general terms we've seen where, you know,  
22 some companies have a distribution scheme for distributing the  
23 entries.

24 Q. Okay. I guess what I'm asking is, how does any particular  
25 shuffle of a pool of entries get from the manufacturer to, say,

1 Net Connection in Hayward into their computers? How does it go  
2 from one place to another, if you know?

3 A. Well, it would be programmed initially by the  
4 manufacturer, the system.

5 Q. Programmed into the computers at the business?

6 A. Yes.

7 Q. So, you know, I'm trying to understand, you know, how this  
8 all works. So the manufacturer would -- predetermines whatever  
9 sequence it is for their pool of entries, and your testimony is  
10 that they preprogram it into the system that's at the store?

11 A. Yeah. The shuffle orders are -- like I said, there's four  
12 shuffle orders. Those are all programmed into the system.

13 Q. Okay. And, so, you testified there's nothing that a  
14 player can do to affect the outcome of any particular, I guess,  
15 reveal?

16 A. Correct.

17 Q. And my understanding is that the terminal that they're  
18 playing on doesn't have any influence on the outcome either?

19 A. That would be correct.

20 Q. So what I'm trying to understand is what influences the  
21 outcome. Is it the manufacturer?

22 A. The outcome is a result of revealing the next entry in the  
23 pool. All the entries are stored electronically in a database.  
24 They're delivered sequentially. Essentially the system has a  
25 table for each of these pools with, you know, the value of the

1 prize value. The prize could be zero, the prize could be  
2 whatever they choose to offer. It's known ahead of time, and  
3 they just move through the table, move down sequentially.

4 Q. And that database is located where?

5 A. That would be on the server computer.

6 Q. And the server computer is located where?

7 A. At the location.

8 Q. At each business location?

9 A. Yes.

10 Q. Okay. So is it fair to say that -- say with respect to  
11 this business location, Net Connection, that you analyzed, if I  
12 understand you correctly, the manufacturer sets the sequence,  
13 which is programmed into the system?

14 A. Yes.

15 Q. And the system is located at the business location. So is  
16 it fair to say that the business location is essentially  
17 running self-contained, it doesn't need any sort of connection  
18 to the manufacturer to obtain new pools of entries or  
19 reshuffles, everything's generated in the server that's on  
20 site?

21 A. That's not part of the scope of our review as to whether  
22 they're required to have an open connection to the manufacturer  
23 or not, so I really couldn't answer that one.

24 I can answer it to a certain degree in that, yes, the  
25 equipment has everything it needs to operate without a

1 connection; but, again, some, in general terms, some  
2 manufacturers have different distribution models as to how they  
3 do things, and some -- I know I have encountered in the past  
4 some that do require an active connection or the system would  
5 be disabled. But in the case of this one here, that was not in  
6 the scope of our review.

7 Q. So you testified earlier about slot machines as a  
8 comparison to the sweepstakes system, and you indicated that  
9 there are different, I guess, manufacturers of slot machines,  
10 different styles. You testified that a lot of the slot  
11 machines today are computer driven. What does that mean?

12 A. In other words, they're running based on a software  
13 program on a computer. Even going back, you know, several  
14 years to a lot of the machines that had what appeared to be  
15 mechanical reels, it's not a random mechanical device. It has  
16 a computer in there that operates reels that are driven by an  
17 electric stepper motor. The computer controls the starting and  
18 stopping of the reel. So that computer internally runs a  
19 program that, like in my example, you know, determines the reel  
20 outcome and, hence, the game outcome.

21 Q. Okay. And are there circumstances where these  
22 computer-driven slot machines might be connected to each other  
23 to determine jackpots or things like that?

24 A. Yes, there are cases where the slot machines have been  
25 connected particularly for, like, a progressive jackpot.

1 Q. Would you consider the -- are you familiar with the phrase  
2 "game of chance" in your line of work?

3 A. Yes.

4 Q. Would you consider the sweepstakes to be a game of chance?

5 A. Please define "game of chance" for me for use here.

6 Q. I guess -- well, you testified that nothing a player can  
7 do can affect the outcome; is that right?

8 A. Correct.

9 Q. And maybe we can define "game of chance" by some sort of  
10 comparison. So as opposed to, say, a game like poker, whether  
11 electronic or real-live poker, a player can, depending on how  
12 good they are, can potentially influence their ability to win a  
13 poker game with some level of application of skill based on  
14 experience or whatever it is.

15 A. Okay.

16 Q. Can a person playing a sweepstakes game, you know, apply  
17 any type of skill or experience in playing sweepstakes games to  
18 affect the outcome or increase their chances of winning?

19 A. No, they couldn't.

20 Q. Well, what's your understanding of what a game of chance  
21 is based on your industry?

22 A. Well, that's the reason I asked for your definition. Many  
23 people have many different ways to look at a game of chance.  
24 I've heard skill games be called games of chance where, you  
25 know, actual application of skill does directly affect the

1 outcome, but I've seen that called a game of chance. In some  
2 cases there's even, I believe, settled law that says certain  
3 games can become a game of chance even though they were really  
4 skill based.

5 Q. Okay. But how often for your purposes have you been asked  
6 to determine if something is a game of chance or not? What  
7 criteria would you use?

8 A. In this particular case, my personal opinion on it, I  
9 would not say sweepstakes is a game of chance. To me a game of  
10 chance is something similar to a slot machine where you've got  
11 consideration, chance, and reward.

12 Q. And by "chance" do you mean outcome not determined by the  
13 player?

14 A. "Chance" being that it's a chance outcome that neither you  
15 nor I -- let's say, for example, if you were the casino and I'm  
16 playing your slot machine or other game of chance, you don't  
17 know if I'm going to win or if you're going to win on any  
18 particular game. I may win and you lose. I pay to do that.  
19 You collect money for that.

20 That would be the consideration, you know, again the  
21 chance part. We don't -- neither one of us know which one's  
22 going to win in the end until it occurs, and then one of us is  
23 going to receive a reward, hopefully me.

24 Q. Okay. So the distinction you're making is the  
25 manufacturer of this sweepstakes game ostensibly would know

1 what the outcomes are. So it's not chance to them. They know  
2 when the winners are going to occur and when they're not.

3 A. Absolutely.

4 Q. Okay. From a player's point of view, can a player tell, a  
5 player playing a sweepstakes game or a player -- versus a  
6 player playing a slot machine, can they tell that the  
7 sweepstakes is predetermined and the slot machine is generated  
8 by a random number generator? I mean, can the player tell?

9 A. Well, if they were educated and if they're playing a  
10 sweepstakes game, you know, that displays, you know, the pool  
11 information and such, they would have the information available  
12 to them to make that decision or determination.

13 If they don't choose to make -- you know, to read the  
14 information available or what have you, they may not perceive  
15 that. It would depend on the individual.

16 Q. Turning your attention to the report that was prepared by  
17 Mr. Farley. I believe that's Exhibit -- I'm not sure if that's  
18 3 or 4.

19 A. Mine's marked 4.

20 Q. Plaintiff's 4. Page 9 of 12 there is a screen capture of  
21 the sweepstakes game rules.

22 A. Uh-huh.

23 Q. Do you see that? And at the bottom it says in bold, "Game  
24 prizes and odds of winning," and the sentence right before the  
25 green underline says: (reading)

1           "The more game entries played increases the player's  
2           odds of winning a prize."

3           Now, can you explain that to me how that relates to the  
4           fact or the assertion that a player can't affect the outcome if  
5           they're told the more I choose to play, they increase their  
6           odds of winning?

7           A.    I can, and that's, again, misuse of terminology.

8           Q.    Okay.  It's a terminology issue?

9           A.    Yeah.  If I had a standard deck of cards, for example, the  
10          odds of you drawing the ace of spades out is 1 in 52.  But if  
11          you draw two cards, you could have two chances at drawing --  
12          you know, if I give you the opportunity to draw two cards,  
13          you've taken two chances, you've increased your chances of  
14          drawing the ace of spades.  The odds on either given one remain  
15          the same.

16          Q.    Okay.

17          A.    It's a common terminology confusion that I see.

18          Q.    Okay.  So if we applied that, how do we apply that to the  
19          sweepstakes contest?  If you decide to play a higher entry  
20          level game, would you give yourself greater chances because  
21          you're playing more entries?

22          A.    Well, let's put it this way:  If the sweepstakes have a  
23          thousand entries in the pool and maybe there's, you know,  
24          whatever prizes are in there, if you play one entry, you get  
25          one chance out of a thousand.  Okay.  If you play a thousand, I

1 can guarantee you that you're going to get all the prizes.

2 Q. Okay.

3 A. So the chance of getting any of those prizes goes up to  
4 the point if you get all -- if you take every entry, you're  
5 guaranteed to get all the prizes.

6 Q. Okay. So that's how you increase your chances of winning,  
7 basically, if you're given 500 sweepstakes points and you want  
8 to maximize your potential for winning, just go ahead and play  
9 all of them at once because one of those is going to be a  
10 winner, or something to that effect?

11 A. Well, you've got more chances of drawing the entries that  
12 have a winning value associated with them.

13 Q. And there was some discussion about the payout rate of  
14 slot machines. Do you know -- were you able to determine what  
15 the payout rate of the computer terminals for Net Connection  
16 is?

17 A. We could. I don't believe that was actually part of the  
18 scope of this in my review.

19 Q. Would a review of the software be --

20 A. A review of the tables would tell that, and it would be  
21 different from that of a slot machine in that a slot machine's  
22 return to player is either going to be theoretical based on the  
23 odds of the outcomes or based on historic performance of the  
24 machine.

25 Whereas, when you've got a device that uses a finite pool,

1 in this case with a thousand entries or with a hundred thousand  
2 entries in it, after a hundred thousand plays, we know with  
3 certainty how much will be awarded. So we can determine  
4 exactly how much will be paid out.

5 Another key difference here is, with a slot machine,  
6 you're saying return to player. That's based on the player  
7 making a purchase at the -- for the chance outcome of getting a  
8 reward; whereas, a sweepstakes the entries come free, so there  
9 is no technical return to player. It's a payout per pool.  
10 Just the return-to-player terminology wouldn't really be  
11 applicable to a sweepstakes game.

12 Q. All right. Fair enough.

13 And I just have a couple more questions about the  
14 software's capability. Does the software have the capability  
15 to track how much -- how many sweepstakes points have been  
16 awarded to any particular customer over time? Like if they're  
17 repeat customers and they have some sort of count, is there a  
18 way to track how many sweepstakes points someone's been awarded  
19 over time?

20 A. Well, the outcomes do go into a database. The system is  
21 capable of storing, you know, player name, information like  
22 that. So the system is capable of doing that.

23 Q. Okay. And I think you testified, and I just want to  
24 clarify, that the system is capable of keeping track of your  
25 product during that time, so you know every time you go in how

1 much Internet time you have?

2 A. Yes.

3 Q. And, finally, do you know how many other sweepstakes  
4 systems you've reviewed?

5 A. I couldn't give you an exact number, but probably on the  
6 order of over a dozen.

7 Q. Okay. And in those cases how many of them were reviewed  
8 for litigation purposes because there was a lawsuit going on?

9 A. There were probably only a few that had the review  
10 initiated as a result of litigation. Most systems come in the  
11 normal process is the manufacturer will submit it prior to  
12 placing it out in the field to get a report and have an  
13 attorney, you know, present a legal opinion on it.

14 Q. Okay. So almost like as a part of their marketing tool, a  
15 manufacturer can say, "We've been reviewed by Eclipse Testing  
16 and these are the results"; and when they sort of solicit, you  
17 know, businesses to use their business, they can use that?

18 A. I don't know what they might be doing, but I could say I  
19 would do it to, you know, make sure that I'm going to be  
20 placing a product that, you know, isn't going to put me in  
21 jail. You know, we have had games submitted that have been --  
22 I did have one that was submitted that absolutely would look  
23 like a slot machine. It had -- it was essentially a slot  
24 machine converted to be a sweepstakes system, and that --  
25 that's a good thing that they submitted it. You know, that --

1 you know, between what we found and discussion with their  
2 attorney was able to prevent them from making a mistake that  
3 potentially could have, you know, gotten people in jail or  
4 fined, or what have you.

5 Q. Right. Okay.

6 And you mentioned the slot machine. Are there sweepstakes  
7 systems that sort of mimic a slot machine displaying in the way  
8 it reveals the outcomes? Have you seen those types of  
9 sweepstakes systems?

10 A. I have. I have seen systems that do present spinning reel  
11 outcomes, if that's what you're getting at.

12 Q. Right, yes. But, I mean, the appearance is really  
13 irrelevant in the context of the sweepstakes system, right,  
14 whether it's a spinning reel or images that you analyze through  
15 this system? Because it's a sweepstakes sort of system,  
16 whether it looks like a slot machine or not, it is irrelevant;  
17 right?

18 A. Right. The visual display is for entertainment purposes  
19 much like, you know, a scratcher lottery ticket has some game  
20 associated with it. Let's face it, the lottery could just  
21 print, "You win. You lose," and the amount on each of their  
22 tickets but they usually have some sort of, you know, game to  
23 have some entertainment value to it.

24 Q. Right. And in the same vein, a sweepstakes system could  
25 just have a pop-up screen that says, "You won; you lost"?

1 A. Yes.

2 Q. As opposed to spinning reels or matching symbols, or  
3 whatever it is?

4 A. That's correct.

5 MR. VIGILIA: All right. Thank you.

6 THE COURT: Any redirect?

7 MR. GRIFFIN: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GRIFFIN:

10 Q. Mr. Grey, Mr. Vigilia asked you some questions about the  
11 finite pools in the sweepstakes, and I believe at one point you  
12 testified that if you were using an example of a thousand  
13 entries in a sweepstakes and if you -- if a particular player  
14 obtained all a thousand of those entries, the player could  
15 guarantee himself or herself that they would win all the  
16 prizes; is that right?

17 A. Yes.

18 Q. Because there's a finite pool in that situation?

19 A. Yes.

20 Q. In a slot machine example with the random number  
21 generator, is there any way a customer can say, "All I've got  
22 to do is spin the wheel this many times and I can guarantee  
23 myself I'm going to hit a jackpot"?

24 A. No. In fact, in our testing, you know, we've got games  
25 that, you know, have, like, top prizes that are one in maybe a

1 million, let's say, of hitting; and if we -- if you played a  
2 million times, you may or may not get it. Sometimes in  
3 simulations, simulated play, it can take several million plays  
4 before you hit that one-in-a-million play or one-in-a-million  
5 prize.

6 Q. By the same token, if somebody's operating a legitimate  
7 casino with a slot machine with a million-dollar jackpot,  
8 there's a chance that different customers could hit that  
9 jackpot five times over the first month this place is open; is  
10 that correct?

11 A. That's correct.

12 Q. And in that situation the casino would be out-of-pocket  
13 having to pay that, pay that money; is that right?

14 A. Yes.

15 Q. There's no predictability from the casino's perspective in  
16 that slot-machine-type situation; is that right?

17 A. That's correct.

18 Q. Now, in a sweepstakes situation where you have a finite  
19 pool, is there predictability from the operators -- from the  
20 business' perspective?

21 A. Over the course of the pool.

22 Q. So what do you mean by that?

23 A. In other words, the operator isn't privy to the order of  
24 what's in the pool. So they wouldn't know what the first  
25 reveal is going to be. So if we -- say, you know, we've got a

1 hundred thousand entries in the pool and we reveal one. Well,  
2 you know, they may be ahead or they may be paying out; but over  
3 the course of the entire life of the pool, we know with  
4 certainty what would be awarded.

5 Q. So the operator, the business owner in this case, can say,  
6 "I know that after a thousand sweepstakes entries," if that's  
7 the entire pool, "are revealed, I'm going to pay out exactly  
8 this amount."

9 A. Correct.

10 MR. GRIFFIN: No further questions, Your Honor.

11 THE COURT: All right. Anything further?

12 MR. VIGILIA: No, Your Honor. Thank you.

13 THE COURT: All right. Thank you. You may step down.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 THE COURT: You have Mr. Rogers?

17 MR. GRIFFIN: Your Honor, I'm sorry, one -- I'll ask  
18 it later. Go ahead.

19 MR. VIGILIA: Your Honor, we were going to take our  
20 witness, Mr. Patenaude, out of order because he's going to be  
21 unavailable for the rest of the week.

22 THE COURT: How long is he going to be?

23 MR. VIGILIA: Excuse me?

24 THE COURT: How long? If he's going to be more than a  
25 half an hour, we close at 5:00 o'clock here. Our staff have to

1 go home. They don't get paid after 5:00.

2 MR. VIGILIA: Right. You know, I think -- he's an  
3 important witness, Your Honor. He processed the business  
4 license for the City.

5 THE COURT: I don't care how important he is. We  
6 close at 5:00.

7 MR. VIGILIA: Right. He will take more than 30  
8 minutes I would imagine, including cross-examination.

9 THE COURT: Well, you better get started then.

10 MR. VIGILIA: Okay.

11 THE COURT: But, remember, we close at 5:00.

12 MR. VIGILIA: We will stop promptly, Your Honor. I  
13 just wanted --

14 THE COURT: Do you have his deposition?

15 MR. VIGILIA: Excuse me, Your Honor?

16 THE COURT: Do you have his deposition?

17 MR. VIGILIA: His deposition?

18 THE COURT: Yes. Do you know what a deposition is?

19 MR. VIGILIA: Yes.

20 THE COURT: Yes. Do you have one?

21 MR. VIGILIA: We do not.

22 THE COURT: Oh, okay.

23 MR. GRIFFIN: We haven't done any discovery in this  
24 case, Your Honor.

25 THE COURT: Oh, all right.

1           MR. VIGILIA: And he's not available to testify again  
2 until Monday, I believe.

3           THE COURT: Well, I'm not going to be here on Monday,  
4 so he's either today or not, and we close at 5:00 on the dot.

5                           RICHARD PATENAUDE,  
6 called as a witness for the Defendant, having been duly sworn,  
7 testified as follows:

8           THE WITNESS: I do.

9           THE CLERK: Please be seated and speak into the  
10 microphone.

11           State your full name and spell your last name.

12           THE WITNESS: My name is Richard Patenaude,  
13 P-A-T-E-N-A-U-D-E.

14                           DIRECT EXAMINATION

15 BY MR. VIGILIA:

16 Q. Good afternoon, Mr. Patenaude.

17 Are you currently employed?

18 A. I am not currently employed.

19 Q. What was your -- who was your last employer?

20 A. My last employer was the City of Hayward.

21 Q. And when did your employment with the City of Hayward end?

22 A. I officially retired at the end of December 2012, but I  
23 remained on contract with the City until a week ago Friday.

24 Q. Okay. And what was your last position with the City of  
25 Hayward?

1 A. Planning manager.

2 Q. And what were your duties as the planning manager?

3 A. I was the head of the Planning Division. My  
4 responsibilities were to oversee the day-to-day activities of  
5 that division, managing staff and processing development  
6 applications, handling the public counter and those contacts.

7 Q. Okay. I'm going to show you what was previously marked as  
8 I think Defense Exhibit 1. It's a business license  
9 application. Do you recognize that document?

10 A. Yes, I do.

11 Q. What do you recognize it to be?

12 A. It's an application for a business license for an Internet  
13 service and business center.

14 Q. Okay. And that's for the Net Connection business located  
15 in Hayward; is that right?

16 A. Correct.

17 Q. And how did you first -- how did this application first  
18 come to your attention?

19 A. One of the planners that work for me brought this to my  
20 attention as this was a use that was being requested that is  
21 not specifically listed in the zoning ordinance; and, so, the  
22 planner was seeking direction on whether there could be a  
23 determination whether this use could be allowed.

24 Q. And by "use," what use are you referring to?

25 A. The specific designation of Internet services and business

1 center.

2 Q. Okay. And what was the first thing you did with respect  
3 to reviewing this application?

4 A. Well, one of the first things I did was to refer to the  
5 zoning ordinance to see whether there was any correlation with  
6 other types of uses within that zoning district to see whether  
7 there was any way to make a determination of similarities.

8 And I then contacted --

9 Q. Let me stop you there. What zoning district is it located  
10 in?

11 A. It's called Central City Commercial.

12 Q. And are there particular land uses that are allowed in  
13 that district?

14 A. Yes. There are three categories of land uses, and ones  
15 called primary use and those uses do not require any special  
16 planning permitting.

17 Then there are two categories under conditional uses, and  
18 one requires application for an administrative use permit,  
19 which is the one that the planning director has the authority  
20 to make a decision on; and the other one is a conditional use  
21 permit. Those uses in that category require authority by the  
22 Planning Commission to operate.

23 Q. And was this Internet services use listed as a use that  
24 could be operated in that zone district?

25 A. It was not. It's not listed in either -- or in any of

1 those categories.

2 Q. Okay. And what's the significance of that?

3 A. Well, the zoning ordinance is considered an exclusionary  
4 ordinance, which means that if the use is not specifically  
5 listed, it's prohibited unless that use can be determined by  
6 the planning director to be similar to other uses that are  
7 allowed in that district.

8 Q. Did you meet with the prospective business owner in  
9 reviewing this application?

10 A. I did. I met the business owner at the public counter and  
11 I requested that he provide me with a description of the use  
12 being proposed.

13 Q. Okay. I'm going to show you what's been marked as  
14 Plaintiff's Exhibit 1. Do you recognize that document?

15 A. Yes, I do.

16 Q. Is that the description that was provided to you by the  
17 owner, Mr. Doyle?

18 A. Yes.

19 Q. And how did Mr. Doyle describe the nature of his business  
20 to you?

21 A. That in my understanding of his description to me was that  
22 it was to primarily operate as an Internet cafe and with some  
23 ancillary business services.

24 Q. And by "ancillary business services," what did you  
25 understand that to mean?

1 A. Copy machines, fax machines, those types of, you know,  
2 business facilities that someone may not have at their own  
3 small business or home.

4 Q. Okay. And was that description, that oral description  
5 along with the written document, was that sufficient to allow  
6 you to make a determination or did you do any other type of  
7 investigation?

8 A. I did visit one of the other sites operated by this owner.

9 Q. And where was that located?

10 A. That was located in San Lorenzo.

11 Q. And what was the purpose of your visit there?

12 A. I just wanted to collaborate my understanding of, you  
13 know, the written description against the actual operations.  
14 It's always helpful, you know, if there is a way to see how a  
15 business is operating before I make that determination, I do  
16 that.

17 Q. And what did you observe when you went to the San Lorenzo  
18 location? What did you observe of the interior?

19 A. I noticed basically a, you know, a single main room  
20 with -- it was divided up into cubicles. Each one of those  
21 spaces had a computer. There was also a counter where a  
22 receptionist or operator was located, and there was also a  
23 section with snacks for sale.

24 Q. Did you speak with any of the employees while you were  
25 there?

1 A. I did speak to someone that was behind the counter. My  
2 purpose in doing so, I had not seen any of the machines that  
3 you would normally connect, you know, the business service  
4 portion. So I did ask about the location of those, and it was  
5 indicated to me that they were located in a room that was off  
6 to the side.

7 Q. And what types of machines are you referring to?

8 A. Copy machines, fax machines.

9 Q. And you confirmed that those types of -- that type of  
10 equipment was there?

11 A. I asked whether they were -- whether that equipment was  
12 there. It was indicated to me that they were in a side room  
13 that was not directly accessible to the public.

14 Q. Okay. But this is the San Lorenzo location; correct?

15 A. (Nods head.)

16 Q. And what did you observe of the computers, if anything?

17 A. I did not notice anything operating at the time.

18 Q. Did you notice if there were any customers who were using  
19 any of the computers?

20 A. I did not. I do not have any remembrance of any customers  
21 being there at that moment.

22 Q. Do you recall what time of day you went to the location?

23 A. I believe it was early afternoon.

24 Q. And when you went to this location, were you accompanied  
25 by anybody?

1 A. No. I was by myself.

2 Q. And did you speak to any employees to ask about the  
3 operation of the computers or did you use any of the computers  
4 yourself?

5 A. No, I did not.

6 Q. Now, with respect to the written description given to you  
7 by Mr. Doyle, it indicates that he would use promotions to  
8 induce, you know, repeat customers to his business. What was  
9 your understanding of the type of promotion he was going to  
10 use?

11 A. Well, I specifically asked that question of the owner, and  
12 asked him what the nature of those promotions were. My  
13 understanding of his description to me was that they were -- it  
14 was along the line of a customer loyalty program, such as, you  
15 know, a number of other businesses do have, Safeway or any of  
16 those types of programs. One that he particularly mentioned as  
17 a comparison was McDonald's.

18 Q. Okay. And did he ever use the term "sweepstakes" in  
19 describing his promotions?

20 A. That word was used and that prompted me to ask what that  
21 was, because I -- you know, what he meant by that because I  
22 didn't have an understanding.

23 Q. What was his response in terms of explaining the  
24 sweepstakes?

25 A. Well, that led into the discussion that led me to believe

1 that they were in the form of customer loyalty programs.

2 Q. Did you -- was it your understanding that this promotional  
3 program would involve the computers at the business?

4 A. No.

5 Q. Were you told by Mr. Doyle that the customers may engage  
6 in the promotions by playing games on a computer?

7 A. No.

8 Q. Were you aware that customers would be eligible to win  
9 cash prizes?

10 A. I don't recall that I heard that.

11 Q. Okay. Do you recall if you were told that the cash prizes  
12 would be paid at the location to customers who won a  
13 promotional sweepstakes?

14 A. I don't believe so.

15 Q. Were you aware that there would be a security guard or  
16 security measures used at that location?

17 A. Well, I did see a security guard at the San Lorenzo  
18 location. I wasn't sure whether that person was directly  
19 related to this business or whether he was there, you know,  
20 hired by the shopping center as a whole where the San Lorenzo  
21 location was located.

22 Q. Did you interact with that particular security guard that  
23 you saw in San Lorenzo?

24 A. No, I did not.

25 Q. And after your investigation, did you come to a

1 determination with respect to the business license?

2 A. Yes. I made the determination that it would be similar to  
3 other uses within that zoned district as a primary use.

4 Q. What other uses did you believe it was similar to?

5 A. The ones I compared it to are listed under I believe it  
6 was personal services in that zoning district, which include  
7 copying services and mailing and facsimile services.

8 Q. Okay. And when you made that determination, did you  
9 determine it's not going to be any more intensive than those  
10 types of uses?

11 A. Correct. That's what the ordinance calls for as part --  
12 in making the determination, that it be similar to and not more  
13 intensive.

14 Q. Okay. And would the fact that there might be certain  
15 impacts associated with the business make it more intensive  
16 potentially?

17 A. Yes.

18 Q. For example, if the business had the potential to create  
19 maybe parking issues at the location, is that something that  
20 would require further review?

21 A. That certainly could be one of the considerations.

22 Q. And if a business required some sort of security measure,  
23 whether a security guard or alarms, is that something generally  
24 you might explore further if there are impacts that might  
25 require security measures that the City needs to be aware of?

1 A. Certainly that could be taken under consideration, you  
2 know, in looking at why that service would be necessary as most  
3 of the uses set as primary uses we don't typically require  
4 security.

5 Q. And just to clarify, this was -- you did -- this was not a  
6 situation where the business owner applied for any type of  
7 permit that required Planning Commission approval or any type  
8 of approval by the planning director?

9 A. That's correct.

10 MR. VIGILIA: Nothing further, Your Honor.

11 THE COURT: All right. Cross?

12 MS. POPE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. POPE:

15 Q. Good afternoon, Mr. Patenaude.

16 Your job in reviewing the business license application,  
17 the reason you reviewed the business license application for  
18 Net Connection was to determine if it was similar enough to  
19 other uses listed that it would be permissible from a land use  
20 perspective; is that correct?

21 A. Well, my primary role in reviewing or any of the staff  
22 reviewing business license applications is to determine whether  
23 or not the use is allowed in the zoning district.

24 Q. And in this instance when you approved the issuance of  
25 this license, you did make that determination that this use

1 was, based on your investigation and your discussions with  
2 Mr. Doyle, was permitted under this zoning ordinance?

3 A. Yes, based on my understanding.

4 Q. And you did that as the planning director's designee?

5 A. That's correct.

6 Q. Now, prior to approving the business license, you spoke to  
7 Mr. Doyle on several occasions?

8 A. Yes.

9 Q. And you had some questions about Mr. Doyle's business;  
10 correct?

11 A. Correct.

12 Q. Based on the fact that in the business license, it didn't  
13 provide much description; it just said, "Internet  
14 Service/Business Center"?

15 A. Correct.

16 Q. Of course, on the business license they only give a very  
17 small amount of space to describe the business; correct?

18 A. That's correct.

19 Q. So Mr. Doyle at some point sent you an email attaching a  
20 letter that did describe his business; is that right?

21 A. Correct.

22 MS. POPE: Can I have what's been marked as Exhibit 1?  
23 May I approach the witness, Your Honor?

24 THE COURT: Yes, at any time.

25 (Pause in proceedings.)

1 BY MS. POPE:

2 Q. Sir, you've been handed what's been marked as Plaintiff's  
3 Exhibit 1, and you testified this is a copy of the letter that  
4 you received from Mr. Doyle?

5 A. Correct.

6 Q. Now, you testified earlier that you don't recall any  
7 mention that the promotions at the Hayward store would involve  
8 cash prizes; is that correct?

9 A. That is correct.

10 Q. Would you please take a look at the letter, and it might  
11 be easier to count up from the bottom. There's a paragraph  
12 kind of in the middle of the page that says: (reading)

13 "Our customers will purchase a computer time usage  
14 card."

15 Do you see that paragraph?

16 A. Yes.

17 Q. Would you please read the second sentence? You can read  
18 it to yourself.

19 A. Okay.

20 (Witness examines document.) Okay.

21 Q. Does that refresh your recollection about whether you were  
22 advised that the promotions would provide customers the  
23 opportunity to earn cash prizes?

24 A. I suppose.

25 Q. And the letter does, in fact, say that: (reading)

1            "We provide special promotions where our customers  
2            have the opportunity to earn cash prizes through their  
3            usage of purchased Internet time"; correct?

4            A.    Correct.

5            Q.    Thank you.

6            Now, during your discussions with Mr. Doyle, he did invite  
7            you to visit the San Lorenzo location; correct?

8            A.    He gave me a list of several locations, and I chose that  
9            particular location.

10          Q.    Were those all locations owned by him?

11          A.    That's my understanding.

12          Q.    Okay. And you testified you did go and visit that store?

13          A.    Yes.

14          Q.    But you don't recall whether there were customers there at  
15          the time or not?

16          A.    I do not. It didn't seem to be particularly busy at the  
17          time.

18          Q.    Did you ask anyone at the store while you were there about  
19          the promotions, about whether the San Lorenzo store was  
20          offering a promotion?

21          A.    I did not.

22          Q.    And you did understand, based on your discussions with  
23          Mr. Doyle, that Mr. Doyle intended the Hayward store to be the  
24          same kind of business as the San Lorenzo store; right?

25          A.    That's my understanding.

1 Q. Prior to approving the business license, Mr. Doyle  
2 reminded you that the City had already authorized two similar  
3 businesses in Hayward; right?

4 A. He did mention that.

5 Q. Did you check those businesses out before you authorized  
6 this business license?

7 A. I did ask Mr. Doyle for those locations and did not  
8 receive that information from him.

9 Q. Going back, we were talking about your visit to the  
10 San Lorenzo store a minute ago. Did you visit the San Lorenzo  
11 store before or after you received the letter from Mr. Doyle  
12 describing his business, his proposed business?

13 A. I honestly don't remember.

14 Q. Now, you mentioned that in your discussions with  
15 Mr. Doyle, he did specifically use the term "sweepstakes";  
16 correct?

17 A. Yes.

18 Q. And he mentioned, in describing what he intended to do at  
19 Hayward, he mentioned something similar to McDonald's?

20 A. I do remember him mentioning McDonald's.

21 Q. And, so, after talking with Mr. Doyle several times,  
22 visiting the San Lorenzo store, finishing your investigation,  
23 you did ultimately authorize approval of Net Connection  
24 business license?

25 A. Correct.

1 Q. Did you ask Mr. Doyle during any of your discussions about  
2 whether he intended to use a security guard at the Hayward  
3 store?

4 A. I don't believe so. I don't recollect. I don't believe I  
5 did.

6 Q. Can you tell me, were the City's efforts to force  
7 Net Connection to cease its business operations, if you know,  
8 triggered by the California Bureau of Gambling Controls  
9 advisory opinion?

10 A. I am not personally aware of that.

11 Q. Okay. If you had any concerns with the legality of the  
12 proposed business at the time you were analyzing this, you  
13 wouldn't have issued the license, correct, or you wouldn't have  
14 approved of the license?

15 A. That's correct.

16 MS. POPE: I'd like to hand you this and mark it as  
17 the next.

18 THE CLERK: 8.

19 (Plaintiff's Exhibit 8 marked for identification)

20 MS. POPE: May I approach the witness?

21 (Pause in proceedings.)

22 BY MS. POPE:

23 Q. Mr. Patenaude, you've been handed what's been marked as  
24 Plaintiff's Exhibit Number 8. Do you recognize this document?

25 A. I do recognize it.

1 Q. Can you tell me what it is?

2 A. It's a staff report to the City Council.

3 Q. And does this, just looking at it, does it look to be a  
4 true and accurate copy of the staff report?

5 A. It appears to be so. I do notice some formatting issues  
6 for some of the text not being correct.

7 MS. POPE: I'd like to offer Plaintiff's Exhibit 8  
8 into evidence.

9 THE COURT: Received.

10 (Plaintiff's Exhibit 8 received in evidence)

11 BY MS. POPE:

12 Q. Mr. Patenaude, if you could turn to page 2, it says at the  
13 bottom right-hand corner "Page 2 of 5," and then read that top  
14 paragraph to yourself.

15 A. (Witness examines document.) Okay.

16 Q. Okay. So it says in there that the planning manager, as  
17 the planning director's designee, has approved business  
18 licenses for three Internet businesses in Hayward since June of  
19 last year. Is that an accurate statement?

20 A. No.

21 Q. How so?

22 A. I was not specifically aware of two other -- two other  
23 business license applications at the time they were issued.

24 Q. Okay. So you approved the Hayward -- the Net Connection  
25 business license, you approved that to be issued as the

1 planning director's designee, but you weren't aware of the  
2 other two?

3 A. Correct.

4 Q. Okay. And then there's -- if you go after the, I guess,  
5 kind of chart in the middle of the page where it talks about  
6 those three businesses, the next paragraph says in the middle:  
7 (reading)

8 "The planning director authorized approval of the  
9 business licenses for these establishments from a land use  
10 perspective."

11 Is that an accurate statement? I guess, again, limiting,  
12 since you didn't approve the other two, limiting it just to the  
13 San Lorenzo location. I'm sorry, limiting it to the Hayward  
14 location.

15 A. (Witness examines document.) That would be correct from a  
16 land use perspective.

17 MS. POPE: I have no further questions, Your Honor.

18 THE COURT: All right. Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. VIGILIA:

21 Q. Mr. Patenaude, are you aware if the zoning ordinance  
22 includes a category that allows a business that would employ  
23 computer games that simulate or appear like casino style games?

24 A. No.

25 MR. VIGILIA: Nothing further. Thank you, Your Honor.



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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Monday, May 6, 2013



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Jo Ann Bryce, CSR No. 3321, RMR, CRR  
U.S. Court Reporter

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Samuel Conti, Judge

NET CONNECTION HAYWARD LLC, a )  
California limited liability )  
company, )

Plaintiff, )

VS. )

NO. C 13-01212 SC

CITY OF HAYWARD, )

Defendant. )

San Francisco, California  
Wednesday, May 1, 2013

TRANSCRIPT OF PROCEEDINGS

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

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Official Reporter

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I N D E X

Wednesday, May 1, 2013

PLAINTIFF'S WITNESSESPAGE VOL.ROGERS, CARNELL

(SWORN)

241 2

Direct Examination by Ms. Pope

242 2

Cross-Examination by Mr. Vigilia

256 2

Redirect Examination by Ms. Pope

259 2

Recross-Examination by Mr. Vigilia

260 2

HERNANDEZ, AZALEA KEYAWIE (IN REBUTTAL) (RECALLED)

Direct Examination by Ms. Pope

326 2

Cross-Examination by Mr. Vigilia

327 2

DEFENDANT'S WITNESSESPAGE VOL.RIZK, DAVID

(SWORN)

262 2

Direct Examination by Mr. Vigilia

262 2

Cross-Examination by Ms. Pope

271 2

MCKILLOP, JULIE ROMECK

(SWORN)

278 2

Direct Examination by Mr. Vigilia

278 2

Cross-Examination by Ms. Pope

283 2

Redirect Examination by Mr. Vigilia

284 2

ESPINOZA, CHRISTOPHER

(SWORN)

288 2

Direct Examination by Mr. Vigilia

288 2

Cross-Examination by Mr. Griffin

295 2

Redirect Examination by Mr. Vigilia

306 2

RITCHIE, FRASER

(SWORN)

307 2

Direct Examination by Mr. Vigilia

308 2

Cross-Examination by Mr. Griffin

315 2

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I N D E X

E X H I B I T S

PLAINTIFF'S EXHIBITS

IDEN   EVID   VOL.

9	244	247	2
10	247	248	2
11	254	256	2
12	254	256	2
13	254	256	2

E X H I B I T S

DEFENDANT'S EXHIBITS

IDEN   EVID   VOL.

2		271	2
3		324	2

1 Wednesday - May 1, 2013

9:30 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 ---000---

4 THE COURT: Is something going to happen? Is  
5 something going to happen?

6 MR. GRIFFIN: You'd like us to call our next witness,  
7 Your Honor?

8 THE COURT: Okay, call your witness.

9 MR. GRIFFIN: Thank you.

10 THE COURT: Let's get moving.

11 MS. POPE: Good morning, Your Honor. Our next witness  
12 is Carnell Rogers.

13 THE COURT: Okay.

14 THE CLERK: If you'll please stand and raise your  
15 right hand.

16 CARNELL ROGERS,

17 called as a witness for the Plaintiff, having been duly sworn,  
18 testified as follows:

19 THE WITNESS: Yes, I do.

20 THE CLERK: Be seated.

21 Please state and spell your full name.

22 THE WITNESS: My name is Carnell Rogers Senior;  
23 C-A-R-N-E-L-L; Rogers, R-O-G-E-R-S; Senior.

24  
25 ///

DIRECT EXAMINATION

1

2 BY MS. POPE:

3

4 Q. Good morning, Mr. Rogers.

5

6 A. Good morning.

7

8 Q. Are you currently employed by Net Connection?

9

10 A. Yes, I am.

11

12 Q. And what's your job with Net Connection?

13

14 A. As of this moment right now I'm a greeter. I was a  
15 security -- I started off as a security.

16

17 Q. Okay. So let's start with where you started. So you were  
18 a security guard?

19

20 A. Yes.

21

22 Q. When did you start with Net Connection as a security

23

24 guard?

25

A. March 16th. March 16th of 2012.

26

27 Q. 2012?

28

29 A. Yes.

30

31 Q. And which location did you work at as a security guard?

32

33 A. San Lorenzo.

34

35 Q. Was that the only location?

36

37 A. Yes.

38

39 Q. Okay. I'd like to talk to you about -- well, stepping  
40 back, what were your -- what were your job duties as a security  
41 guard in San Lorenzo?

42

43 A. Well, it consisted of keeping the peace inside the store,

44

45

1 keeping people from not loitering out front, stop them from  
2 smoking 20 feet away from the door, making sure no one is  
3 messing with the computers, monitors, plugging into them; and  
4 basically that's -- you know, just keeping security in the  
5 building.

6 Q. So as part of your job, were you kind of walking around  
7 the store all the time?

8 A. Yes. Constantly walking, yes.

9 Q. And when you're inside the store and you're looking for  
10 what people are doing on the computers, you know, in addition  
11 to looking for, you know, plugging things in, were you looking  
12 for what they were doing on the screen?

13 A. Yes, always. Always checking to see if they're looking up  
14 job research, see if they're not pulling up any illegal  
15 activity on the computer, making sure they're doing the right  
16 thing while I'm there, yes.

17 Q. What about drinking? Was any drinking allowed in the  
18 San Lorenzo store?

19 A. No, there was no alcohol or drinking inside.

20 Q. So were you watching for that as well?

21 A. Also.

22 Q. How would you deal with it if you saw someone in the store  
23 doing something they weren't supposed to?

24 A. Well, there's an appropriate way to approach someone. You  
25 know, "Can I please talk to you? Come outside. You know,

1 that's not allowed in the store here."

2 You know, if they don't agree, then I have to let them  
3 know I will have to call the police to escort them out.

4 Q. Okay. I'd like to talk to you about the day that Richard  
5 Patenaude visited Net Connection's San Lorenzo store. Were you  
6 there that day?

7 A. Yes.

8 Q. And did you speak to Mr. Patenaude?

9 A. Well, I greeted him at the door, asked him can I help him,  
10 and he asked how do this operates. At that time I walked him  
11 to the counter, and he spoke to one of my coworkers.

12 Q. As you're walking from -- as you were walking with him  
13 from the door to the counter, what would he have seen in the  
14 store? You know, were there posters on the wall, for example?

15 A. Yes. From the time you walk in -- from the time you walk  
16 in the store, everything is pretty much visible. You can see  
17 everything. So you can see posters. You can see the  
18 computers. You can see the people. You can see what's being  
19 sold inside the stores.

20 MS. POPE: I'd like to mark this as the next exhibit.

21 THE COURT: Show it to the --

22 MS. POPE: Yes.

23 THE CLERK: Exhibit 9.

24 (Plaintiff's Exhibit 9 marked for identification)

25 MS. POPE: I'm sorry, Your Honor, we only have one

1 copy if you'd like to look at it.

2 THE COURT: Yes.

3 (Pause in proceedings.)

4 THE COURT: Okay.

5 MS. POPE: May I approach the witness, Your Honor?

6 THE COURT: Yes. What number is that?

7 MS. POPE: 9.

8 THE COURT: 9.

9 BY MS. POPE:

10 Q. Mr. Rogers, I've handed you what's been marked as  
11 Plaintiff's Exhibit 9. Can you tell me what that picture  
12 depicts?

13 A. Say that again.

14 Q. Sure. What is that a picture of?

15 A. Okay, yeah, this is a picture of the store. This would  
16 show you the layout of the store, not the entire store but it  
17 will show you where the clerk will sit, it will show you where  
18 the main posters that can be seen, yeah.

19 Q. And is that looking if you're walking from the door back  
20 to the clerk's counter, is that what you see?

21 A. Yes.

22 Q. That poster on the wall, what's that a poster of?

23 A. Which poster are you speaking about?

24 Q. The one on the back wall.

25 A. The one on the back wall is our Internet poster. It shows

1 you the breakdown of the sweepstakes.

2 Q. So if, as Mr. Patenaude was walking to the counter, if he  
3 was looking around the store, would he have seen that poster?

4 A. Yes. It's very big, yes, it is.

5 Q. And it talks about the rules of the sweepstakes game?

6 A. Yes, it does.

7 Q. Was that poster there the day Mr. Patenaude was there?

8 A. Yes.

9 Q. And the photocopier and the printer, is that next to the  
10 poster? I know you can't see it in the picture, but --

11 A. Yes, it is.

12 Q. And was the photocopier and the printer in that location  
13 next to the poster the day Mr. Patenaude was there?

14 A. Yes.

15 Q. Is that photocopier and printer available for the public  
16 to use?

17 A. Yes, it is.

18 Q. Thank you.

19 A. Okay.

20 MS. POPE: May I approach the witness?

21 (Pause in proceedings.)

22 MS. POPE: I'd like to offer Plaintiff's Exhibit 9  
23 into evidence.

24 THE COURT: Received.

25

1 (Plaintiff's Exhibit 9 received in evidence)

2 MS. POPE: And then I have another one.

3 (Pause in proceedings.)

4 MS. POPE: I'd like to mark this as the next exhibit.

5 THE CLERK: Exhibit 10.

6 (Plaintiff's Exhibit 10 marked for identification)

7 MS. POPE: Your Honor, I have another photo if you'd  
8 like to take a look.

9 THE COURT: All right.

10 (Pause in proceedings.)

11 MS. POPE: May I approach the witness?

12 THE COURT: Yes. Any time.

13 MS. POPE: Thanks.

14 Q. Here you go.

15 I've handed you what's been marked as Plaintiff's  
16 Exhibit 10. Do you recognize that picture?

17 A. Yes, I do.

18 Q. Is that an accurate depiction of the bathroom in the  
19 San Lorenzo store?

20 A. Yes, it is.

21 Q. Is that the only other room in the San Lorenzo store?

22 A. That is the only room.

23 Q. The only room. So the only rooms in the San Lorenzo store  
24 are the main room with all the computers, and the cashier  
25 station, and then the bathroom?

1 A. Yes.

2 MS. POPE: I'd like to offer Plaintiff's Exhibit 10  
3 into evidence.

4 THE COURT: Received.

5 (Plaintiff's Exhibit 10 received in evidence)

6 BY MS. POPE:

7 Q. Now, going back to Mr. Patenaude's visit, so you greeted  
8 him at the door and then you walked him to the counter?

9 A. Yes.

10 Q. Did you stay near the counter while he was there?

11 A. No. I'm still observing the store, so I greeted him to my  
12 coworker. My coworker Ken then attempted to talk to him asking  
13 him, "Do you want to see how we operate?" He didn't want to  
14 see how it operate. At the end he was walking back out the  
15 store. He didn't stay too long.

16 Q. Okay. So you walked him up to the counter and then you  
17 went back to walking around the store?

18 A. Right.

19 Q. While you were walking around, could you hear  
20 Mr. Patenaude's conversation with the counter?

21 A. Yeah. It was real brief. It wasn't too long. It was  
22 brief. My coworker asked him would he like to see how it's  
23 being operated. No, he didn't want to. He just left out the  
24 store.

25 Q. Did he ask -- did Mr. Patenaude ask about the photocopy

- 1 machine or anything like that?
- 2 A. No, I didn't hear that.
- 3 Q. So you just heard him ask how it works?
- 4 A. Yes.
- 5 Q. Did he say what "it" was?
- 6 A. No. He just asked how do this work.
- 7 Q. And the gentleman behind the counter offered to show him?
- 8 A. Offered to show him.
- 9 Q. And Mr. Patenaude --
- 10 A. Waved him off, started back out the door.
- 11 Q. When Mr. Patenaude was there, were there customers in the
- 12 store at the time?
- 13 A. Yes.
- 14 Q. And were they using the computers?
- 15 A. Yes.
- 16 Q. Were any of them playing the sweepstakes game at the time?
- 17 A. Yes.
- 18 Q. Did you notice if Mr. Patenaude watched any of the
- 19 customers?
- 20 A. Briefly. If he did, he seemed he was doing it on the
- 21 computer.
- 22 Q. Did he speak to you again before he left?
- 23 A. No.
- 24 Q. Did he talk to any of the customers?
- 25 A. No.

1 Q. Did he talk to anyone other than you and the gentleman at  
2 the counter?

3 A. No.

4 Q. Do you remember if he was there by himself or if anyone  
5 was with him?

6 A. He had another guy with him. I didn't know his name or  
7 anything. There was another guy with him.

8 Q. So he didn't -- the second guy didn't say anything?

9 A. No.

10 Q. Was he taking notes or anything like that?

11 A. No.

12 Q. Just looking around?

13 A. Yes.

14 Q. How long would you say Mr. Patenaude was inside the store?

15 A. Three, four minutes.

16 Q. Now, when we started, you said you started as a security  
17 guard and now you're a greeter. Which store are you a greeter  
18 for?

19 A. Hayward.

20 Q. And how long have you been a greeter at the Hayward store?

21 A. About five weeks.

22 Q. Five weeks?

23 A. Yes.

24 Q. So I'd like to talk to you a little bit about that store.  
25 What are your job duties as a greeter at the Hayward store?

1 A. Making sure people are comfortable there. Making sure  
2 there's no problems, no loitering out front, still making sure  
3 nobody's doing nothing illegal on the computers. Staying in  
4 contact with my boss letting him know how many people we have  
5 in the store.

6 Q. And which boss is that? Is that Ron Doyle?

7 A. Yes, it is.

8 Q. So in the Hayward store do you allow drinking alcohol?

9 A. No.

10 Q. Or smoking?

11 A. No.

12 Q. So in the Hayward store, is that one of the things you do,  
13 you look for people that are doing those things?

14 A. Yeah.

15 Q. And you ask them to stop?

16 A. Anything that's illegal, you know, in front of the store,  
17 you know, we don't allow no loitering, no hanging out inside  
18 the store. If you're not on the computer, you have to leave.

19 Q. How do you deal with people that are loitering out front?

20 A. It's just the way you approach them, you know, what you  
21 say. You know, "Excuse me. You're not allowed to loiter in  
22 front of the store."

23 You know, you don't use no force or anything. It's just  
24 the way you talk to people. And if you get the kind that just  
25 don't agree with you, then you have to let them know, "Well,

1 I'm going to have to call the police."

2 Q. Have you ever had to call the police since you've been  
3 working there?

4 A. No.

5 Q. Have you noticed any problems with drug use inside the  
6 store since you've been working there?

7 A. No.

8 Q. How about people coming in intoxicated?

9 A. No.

10 Q. Any problems with prostitution?

11 A. No.

12 Q. Other criminal activity?

13 A. No.

14 Q. So in the five weeks you've been there, you haven't  
15 noticed any of that?

16 A. No, I haven't.

17 Q. And what about the computers? You testified in  
18 San Lorenzo you watch to make sure no one is plugging anything  
19 into the computer or viewing stuff on the computers that  
20 they're not supposed to be. Do you do that in Hayward as well?

21 A. Yes, I do.

22 Q. And what's the kind of stuff they're not supposed to be  
23 doing on the computers?

24 A. Porn. Anything that doesn't look right, I always question  
25 it, you know, "Excuse me. What is this and what are you

1 doing?"

2 Now, some things I do know, you know, Google and searching  
3 for addresses and things like that, Facebook, I'm pretty much  
4 aware of that, you know, so that's okay. Other than that, just  
5 knowing if I've never seen it before, I'm going to question it.

6 Q. Since you've been -- in the five weeks you've been at the  
7 Hayward store, have you observed people using the computers to  
8 do things other than sweepstakes?

9 A. Yes.

10 Q. And what kinds of things have you seen people use the  
11 computers for?

12 A. Résumés, job search, Facebook.

13 Q. Of the people that come in, how many, you know,  
14 approximately, if you know, what percentage have you observed  
15 that do things other than the sweepstakes?

16 A. I can't say percentage. I can say majority. Let's say  
17 half, half of the people come in that play sweepstakes normally  
18 get online, Facebook.

19 Q. So they'll come in, they'll play the sweepstakes --

20 A. Yes.

21 Q. -- and then at least half of them will then go on to --

22 A. Get online.

23 Q. -- do other things?

24 A. Yes.

25 MS. POPE: A couple more pictures.

1 (Pause in proceedings.)

2 MS. POPE: So if I can just mark these as the next  
3 three.

4 THE CLERK: Sure. That will be 11, 12, and 13.

5 (Plaintiff's Exhibits 11, 12, and 13 marked for  
6 identification)

7 MS. POPE: May I approach the witness?

8 Q. I've handed you three photos that have been marked as  
9 Plaintiff's Exhibits 11, 12, and 13. Do you recognize the  
10 photos?

11 A. Yes.

12 Q. Let's take them one at a time. One of the photos is a  
13 picture of a sign that says "No Loitering"; right?

14 A. Yes.

15 Q. Is that a photo of the outside of the Hayward store?

16 A. Yes, it is.

17 Q. And is that sign currently out front of the Hayward store?

18 A. Yes.

19 Q. Does that photo accurately depict the sign?

20 A. Say it again.

21 Q. Is that an accurate picture of the sign?

22 A. Yes. Yes.

23 Q. And then another photo is a picture of a poster; correct?

24 A. Yes.

25 Q. And what's that poster?

1 A. This is the breakdown of the sweepstakes, the  
2 Internet Zone.

3 Q. And is that poster in the Hayward store?

4 A. Yes.

5 Q. Is that an accurate picture of the poster that's at the  
6 Hayward store?

7 A. Yes.

8 Q. And then the final picture shows a counter with a computer  
9 behind it. Is that a picture of the cashier's counter at the  
10 Hayward store?

11 A. Yes, it is.

12 Q. And the computer behind it, is that the cashier's  
13 computer?

14 A. Yes.

15 Q. Or do you know?

16 A. You're saying behind the counter?

17 Q. Yeah.

18 A. Yes.

19 Q. How big is the poster that shows the sweepstakes odds?

20 A. When you say "how big," what do you mean?

21 Q. Is it very visible in the store?

22 A. Yes. Yes, it is. Yeah, it's very big.

23 Q. And that's the poster of the sweepstakes odds?

24 A. Yes.

25 Q. So anyone who comes in the store, can they see it?

1 A. Yes.

2 Q. Clearly visible?

3 A. Yes.

4 MS. POPE: I'd like to offer Plaintiff's Exhibits 11,  
5 12, and 13 in evidence.

6 THE COURT: Received.

7 (Plaintiff's Exhibits 11, 12, and 13 received in evidence)

8 BY MS. POPE:

9 Q. The poster of the sweepstakes odds that's shown in  
10 Plaintiff's Exhibit 12, is that the same poster that's in the  
11 San Lorenzo store?

12 A. Yes, it is.

13 Q. Is it the same size?

14 A. Yes.

15 Q. So the poster that's in the San Lorenzo store, is that  
16 clearly visible to anyone that walks in?

17 A. Yes, it is.

18 MS. POPE: I have no further questions at this time.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. VIGILIA:

22 Q. Good morning, Mr. Rogers.

23 A. How are you doing?

24 Q. I'm doing well. How are you?

25 A. I'm fine.

1 Q. So with respect to your position as a security guard in  
2 San Lorenzo, did you receive any training beforehand as to how  
3 you would perform your duties?

4 A. No.

5 Q. Have you -- did you receive any type of certification to  
6 perform duties as a security guard?

7 A. No.

8 Q. And with respect to your duties as a greeter, it sounds  
9 like you described a lot of the same duties you had as a  
10 security guard; is that right? It's generally the same types  
11 of duties?

12 A. Yeah. Yes.

13 Q. When you were working as a security guard, did you wear  
14 any type of uniform?

15 A. Did I wear a uniform at San Lorenzo or Hayward?

16 Q. San Lorenzo.

17 A. Yes.

18 Q. And can you describe what the uniform looked like?

19 A. Just a security shirt.

20 Q. When you were describing the day that Richard Patenaude  
21 went to the San Lorenzo store, how did you know that that was  
22 Mr. Patenaude?

23 A. Because I was informed and my boss told me that someone  
24 was coming by.

25 Q. Okay. But did this gentleman who you believed to be

1 Mr. Patenaude introduce himself to you?

2 A. No.

3 Q. And did you hear him introduce himself by name to any  
4 staff members at --

5 A. Yes.

6 Q. Okay. Do you remember what this gentleman looked like?

7 A. Not right offhand, no.

8 Q. What are your working hours at the Hayward store?

9 A. 10:00 to 6:00.

10 Q. Is there always a greeter on duty at the Hayward store?

11 A. Yes.

12 Q. Do you carry a cell phone so that in case there's a  
13 situation that you can't resolve, you know, in a peaceful  
14 manner, do you have a cell phone where you can call 911  
15 quickly?

16 A. Yes.

17 Q. But it sounds like you haven't had to use that yet.

18 A. No.

19 Q. Do you -- strike that.

20 (Pause in proceedings.)

21 MR. VIGILIA: Do you have the photographs?

22 THE CLERK: Yes.

23 MR. VIGILIA: Thank you.

24 (Pause in proceedings.)

25

1 BY MR. VIGILIA:

2 Q. Mr. Rogers, I'm going to show you what's been marked as  
3 Plaintiff's 12. Would you take a look at that?

4 A. Uh-huh.

5 Q. It says at the bottom that Internet Zone is donating to  
6 charities. Do you see that at the bottom?

7 A. Yes.

8 Q. And in the space there it says "Seventh Step Foundation"  
9 or something like that?

10 A. Yes.

11 Q. Are you aware if that's the same charity that's run by  
12 Mr. Doyle, the owner of Net Connection?

13 A. Say it again.

14 Q. Are you aware if that Seventh Step Foundation that the  
15 business is donating to, is that the same Seventh Step  
16 Foundation that Mr. Doyle runs?

17 A. Yes.

18 (Pause in proceedings.)

19 MR. VIGILIA: No further questions, Your Honor.

20 THE COURT: All right. Anything further?

21 MS. POPE: Just quick.

22 REDIRECT EXAMINATION

23 BY MS. POPE:

24 Q. Mr. Rogers, when you were a security guard for  
25 San Lorenzo, did you wear a gun?

1 A. No.

2 Q. So how did you know what your job duties were supposed to  
3 be as a security guard for San Lorenzo?

4 A. Well, I was hired as a security and I was trained to do  
5 the certain duties that I do.

6 Q. Who trained you?

7 A. Keyawie.

8 Q. Is that Ms. Azalea Hernandez?

9 A. Yes. I don't know how to pronounce it too well, yeah.

10 Q. So she told you when she hired you what kind of behavior  
11 she wanted you to look for?

12 A. Yes.

13 Q. And what the store's policies were about illegal activity?

14 A. Yes.

15 Q. And about drinking?

16 A. Yes.

17 Q. And what were you told to do if someone didn't cooperate?

18 A. Use your cell phone to call 911.

19 MS. POPE: Thank you very much.

20 THE COURT: Okay.

21 MR. VIGILIA: Briefly, Your Honor. Thank you.

22 RE-CROSS-EXAMINATION

23 BY MR. VIGILIA:

24 Q. Before being hired at Net Connection in San Lorenzo, had  
25 you ever worked as a security guard before?

## ROGERS - RECROSS / VIGILIA

1 A. No.

2 MR. VIGILIA: No further questions, Your Honor.

3 THE COURT: All right, fine. Thank you. You may step  
4 down.

5 (Witness excused.)

6 MR. GRIFFIN: Your Honor, at this point we have no  
7 further witnesses. We have one witness we may recall.

8 THE COURT: I can't hear you.

9 MR. GRIFFIN: I'm sorry, Your Honor.

10 THE COURT: Up here.

11 MR. GRIFFIN: At this point, Your Honor, we have no  
12 further witnesses. We have one that we may recall after the  
13 defense witnesses.

14 THE COURT: All right.

15 MR. GRIFFIN: At this point no further witnesses.

16 THE COURT: You rest then?

17 MR. GRIFFIN: We rest.

18 THE COURT: Okay. Tell me this: I'm looking at this  
19 ordinance. The ordinance says it runs for 45 days and with the  
20 option of the Council to continue it 45 days. Is it in  
21 operation now?

22 MR. VIGILIA: It is, Your Honor. Actually the option  
23 under the Government Code is to extend it for an additional I  
24 believe it's 10 months, 15 days; and, so, it was extended by  
25 the City Council and the expiration date is February 2014. I

## RIZK - DIRECT / VIGILIA

1 can't recall the exact date, but it will last no longer than  
2 that unless some other action is taken, I believe; or,  
3 actually, it will last no longer than that. The Council will  
4 then have to either enact some sort of permanent ordinance or  
5 take no action.

6 THE COURT: Okay. So it's in operation now?

7 MR. VIGILIA: It is.

8 THE COURT: Okay. All right.

9 Your first witness is?

10 MR. VIGILIA: David Rizk, Your Honor.

11 (Pause in proceedings.)

12 THE CLERK: Raise your right hand, please.

13 DAVID RIZK,

14 called as a witness for the Defendant, having been duly sworn,  
15 testified as follows:

16 THE WITNESS: I do.

17 THE CLERK: Be seated. Please move the microphone  
18 where you can speak into it.

19 Please state your full name and spell your name.

20 THE WITNESS: David Rizk; D-A-V-I-D, R-I-Z-K.

21 DIRECT EXAMINATION

22 BY MR. VIGILIA:

23 Q. Good morning, Mr. Rizk.

24 A. Good morning.

25 Q. Where are you currently employed?

1 A. The City of Hayward, California.

2 Q. What's your position there?

3 A. I'm development services director slash planning director.

4 Q. Can you describe what your primary duties are?

5 A. My primary duty is to oversee the operations and functions  
6 of the Planning and Building Divisions, which comprise the  
7 Development Services Department.

8 Q. Approximately how long have you had that position?

9 A. Approximately four and a half years.

10 Q. Mr. Rizk, can you tell me what the role of the Planning  
11 Department is in reviewing business licenses?

12 A. Well, the Planning Division looks at business licenses for  
13 new proposed businesses to ensure that those proposed  
14 businesses are compliant with the language of the zoning  
15 regulations of the City.

16 Q. And how do you determine if proposed uses then comply with  
17 the uses allowed by the City?

18 A. Well, we look at what the address is of the proposed  
19 business or licensee, potential licensee. Then we check the  
20 zoning ordinance to see if that particular use or specific use  
21 is listed as allowed in the zoning district in which the  
22 proposed use is considered.

23 And if it's not, then we make a determination, typically  
24 it's planning staff. Though planning staff will confer with  
25 the planning manager on clarification as to whether the use

1 listed is similar to other uses listed.

2 Q. Are there any other procedures whereby a proposed use if  
3 it's not listed could be considered for, I guess, approval, for  
4 lack of a better word, by the City?

5 A. Well, our zoning ordinance is what's called an  
6 exclusionary ordinance, which means that if a use is not  
7 specifically listed as allowed, it is not allowed unless the  
8 planning director or on appeal to the Planning Commission  
9 determines that the use is similar to and not more  
10 objectionable or intensive than those uses that are listed.

11 And, so -- I'm sorry.

12 And, so, on those occasions where the planning director --  
13 as I said, the planning director's designee is the planning  
14 manager -- determines that the use is not listed or, you know,  
15 similar to those that are listed, then one would need to do a  
16 text amendment to the zoning ordinance that would allow that  
17 use to be considered as allowed and listed. And in those  
18 situations, that would involve a public hearing before the  
19 Planning Commission and City Council.

20 Someone who applies for a business that the planning  
21 director designee determines is not allowed could appeal that  
22 decision to the Planning Commission.

23 Q. Can you explain or are you familiar with the term "by  
24 right use" and "conditional use"?

25 A. Yes.

1 Q. Can you explain what those terms mean?

2 A. "By right" means that it's a use that's permitted by  
3 right. It doesn't require a discretionary use permit or  
4 discretionary approval.

5 And then a use permit in the City of Hayward there are  
6 two -- excuse me -- types of use permits. There's an  
7 administrative use permit, which are associated with uses that  
8 are listed as allowed administratively, and that is typically  
9 approved administratively by staff. It does require certain  
10 findings to be made.

11 And then there are uses that are listed as conditional  
12 uses, which require a conditional use permit from the Planning  
13 Commission.

14 And typically administrative and even more so conditional  
15 uses are those that have greater potential for impacts.

16 Q. Are you aware, in your capacity as the planning director,  
17 whether or not an Internet cafe use is explicitly allowed by  
18 the zoning ordinance?

19 A. It's not specifically listed as allowed.

20 Q. Are you aware if a business center is a specifically  
21 allowed type of use?

22 A. There's -- particularly in the Central City Commercial  
23 zoning subdistrict, there are reproduction and copying facility  
24 and a facsimile and mailing service. Those are listed as  
25 allowed uses.

1 Q. And are those uses allowed by right or by obtaining a  
2 conditional use permit of some type?

3 A. By right.

4 THE COURT: What is an Internet cafe?

5 THE WITNESS: An Internet cafe, in my mind, would be a  
6 business where the primary purpose or function is to provide  
7 Internet access and service to the public.

8 There are some businesses, like a Copymat or something,  
9 you know, that provide facsimile services, mailing, but also  
10 have computers for use and access to the Internet.

11 THE COURT: Is that an administrative okay or does it  
12 need a conditional use permit?

13 THE WITNESS: Well, it's not listed as allowed, so  
14 what we've typically done in the Planning Division is consider  
15 those similar to those uses I just mentioned, like those that  
16 you would find typically at a Kinko's or Copymat, where  
17 primarily there are, you know, mailing, reproduction.

18 THE COURT: I was wondering, if you want to open an  
19 Internet cafe, do you have to go before the Planning  
20 Commission?

21 THE WITNESS: Well, we would not allow that as a  
22 primary use because it's not listed, unless we determine that  
23 it's similar to those uses that are allowed. So if -- I  
24 wouldn't say an Internet cafe where the main or sole purpose is  
25 Internet access, I would not say that that's allowed at all;

1 but if it has Internet access as a secondary or part of the  
2 use, then we would look at what the primary use is and  
3 determine what is listed as the primary use to determine  
4 whether it's allowed, needs Planning Commission review,  
5 et cetera.

6 **THE COURT:** How do you determine whether it's allowed  
7 or not?

8 **THE WITNESS:** Well, we look at -- we look at what the  
9 components are of the proposed business, and what that is, and  
10 then we look at those uses that are listed as allowed. And if  
11 we determine that the proposed use is consistent with similar  
12 to, et cetera, to those uses that are allowed, then we would  
13 say that is the type of process that that business would need  
14 to go through to be permitted.

15 **THE COURT:** Well, is there something discretionary  
16 with the Planning Commission? Is it discretionary with you?

17 **THE WITNESS:** It's discretionary with me, but my  
18 decision can be appealed to the Planning Commission.

19 **THE COURT:** Well, for instance, if you say, "I want to  
20 put 20 computers in a room in my store and I want to serve  
21 coffee, or whatever, to facilitate people using those  
22 computers," is that okay?

23 **THE WITNESS:** I would say, yes, depending on the  
24 details of that. We would typically say that's a conditional  
25 use permit similar to a commercial gaming facility or something

1 like that.

2 THE COURT: Okay.

3 MR. VIGILIA: Thank you, Your Honor.

4 Q. Are you familiar with the business Net Connection that's  
5 located at 778 B Street?

6 A. I'm aware of its existence.

7 Q. And what zoning district in the city is that located in?

8 A. It's located in the CCC or the Central City Commercial  
9 Zoning District.

10 Q. Okay. I'm going to show you what's been premarked as  
11 Defendant's Exhibit Number 2. It's a copy of Section 10-1.1520  
12 of the Hayward Municipal Code, the Central City Commercial  
13 Subdistrict.

14 Now, Mr. Rizk, I've handed you Defense Exhibit 2. And is  
15 it your understanding that with respect to Net Connection, the  
16 determination was made that the use as described was similar to  
17 or no more intensive than a copying or reproduction facility or  
18 mailing or fax service as is shown on the second page,  
19 subparagraph 6 there, Service Commercial Uses?

20 A. Yes.

21 Q. Now, suppose -- is -- does the Municipal Code allow a use  
22 where there is a substantial gaming component to the business?

23 A. I'm sorry, could you repeat?

24 Q. Is there a use that's allowed in the Municipal Code that  
25 allows for a business that has a substantial gaming component

1 to it?

2 A. Well, we do allow through the conditional use permit  
3 process an entire article of regulations at card clubs. So  
4 that's card-club-and-gambling-type use.

5 Q. Does the City have any establishments like that?

6 A. We have one.

7 Q. And what type of activity goes on at that location?

8 A. Various card clubs, card club games.

9 Q. Like poker, blackjack, things like that?

10 A. Yes.

11 Q. And what types of conditions are involved in or imposed by  
12 the City on a business like that?

13 A. Well, everything from, in this particular case, no alcohol  
14 service, the hours of operation, compliance with the local laws  
15 and state gambling and gaming laws, those types of conditions.

16 Q. Are there security requirements?

17 A. Yes.

18 Q. Now, if a use had the potential for a substantial gaming  
19 component and as well a potential for large amounts of cash  
20 payouts on a daily basis, is there a section in the Municipal  
21 Code that will allow for a business of that type that has  
22 substantial amounts of gaming and large cash prizes that will  
23 be paid on site?

24 A. No, other than if gaming is meant to include card club  
25 activities.

1 Q. Can you describe the location where Net Connection is  
2 located? Is it a strip mall of some kind?

3 A. It's on the fringe of the downtown retail area along  
4 B Street, across B Street from the Hayward City Hall.

5 Q. Are there restaurants in close proximity?

6 A. Yes.

7 Q. And I believe there's a grocery store that's within  
8 walking distance as well? It's a Lucky's?

9 A. Right, full-service, full-size Lucky store very close to  
10 Net Connection.

11 Q. All right. And the Hayward Public Library is also within  
12 walking distance from that store; is that right?

13 A. Yes.

14 Q. And to your knowledge does the Hayward Public Library  
15 offer free Internet access?

16 A. To my knowledge, yes.

17 (Pause in proceedings.)

18 **BY MR. VIGILIA:**

19 Q. Mr. Rizk, what is the significance of having an accurate  
20 description of a proposed business for evaluating whether or  
21 not -- what level of approval it needs from a land-use  
22 perspective?

23 A. I think it's very -- it's significant. It's very  
24 important. It allows the planners and Planning Division to  
25 determine whether that particular use is allowed by the zoning

1 ordinance.

2 Q. And at some level is it true that a planner relies on what  
3 a business owner tells the planner?

4 A. Yes.

5 Q. And, although, would you also agree that the planner has  
6 some responsibility to do some level of investigation on their  
7 own too; is that right?

8 A. If there's some question or lack of, you know, clarity,  
9 then, yes.

10 MR. VIGILIA: Nothing further at this time,  
11 Your Honor.

12 THE COURT: Okay.

13 MR. VIGILIA: Your Honor, I'd ask that Defense 2 be  
14 moved into evidence.

15 THE COURT: Received.

16 (Defendant's Exhibit 2 received in evidence)

17 CROSS-EXAMINATION

18 BY MS. POPE:

19 Q. Good morning, Mr. Rizk.

20 A. Good morning.

21 Q. So you testified that as the planning director, it's your  
22 job to oversee the operations of the Planning Department;  
23 correct?

24 A. Yes, the Planning Division and Building Division.

25 Q. But you don't review business license applications

1 yourself?

2 A. That's correct. The only time I would get involved with  
3 those, because we process several -- several a week, is if  
4 there's a question from the planning manager and then I would  
5 get involved.

6 Q. Okay. So were you involved in reviewing Net Connection's  
7 business license application?

8 A. Not when it was submitted.

9 Q. That was Mr. Patenaude who was the planning manager at the  
10 time; correct?

11 A. Correct.

12 Q. And he was your designee -- the planning director's  
13 designee, for the purpose of reviewing business license  
14 applications?

15 A. Correct.

16 Q. And determining whether the uses were similar to what was  
17 permitted in the zoning ordinance if the use wasn't  
18 specifically listed?

19 A. Yes.

20 Q. And Mr. Patenaude did make that determination in the case  
21 of Net Connection; correct?

22 A. Yes.

23 Q. And he did that, as you testified, based on -- he would  
24 have done that based on the information that he was provided by  
25 the property owner, correct, or by business license applicant?

1 A. Yes.

2 Q. And are you aware that he spoke to Ron Doyle, the owner of  
3 Net Connection, a number of times?

4 A. That's my understanding.

5 Q. Are you aware that Mr. Patenaude visited one of Ron  
6 Doyle's other businesses prior to approving the business  
7 license application?

8 A. That's my understanding.

9 Q. And when he approved the business license application, he  
10 did so from a land-use perspective?

11 A. Yes.

12 Q. You testified that there is a library nearby or within  
13 walking distance of Net Connection's location, and that they --  
14 you believe they have the ability to see the Internet for free  
15 there?

16 A. That's my understanding. I think it's restricted in terms  
17 of children access to certain sites.

18 Q. Does the library offer the ability to check out books for  
19 free as well?

20 A. Yes.

21 Q. Does the city of Hayward have bookstores?

22 A. Yes.

23 Q. How about McDonald's, are there any McDonald's in the city  
24 of Hayward?

25 A. Yes.

1 Q. How about Carl's Jr., any Carl's Jr.'s in the city of  
2 Hayward?

3 A. I don't believe so.

4 Q. Okay. Are you aware of the fact that McDonald's  
5 occasionally runs a sweepstakes promotion?

6 A. I'm aware they have various games.

7 Q. Was McDonald's required to obtain a special permit to run  
8 that promotion?

9 A. No.

10 Q. Do you know if the City's enforcement actions against  
11 Net Connection were triggered by the advisory opinion issued by  
12 the Bureau of Gambling Control?

13 A. I don't believe that's the case.

14 Q. Is retail permitted in the Central City Commercial  
15 District?

16 A. Yes.

17 MS. POPE: I have no further questions.

18 THE COURT: You say that the ordinance was not  
19 triggered by the gambling definition that was included in the  
20 ordinance, but what was the purpose of the ordinance; to get at  
21 gambling? Is that it? Is that the purpose?

22 THE WITNESS: I'm not sure I understand your question.

23 THE COURT: What's the purpose of this ordinance; to  
24 get at gambling?

25 THE WITNESS: The purpose of the zoning ordinance is

1 to regulate and define and clarify where various uses are  
2 allowed and where uses are not allowed.

3 THE COURT: Well, the ordinance -- let's see what the  
4 ordinance says here.

5 (Pause in proceedings.)

6 THE COURT: Well, what -- I don't understand.

7 THE WITNESS: Are you --

8 THE COURT: My impression was that you didn't like the  
9 sweepstakes because it was a gambling situation. Is it? Is  
10 that what you're after?

11 THE WITNESS: Yes. I think I'm confusing -- confused  
12 about which ordinance. I thought you were talking about the  
13 zoning ordinance, and you may be talking about the --

14 THE COURT: No, no, no. The ordinance that's at issue  
15 in this case.

16 THE WITNESS: Yes, that was adopted, a moratorium to  
17 preclude those types of uses from occurring until City staff  
18 has time to research and determine whether they should be  
19 allowed or not; and, if so, to develop standards that we would  
20 recommend.

21 THE COURT: When you look at that, do you look at the  
22 Penal Code, the 319 of the Penal Code, which defines a slot  
23 machine?

24 THE WITNESS: I didn't personally look at that, but I  
25 was --

1           **THE COURT:** I beg your pardon?

2           **THE WITNESS:** I did not personally look at that code.

3           **THE COURT:** Okay. So your duty is just to take the  
4 ordinance as the City Attorney writes up and the Council  
5 passes?

6           **THE WITNESS:** And also provide input on the ordinance  
7 in terms -- from a land-use perspective.

8           **THE COURT:** What input did you put on this ordinance?

9           **THE WITNESS:** Well, I did some research as to --  
10 through the Internet about what types of activities and  
11 concerns there were in other cities in the Bay Area and  
12 elsewhere.

13           **THE COURT:** What other concerns were other cities  
14 having? What did you find?

15           **THE WITNESS:** I found there were concerns with  
16 gambling-like activities, robberies, potential prostitution,  
17 those types of things.

18           **THE COURT:** Well, just because some other city has  
19 that problem, do you equate that with a problem you're going to  
20 have in your city?

21           **THE WITNESS:** Well, potentially, yes.

22           **THE COURT:** So the fact that it hasn't arisen, is that  
23 justification -- you passed the ordinance because other cities  
24 have a problem; is that what you're telling me?

25           **THE WITNESS:** I think that and, more importantly, we

1 do not have standards to address those types of uses.

2           **THE COURT:** Well, suppose that you don't have that  
3 problem in your city, can't a person start an operation having  
4 10, 15 computers that he rents out time to? Is that possible?

5           **THE WITNESS:** I think as long as the detailed use of  
6 those computers and what they're to be used for are consistent  
7 with other uses listed as allowed.

8           **THE COURT:** Well, suppose they're used for the  
9 ordinary course of business you use computers for, but in  
10 addition to that they have a promotion aspect to it to get  
11 people in to use their computer. Is there anything wrong with  
12 that?

13           **THE WITNESS:** Well, I think it depends. I think if  
14 there's a potential for people walking out of the store with  
15 significant amounts of cash, which may attract, you know,  
16 people that want to commit burglary/robbery, which has happened  
17 in -- you know, like at our card club establishment, then that  
18 would be a concern and that's something that the City would,  
19 you know, would want to look at.

20           **THE COURT:** Is there any criteria for substantial  
21 amounts of cash?

22           **THE WITNESS:** No.

23           **THE COURT:** So what you think is substantial and what  
24 I think is substantial are two different figures?

25           **THE WITNESS:** They could be. They may be the same,

1 but they could be.

2 THE COURT: Okay. Fine. Thank you.

3 Anything further?

4 MR. VIGILIA: No, Your Honor.

5 THE COURT: Anything further?

6 MS. POPE: No.

7 THE COURT: Thank you. You may step down.

8 (Witness excused.)

9 MR. VIGILIA: Your Honor, our next witness is Julie  
10 McKillop, Your Honor.

11 (Pause in proceedings.)

12 JULIE ROMECK McKILLOP,

13 called as a witness for the Defendant, having been duly sworn,  
14 testified as follows:

15 THE WITNESS: I do.

16 THE CLERK: Be seated.

17 Please state your full name and spell your name.

18 THE WITNESS: Julie Romeck McKillop; J-U-L-I-E,  
19 R-O-M-E-C-K, M-C-K-I-L-L-O-P.

20 MR. VIGILIA: Thank you.

21 DIRECT EXAMINATION

22 BY MR. VIGILIA:

23 Q. Good morning, Ms. McKillop.

24 Are you familiar with a business called Net Connection  
25 located at 778 B Street in Hayward?

## McKILLOP - DIRECT / VIGILIA

- 1 A. Yes, I am.
- 2 Q. And how are you familiar with that establishment?
- 3 A. I have a business across the parking drive-through into  
4 the back of the Lucky's shopping center there.
- 5 Q. Can you estimate about what the distance is from your  
6 property to the Net Connection property?
- 7 A. Eighty to a hundred feet.
- 8 Q. Is there anything in between -- any building in between  
9 your property and the Net Connection business?
- 10 A. No. A driveway and then a quasi-landscaped area.
- 11 Q. What type of business do you have at your property?
- 12 A. I have a fine-dining restaurant.
- 13 Q. And what type of building is it located in?
- 14 A. It's a restored Victorian. My husband and myself  
15 purchased it from the Redevelopment Agency about 10 years ago,  
16 and redeveloped the building for a mixed-use property.
- 17 Q. And you say "mixed-use." Is there any other type of use  
18 in addition to the restaurant?
- 19 A. Right. I have two apartments located on the second and  
20 third floor.
- 21 Q. Okay. So the restaurant is on the bottom floor?
- 22 A. Correct.
- 23 Q. What are your business hours for your restaurant?
- 24 A. We are open Tuesday through Saturday from 5:30 till 10:00.
- 25 Q. Have you -- what have you noticed about the area since the

1 Net Connection business opened?

2 A. Well, it opened in the winter, so I was driving up and  
3 down -- I spend a lot of time on B Street as I have two other  
4 properties adjacent to the restaurant and multiple tenants. So  
5 I do spend a lot of time on B Street coming and going and  
6 observed them opening up during the winter months, and didn't  
7 really have occasion to notice changes until the stormy weather  
8 was over and the spring started.

9 After the weather improved, I noticed quite a bit of  
10 activity in front of the business. Mostly people kind of  
11 hanging around the front door, coming down to my property.

12 There's a smoking ordinance in the City of Hayward that  
13 requires people to be 20 feet away from the establishment to  
14 smoke, so they would go across the alley and smoke in the  
15 landscaped area in front of my building.

16 I also saw people sitting on the sidewalk, sitting on the  
17 curbs and smoking, and going back into the business.

18 I also noticed bicycles everywhere. They finally did put  
19 in a bicycle ramp for the individuals to park their bikes; but  
20 still to this very day I still see bikes out in the landscaped  
21 area chained to the lamppost, chained into the landscaping,  
22 chained on fire hydrants.

23 Q. Does your business or your property have a parking lot?

24 A. Yes, it does. We have a small parking lot in the back to  
25 accommodate our tenants on the other building on the other side

1 of the restaurant. I have 10 Cal State students that reside  
2 there in addition to the two tenants on the second and third  
3 floor; and then if there's anything left, I have it ready for  
4 the restaurant.

5 Q. And is that marked as a private parking lot in any way?

6 A. You know, I have been open now 10 years. I've never had a  
7 problem. It's only recently that the tenants have noticed  
8 people coming and going and have asked me to put a sign. So  
9 pending, you know, the outcome of all of this, I'm certainly  
10 entertaining a sign. I haven't had that problem before,  
11 though.

12 Q. What types of problems are associated with your parking  
13 lot?

14 A. People that are going to the business down the street that  
15 we're talking about, Net Connection, park there. We've seen  
16 them and followed them out and asked them to come back and  
17 please move their cars, private parking.

18 Sometimes it works. Sometimes they wait until we  
19 disappear, and then go park there again. There's been multiple  
20 times when the same individuals that we recognize have parked  
21 in there.

22 Q. And has it affected your business either -- or the  
23 restaurant or your residential rental business in any way?

24 A. It has impacted the residential rental business. My  
25 tenants are uncomfortable. I had a tenant move out of the

1 third floor. They were going to move out in a year or so,  
2 decided to move out at the end of this month. This was the  
3 coup de grace kind of banister that they saw down there.

4 MS. POPE: Objection, Your Honor. Hearsay. Move to  
5 strike.

6 THE COURT: I can't hear you. Come up here.

7 MS. POPE: Objection and move to strike that response  
8 as hearsay regarding what her tenants have told her.

9 THE COURT: Yeah, that part will be stricken.

10 BY MR. VIGILIA:

11 Q. But you did -- you have had tenants move out --

12 A. Early.

13 Q. -- early?

14 A. I've also had my tenants have altercations with  
15 individuals parking from Net Connection in the lot because they  
16 refused to understand that it's private parking and continue to  
17 come back and park there.

18 MS. POPE: Objection. Hearsay.

19 THE COURT: Sustained.

20 BY MR. VIGILIA:

21 Q. Did you obtain a business license for your restaurant?

22 A. Yes, I did. I spent quite a bit of time with the Planning  
23 Department in opening my business about 10 years ago. There  
24 were public hearings, neighbors, other businesses had an  
25 opportunity to come to the Planning Commission and voice their

1 concerns. So the planning process was probably six to nine  
2 months before I was able to get the license for my business.

3 Q. Do you recall what kind of concerns were being voiced  
4 about the opening of your business?

5 MS. POPE: Objection. Relevance.

6 THE COURT: Sustained.

7 MR. VIGILIA: I have nothing further, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. POPE:

10 Q. Good morning, Ms. McKillop.

11 So you testified you do not have a current -- you do not  
12 currently have a sign that says your parking lot is private?

13 A. That's correct.

14 Q. If there's no sign there, how are people supposed to know  
15 that it's a private parking lot?

16 A. Well, I don't have one on my home. These are homes of  
17 individuals. It seems self-evident that this is a private  
18 parking area for the residents of those buildings.

19 Q. But you testified that that parking lot is also available  
20 to the customers of your restaurant; correct?

21 A. That's correct.

22 Q. And the restaurant is a business?

23 A. That's correct.

24 Q. You've not filed a complaint with the City against  
25 Net Connection; have you?

1 A. I have not.

2 Q. And you have not testified at any of the hearings in front  
3 of the City of Hayward regarding Internet cafes or  
4 Net Connection in particular?

5 A. I'm in constant contact with the Council members through  
6 Facebook and on my email. So they are very well aware of my  
7 concerns, and I trust that they would relay those to the  
8 appropriate people. Also, I had conversations with the City  
9 Manager; but my business precludes me from going to a lot of  
10 testimony and those types of meetings or anything.

11 Q. So you have not testified at any of the hearings?

12 A. I was not aware of any hearings.

13 Q. There's a BART station near your restaurant; isn't that  
14 right?

15 A. That's true.

16 Q. And the BART station brings a lot of foot traffic through  
17 the area?

18 A. Sure. I've been on B Street for 20 years, so I understand  
19 foot traffic from the BART station very well.

20 MS. POPE: I have no further questions.

21 REDIRECT EXAMINATION

22 BY MR. VIGILIA:

23 Q. Ms. McKillop, it sounds like you're familiar with the  
24 downtown area; is that fair to say?

25 A. Very much so.

1 Q. In your experience, does the City have signage that  
2 indicates where there's public parking available?

3 A. Yes, they do.

4 MR. VIGILIA: No further questions, Your Honor.

5 THE COURT: Thank you, ma'am. You may step down.

6 (Witness excused.)

7 MR. VIGILIA: Our next witness is Chris Espinoza,  
8 Your Honor.

9 MR. GRIFFIN: Your Honor, before the witness gets  
10 sworn in, I'd like to raise an objection to Mr. Espinoza's  
11 testimony on the grounds of relevance and impermissible lay  
12 opinion.

13 He has been designated as a special agent from the  
14 California Department of Justice, Bureau of Gambling Control,  
15 to testify regarding his experiences investigating similar  
16 businesses throughout the state, the community impacts often  
17 associated with such businesses, and the extent to which such  
18 businesses comply with State law relating to gambling,  
19 lotteries, and sweepstakes.

20 Based on that description in the witness disclosure from  
21 the City of Hayward, there's no relevance of impacts in other  
22 cities based on this witness' investigation to the issues in  
23 this case; and certainly the witness is not permitted to offer  
24 a lay opinion as to whether these sweepstakes centers, or  
25 whatever you want to call them, comply with State law relating

1 to gambling, lotteries, and sweepstakes.

2 So I would like to state an objection up front under 401  
3 on relevance grounds and on Rule 701 on the grounds of  
4 impermissible lay opinion to this witness' testimony.

5 THE COURT: What is the relevancy of his testimony?

6 MR. VIGILIA: Your Honor, Mr. Espinoza actually has  
7 personal knowledge of the establishment at 778 B Street.

8 THE COURT: Well, if he's going to talk about that  
9 establishment and Hayward, that's one thing; but what happened  
10 in San Bernardino County or up in Siskiyou County has no  
11 bearing in this case because then we're opening up a whole  
12 series of cases. Each case could very well be different.

13 And I think if he has testimony relevant to the City of  
14 Hayward and this particular business, then that's fine.  
15 Otherwise, it's irrelevant.

16 MR. VIGILIA: He does, Your Honor. And to the extent  
17 that he is a peace officer, his experience and his training are  
18 also relevant to the investigation that he conducted or the  
19 observations that he had at the Hayward location. So I would  
20 submit that --

21 THE COURT: That calls for a voir dire examination.  
22 So once he's been introduced here and he starts to testify,  
23 then you can make an objection and ask for voir dire. I'll let  
24 you voir dire him to see what his qualifications are.

25 MR. GRIFFIN: Thank you, Your Honor.

1 I also -- one more thing I'd like --

2 THE COURT: Is he testifying as an expert or --

3 MR. VIGILIA: No.

4 THE COURT: I don't know what his capacity is now. He  
5 could very well be. I don't know. So let's wait and proceed  
6 as we properly will shift.

7 MR. GRIFFIN: Your Honor, I'd just like to  
8 additionally point out that the witness disclosure that was  
9 made by the City of Hayward in this case did not indicate that  
10 Mr. Espinoza was going to testify with respect to the City of  
11 Hayward or Net Connection's business. It only indicated that  
12 he was going to testify regarding his experiences investigating  
13 similar businesses.

14 THE COURT: Well, he's on the witness list as of  
15 April 23rd.

16 MR. GRIFFIN: He is, but --

17 THE COURT: He's on the witness list since April 23rd.

18 MR. GRIFFIN: I understand that, but I'm saying the  
19 description of his testimony does not match what Mr. Vigilia  
20 just represented to his Court with respect to investigation of  
21 the City of Hayward. It doesn't say that he is going to  
22 testify with respect to the City of Hayward's establishment in  
23 particular. It says he's going to testify generally about  
24 other businesses throughout the state.

25 THE COURT: Well, let's see what he's going to say.

## ESPINOZA - DIRECT / VIGILIA

1           **MR. GRIFFIN:** Thank you, Your Honor.

2           **THE CLERK:** Please raise your right hand.

3                           **CHRISTOPHER ESPINOZA,**

4 called as a witness for the Defendant, having been duly sworn,  
5 testified as follows:

6           **THE WITNESS:** Yes, I do.

7           **THE CLERK:** Be seated.

8           Please state your full name and spell your name.

9           **THE WITNESS:** My name is Christopher Espinoza;  
10 E-S-P-I-N-O-Z-A.

11                           **DIRECT EXAMINATION**

12 **BY MR. VIGILIA:**

13 Q. Good morning, Mr. Espinoza.

14 A. Good morning.

15 Q. Where are you currently employed?

16 A. I'm currently employed as a special agent with the  
17 California Department of Justice, Bureau of Gambling Control.

18 Q. How long have you been employed there?

19 A. Approximately six years.

20 Q. And are you a sworn peace officer?

21 A. Yes, I am.

22 Q. Have you held other law enforcement positions other than  
23 with the Department of Justice?

24 A. Yes.

25 Q. What are they?

## ESPINOZA - DIRECT / VIGILIA

1 A. Previous to my employment with the California Department  
2 of Justice, I was an investigator and a supervising  
3 investigator with the California Department of Alcoholic  
4 Beverage Control. I've been a peace officer for just over  
5 17 years.

6 Q. And did you attend Academies certified to train law  
7 enforcement officials in the state?

8 A. Yes.

9 Q. Are you -- what is your current assignment?

10 A. I'm currently assigned as an agent with the Bureau of  
11 Gambling Control, and my primary duties are the investigation  
12 of any and all criminal activity that occur on or about tribal  
13 casinos, card rooms, and then any other illegal type of  
14 gambling activity in the northern part of the state.

15 Q. Are you familiar with a business located at 778 B Street  
16 in Hayward called Net Connection?

17 A. Yes.

18 Q. How are you familiar with it?

19 A. I received information that the location was possibly  
20 operating as an illegal casino.

21 Q. And what did you do in light of that?

22 A. Last Friday I conducted an undercover operation there  
23 along with two other fellow agents and went inside and played  
24 in an undercover capacity.

25 Q. Again, can you describe specifically what it is that you

1 did during that operation?

2 A. Yes. This location is similar to any of the other  
3 Internet cafes that we've investigated. It's set up with  
4 approximately 40 computer stations. It contains a monitor, a  
5 keyboard, a mouse, and a magnetic card reader.

6 You go in and you contact the cashier at the desk, and you  
7 purchase credits. You purchase play on these machines. You  
8 receive a magnetic card, and you take that card to the station  
9 that you want to play, and you're allowed to play various types  
10 of slot-machine-style games.

11 Q. And specifically can you explain what you did at the  
12 Net Connection location? What's the first thing you did when  
13 you entered?

14 A. I went in and contacted the cashier, and asked him if I  
15 could play. I gave him \$20. He took my \$20 and loaded it onto  
16 a card, a magnetic card, and told me that I could choose a  
17 station that I would like to play on.

18 I sat down and played on one of the stations, and --

19 Q. Okay. Let me stop you there.

20 When you sat down at a station, what was in front of you?

21 A. In front of me was a computer monitor, about a 12- to  
22 15-inch monitor, similar to what you see on the floor here now,  
23 a keyboard, a mouse, and a magnetic card reader.

24 Q. Okay. And what's the first thing you did after you sat  
25 down?

1 A. I swiped the card through the magnetic card reader.

2 Q. And what happened after you swiped your card?

3 A. At that point the screen, you know, comes on and it tells  
4 you that it's loading your credits, and it gives you two  
5 choices on what you want to do; either surf the Internet or  
6 play the sweepstakes games.

7 Q. And did you try to use the Internet feature?

8 A. No.

9 Q. So you used the sweepstakes feature?

10 A. Yes.

11 Q. And what appeared after you chose that?

12 A. Various types of games. I believe I counted around 20  
13 different types of games that were offered. Gem It Up.  
14 There's a candy game, Superman, Prospector's Paradise or  
15 something like that. There were all different types of games.

16 Q. And did you play any of the games, make a selection to  
17 play any of the games?

18 A. Yes, I played several games.

19 Q. Okay. And can you describe specifically one of the games  
20 that you played, if you recall?

21 A. Yeah, the Prospector's game. It basically has a screen  
22 that comes up. There's nine different windows on the game.  
23 You use the mouse to maneuver the cursor, and you click on the  
24 "Reveal" button that's on the bottom right-hand corner. Each  
25 time you hit the "Reveal," the page folds out, folds over, and

1 reveals a fresh screen.

2 If you line up certain items on each screen, then you win  
3 credits, which are documented at the bottom of the screen as  
4 well.

5 You can also manipulate the amount of money that you want  
6 to bet by clicking the up or down button. Some of the minimums  
7 are 10 to 25 credits, and you can bet much more than that if  
8 you'd like.

9 Q. And about how long did you spend playing games at this  
10 location?

11 A. It was approximately 30 to 40 minutes I would say.

12 Q. And did you compile any winnings?

13 A. I did receive winnings. I didn't win overall, but I  
14 received winnings. After playing through my sweepstakes  
15 credits, there's another window that shows you the amount that  
16 you won, and I was able to take that amount to the cashier to  
17 get money back.

18 Q. And did you have the opportunity to observe what other --  
19 were there other customers at the time you were there?

20 A. Yes.

21 Q. What time did you go approximately?

22 A. It was midday, probably right around lunchtime. Maybe  
23 1:00 o'clock in the afternoon.

24 Q. Can you approximate about how many customers were there?

25 A. When I entered, I counted approximately five.

1 Q. And what did it appear that they were doing on the  
2 computers?

3 A. They were gambling. They were playing the same types of  
4 games.

5 MR. GRIFFIN: Objection, Your Honor. Move to strike  
6 his response where he said, "They were gambling." That calls  
7 for an impermissible lay opinion.

8 THE COURT: Well, you're talking too fast, and I can't  
9 hear you.

10 MR. GRIFFIN: I'm sorry, Your Honor.

11 Objection. Move to strike the answer. The witness  
12 responded that the customers were gambling. That is an  
13 impermissible lay opinion under Rule 701.

14 THE COURT: I don't understand what you said.

15 MR. GRIFFIN: There's no foundation for the witness'  
16 testimony that the other customers within the business were  
17 gambling. That was the witness' statement.

18 THE COURT: Oh, yeah. That will be stricken.

19 MR. GRIFFIN: Thank you, Your Honor.

20 BY MR. VIGILIA:

21 Q. Mr. Espinoza, you observed other customers were playing  
22 games similar to yourself?

23 A. Yes.

24 Q. Did you observe any of them -- any customers using the  
25 Internet?

1 A. No.

2 Q. Did you observe any customers who were doing any type of  
3 word processing?

4 A. No.

5 Q. Now, are there other services that you observed being  
6 offered at the location? Do you recall a copy machine or a fax  
7 machine? If you remember.

8 A. I don't recall seeing either of those. I believe that  
9 they were selling snacks in there, but I don't recall seeing  
10 either a copy or a fax machine.

11 Q. Did you speak with any employees at all?

12 A. The cashier.

13 Q. And that was just to do the transaction to begin playing?

14 A. To begin playing, then to cash out at the end.

15 Q. Okay. What was your cash-out procedure like?

16 A. Well, you log off of the computer screen. You click on  
17 the log off. Then you go up to the cashier and you hand him  
18 your card. He swipes the card, and there's an amount on that  
19 card; and he asks you if you want to cash out or redeem. Yes.  
20 And then he gave me money back for my original buy-in.

21 Q. Do you recall how much money you received?

22 A. I received about \$13 back of the 20.

23 MR. VIGILIA: Nothing further, Your Honor.

24 THE COURT: Thank you.

25

CROSS-EXAMINATION

1  
2 BY MR. GRIFFIN:

3 Q. Good morning, Mr. Espinoza.

4 A. Good morning.

5 Q. You testified that you received information that the  
6 Net Connection location at 778 B Street in Hayward was  
7 operating as an illegal casino; correct?

8 A. Correct.

9 Q. When did you receive that information?

10 A. Probably about a week before last Friday. So probably  
11 about almost two weeks ago.

12 Q. Prior to that time, were you aware of the Net Connection  
13 business located or operating in Hayward?

14 A. Not -- not specifically, no.

15 Q. And who did you learn the information from?

16 A. From the City Attorney.

17 Q. Who specifically?

18 A. The gentleman seated right there.

19 Q. Mr. Vigilia or Mr. Lawson?

20 A. Yes, Mr. Vigilia.

21 Q. Mr. Vigilia.

22 And you testified that you visited the location in Hayward  
23 last Friday; correct?

24 A. Correct.

25 Q. Now, did you visit that location for the specific purpose

1 of coming in here to testify today?

2 A. I visited that location to familiarize myself with its  
3 operation.

4 Q. With the understanding that you were coming in this week  
5 to testify in this proceeding?

6 A. Yes.

7 Q. And just to clarify, that was your first time at the  
8 Net Connection operation in the city of Hayward; correct?

9 A. Correct.

10 Q. While you were -- I believe you said you were within the  
11 business for approximately 30 to 40 minutes; is that right?

12 A. Correct.

13 Q. While you were there, did you see anybody using drugs?

14 A. No.

15 Q. Did you see anybody drinking alcohol?

16 A. No.

17 Q. Did you see any minors playing sweepstakes games?

18 A. No.

19 Q. Did you see anybody looking at inappropriate material,  
20 pornographic material, on the Internet?

21 A. No.

22 Q. Was the place -- was it brightly lit? Would you describe  
23 it as brightly lit?

24 A. I wouldn't say it was brightly lit. I would say it was  
25 adequately lit.

1 Q. Did you notice anyone loitering outside?

2 A. Yes.

3 Q. How many people?

4 A. A couple. Two, three people.

5 Q. Do you know whether or not they were customers of  
6 Net Connection?

7 A. Well, one of the gentlemen was here earlier wearing  
8 glasses.

9 Q. Mr. Rogers?

10 A. I don't know his name.

11 Q. Okay.

12 A. He was a black male. He was in and out out front. And  
13 then there were a couple of people that would go out and smoke  
14 cigarettes and then come back in.

15 Q. And all told there was about five people you said within  
16 the business?

17 A. When I entered.

18 Q. Now, you testified that you didn't see a copy or fax  
19 machine in the business; is that correct?

20 A. I didn't notice one.

21 Q. Were you looking for one specifically?

22 A. As a cursory examination, you know, we walk in and try and  
23 take a look at what's going on inside. You can't see  
24 everything, you know.

25 Q. You went up to the cashier station within the business,

1     though; right?

2     A.    Yes.

3     Q.    And you didn't notice the copy/fax machine adjacent to the  
4     cashier terminal?

5     A.    I don't recall seeing it.

6     Q.    Okay.  While you were there, I assume, you didn't do any  
7     forensic analysis or technical analysis of the software  
8     utilized by Net Connection to play the sweepstakes?

9     A.    Correct.

10    Q.    Other than what you described in direct examination, did  
11    you do any other investigation of the business, specifically  
12    Net Connection's business in Hayward?

13    A.    Could you repeat the question?

14    Q.    Sure.  Let me ask it a different way.

15            Did you attempt to obtain from the City of Hayward any  
16    information regarding the frequency of calls to the police for  
17    service at the Hayward Net Connection location?

18    A.    No.

19    Q.    You have no idea how much police activity is involved or  
20    not involved with respect to the operation of that business  
21    then; is that right?

22    A.    Correct.

23    Q.    You testified that when you walked into Net Connection's  
24    business and you went to the cashier, you gave the cashier \$20  
25    to play; is that right?

1 A. Correct.

2 Q. Did you make any -- did you or either of your colleagues  
3 that were with you ask for any free entries into the  
4 sweepstakes? Did you ask if you could play the game for free?

5 A. I believe that I asked him if I would receive any free  
6 credits if I bought in at a certain amount.

7 Q. What do you recall specifically?

8 A. I don't recall anything specifically. Generally when I go  
9 in, I'll ask if there's any free play. Most of the locations  
10 offer you some kind of free credits if you buy in at a certain  
11 amount. And I believe I asked him, "If I buy in 20, do I get  
12 any free credits?"

13 Q. Do you remember what the response was?

14 A. I think he told me that there wasn't any.

15 Q. Did anybody ask specifically, "Can I play for free?"

16 A. I did not ask if I could play for free.

17 Q. While you were there, did you observe any minors playing  
18 any sweepstakes games?

19 A. No.

20 Q. Have you ever testified before the Hayward City Council?

21 A. No.

22 Q. Have you been in contact with anybody from the City  
23 Attorney's Office in Hayward prior to the call you received you  
24 testified approximately a week ago Friday?

25 A. Yes.

1 Q. With respect to this particular business?

2 A. Well, it's kind of hard to explain. I'm going to have to  
3 kind of explain how things worked out.

4 Q. Let me ask you this question: Did you ever provide any  
5 information to the Hayward City Council regarding  
6 Net Connection's business in Hayward prior to February 19th,  
7 2013?

8 A. Did I provide any information about that location to the  
9 City?

10 Q. Yes.

11 A. No.

12 Q. Did you provide any information to the City Attorney's  
13 Office in Hayward regarding any other Internet business prior  
14 to February 19th, 2013?

15 MR. VIGILIA: Objection. Relevance.

16 MR. GRIFFIN: I'll withdraw it.

17 MR. VIGILIA: Objection. Relevance, Your Honor.

18 MR. GRIFFIN: I'll withdraw the question.

19 I have no further questions, Your Honor.

20 THE COURT: Tell me, how does one determine whether or  
21 not an instrument is a slot machine?

22 THE WITNESS: Well, the California Penal Code defines  
23 a slot machine under Section 330(a) of the Penal Code.

24 THE COURT: What does the code say?

25 THE WITNESS: The code basically says that if you have

1 an apparatus that accepts some kind of money, some kind of  
2 consideration to play -- money, coin, ticket, magnetic card --  
3 you have an element of chance or an element of randomness, and  
4 then you also have the third element which is a prize or some  
5 type of consideration, those are the three elements that make  
6 up a slot machine.

7           **THE COURT:** Well, you say the second is the element of  
8 randomness.

9           **THE WITNESS:** The element of chance or randomness.

10           **THE COURT:** So suppose that something is preprogrammed  
11 so there's not -- you know who the winners are going to be,  
12 it's not random.

13           **THE WITNESS:** It's random to the player when you go in  
14 there because you have no idea where that game could be.

15           **THE COURT:** Well, does the code say random to the  
16 player or the machine has to be random?

17           **THE WITNESS:** It says an element of chance in the  
18 game.

19           **THE COURT:** Well, the chance would indicate what,  
20 would indicate random?

21           **THE WITNESS:** I'm not sure I understand the question.

22           **THE COURT:** What is the code? You're going in to  
23 determine the machine you say by chance. What do you mean "by  
24 chance"?

25           **THE WITNESS:** There's an element of chance when you go

1 up to that machine and you play because you don't know, you  
2 have no control over what's going to come up next.

3 **THE COURT:** Well, suppose the machine knows?

4 **THE WITNESS:** Well, even a slot machine has a computer  
5 program that knows what jackpots are going to hit. Any  
6 Nevada-style or California-style slot machine has a program in  
7 it similar to, like, a sweepstakes. The sweepstakes may --  
8 they may have a set number of winners in it; and if the winners  
9 come early and you hit early, you may not have a big jackpot at  
10 the end. It's the same thing with the Nevada-style slot  
11 machine. There's computer programs in there that have programs  
12 on when the jackpots are going to hit.

13 **THE COURT:** Well, is there anything --

14 **THE WITNESS:** There's still an element of chance.

15 **THE COURT:** -- that determines what random is? You  
16 say random. Your definition of random, I want to establish, is  
17 random to the player as opposed to random -- suppose the  
18 machine is preset to pay off one prize, two small prizes, and  
19 three other small prizes, and that's it.

20 **THE WITNESS:** Right.

21 **THE COURT:** And, so, it's preset to do that as opposed  
22 to a Las Vegas slot machine that can pay the first award and  
23 the same award over and over and over again.

24 **THE WITNESS:** Actually, they're programmed -- they're  
25 programmed in the same way, a slot machine.

1           **THE COURT:** They're programmed in the same way?

2           **THE WITNESS:** They have a computer program.

3           **THE COURT:** How are they programmed?

4           **THE WITNESS:** Well, I'm not a computer expert; but  
5 based on my training and experience, they have a computer  
6 program in there that dictates when the jackpots will hit; and  
7 then the casinos purchase those slot machines based on the  
8 chances of them paying out.

9           **THE COURT:** So you say --

10          **THE WITNESS:** The casinos have to know -- the casinos  
11 have to know what the percentage of payouts are on the slot  
12 machines, otherwise they would go broke. So they purchase  
13 programs with slot machines at certain levels so that not only  
14 do the customers keep coming in and playing, but they also have  
15 an ability to make money. If it was completely random for the  
16 casinos, they would never make any money.

17          **THE COURT:** So your testimony is that slot machines,  
18 other than what we're talking about, you're talking about a  
19 regular slot machine, that they are programmable? They are  
20 programmed?

21          **THE WITNESS:** They contain computer programs.

22          **THE COURT:** That will tell who's going to win, how  
23 many winners?

24          **THE WITNESS:** That will have -- that will have a set  
25 number of winning amounts.

1           **THE COURT:** So when an owner of a slot machine puts a  
2 machine out on the floor, he knows how much that machine's  
3 going to make?

4           **THE WITNESS:** Over its lifetime.

5           **THE COURT:** Over a period of time, he knows?

6           **THE WITNESS:** Yes.

7           **THE COURT:** Okay. Fine. Thank you.

8           **MR. GRIFFIN:** Your Honor, with respect to that  
9 testimony as to the slot machines in particular, I believe the  
10 witness testified he's not a computer expert. So I understand  
11 that that was for your understanding; but for the record, I'd  
12 like to move to strike this witness' testimony with respect to  
13 how a slot machine works on an impermissible lay opinion  
14 grounds. The witness is not qualified to testify.

15           **THE COURT:** He tells me slot machines are programmable  
16 or programmed.

17           **MR. GRIFFIN:** But he also testified he didn't have any  
18 computer expertise or didn't have any experience or any  
19 computer expertise, Your Honor.

20           **THE COURT:** How can he tell whether or not this is a  
21 slot machine if he has no experience in it?

22           **MR. GRIFFIN:** Whether what is a slot machine,  
23 Your Honor?

24           **THE COURT:** What we're talking about here.

25           **MR. GRIFFIN:** That's my point, Your Honor. He can't.

1 THE COURT: He can't?

2 MR. GRIFFIN: He can't.

3 THE COURT: Okay. Fine.

4 MR. GRIFFIN: Can I ask one follow-up question,  
5 Your Honor, based on your questioning?

6 THE COURT: Sure.

7 MR. GRIFFIN: Or a short series of questions.

8 Q. Mr. Espinoza, lottery scratcher tickets are distributed --  
9 one way they're distributed is through vending machines; is  
10 that correct?

11 A. I believe so. I'm not familiar with the distribution of  
12 California Lottery items and tickets.

13 Q. Okay. In your vast expertise with the Department of  
14 Gambling Control, you don't have any experience with California  
15 lottery tickets or distribution of scratcher tickets?

16 A. The California Lottery has its own law enforcement agency  
17 that oversees the distribution, sale, and investigation of any  
18 problems with those. I mean, I know what a lottery scratcher  
19 is, but I don't work for the California Lottery.

20 Q. So you know what one is?

21 A. Yes.

22 Q. Have you ever purchased a California lottery ticket?

23 A. Yes.

24 Q. A scratcher ticket that is.

25 A. Yes.

## ESPINOZA - REDIRECT / VIGILIA

1 Q. And it comes off a roll; correct?

2 A. In some instances, I believe, I've seen them in a roll.

3 Q. Okay. Last time you bought one, how did it come?

4 A. From underneath the counter at a store somewhere.

5 Q. Was it -- do you know if when you purchased it --

6 A. I don't know if it was a roll or a flat or, you know.

7 Q. Do you know if when you purchased it, the person you  
8 bought it from just ripped the next one off the top and handed  
9 it to you?

10 A. He ripped it off of I think it was a row of them. I think  
11 they're stacked.

12 Q. At the time you bought the ticket before you scratched it  
13 off, did you know whether or not you won?

14 A. No.

15 Q. No. So there's an element of chance in that regard;  
16 correct?

17 A. Yes.

18 Q. From your perspective?

19 A. Yes.

20 MR. GRIFFIN: All right. No further questions,  
21 Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. VIGILIA:

24 Q. Mr. Espinoza, what you observed at the Net Connection  
25 business, whether or not what the system is is a slot machine

## ESPINOZA - REDIRECT / VIGILIA

1 or not, did it at least, in your perspective as a player, you  
2 know, appear to be mimicking that type of game?

3 A. Yes.

4 MR. VIGILIA: No further questions, Your Honor.

5 THE COURT: Fine. Thank you, sir --

6 THE WITNESS: Thank you.

7 THE COURT: -- Mr. Espinoza.

8 (Witness excused.)

9 THE COURT: All right, we'll take our midmorning  
10 recess at this point.

11 MR. GRIFFIN: Thank you, Your Honor.

12 THE COURT: You have a couple more witnesses?

13 MR. VIGILIA: We have one more witness, Your Honor.

14 THE COURT: One what?

15 MR. VIGILIA: One more and then we'll rest.

16 THE COURT: Okay. Fine.

17 (Recess taken at 10:58 a.m.)

18 (Proceedings resumed at 11:06 a.m.)

19 THE COURT: Okay.

20 MR. VIGILIA: Our last witness is Fraser Ritchie,  
21 Your Honor.

22 FRASER RITCHIE,

23 called as a witness for the Defendant, having been duly sworn,  
24 testified as follows:

25 THE WITNESS: I do.



## RITCHIE - DIRECT / VIGILIA

1 A. To go in -- to go into the establishment and attempt to  
2 view any type of gambling and/or -- and participate in using  
3 the computers that were inside the establishment.

4 Q. Okay. And what's the first thing you did when you went to  
5 this location during that operation?

6 A. As I entered the business, I went to the, I believe it  
7 would be, the main desk that was in the center of the  
8 establishment. I contacted a gentleman that was standing  
9 behind the counter.

10 Q. Okay. What did you do next after you contacted him?

11 A. I asked the gentleman if he could -- if I could sign up to  
12 play. He stated I could. He handed me a form that was a  
13 page -- it was approximately a half of a standard binder-size  
14 piece of paper.

15 Q. Okay. What was that form for?

16 A. It had -- requested information: My name, my address,  
17 birth date, personal information.

18 Q. Did you fill that form out?

19 A. Yes, sir, I did.

20 Q. And what happened after you filled the form out?

21 A. I returned the form to the gentleman. The --

22 Q. Okay.

23 A. I'm sorry.

24 Q. No. Finish your response.

25 A. The gentleman asked me how much I wanted to play. I

## RITCHIE - DIRECT / VIGILIA

1 advised him I wanted to put \$20 on a card, at which time I  
2 handed him \$20 of prerecorded police funds. He took the money,  
3 put it into a cash register that was in front of him. He  
4 handed -- or he pulled out a white credit card looking device,  
5 swiped it through an electronic reader that was attached to a  
6 computer monitor that was in front of him, and he advised me  
7 that I could go sit at any of the computers.

8 Q. Okay. And what did you do after he handed you a card?

9 A. I asked him if he could assist me because I didn't know  
10 how to play or how to get on the computer. He just told me to  
11 select a computer and sit down, and he would be right with me  
12 to assist me.

13 After that, I walked around the establishment looking for  
14 an open station where a computer was. I also wanted to monitor  
15 the people that were in there that were on computers. I was  
16 looking at their screens to see what -- if I could tell what  
17 they were doing.

18 Q. What were some of the other customers doing?

19 A. They were engaged in a video gaming type of system that I  
20 ended up playing.

21 Q. Okay. Did you see anyone using any word processing?

22 A. No.

23 Q. Was anyone on the Internet using Facebook or anything like  
24 that?

25 A. No.

## RITCHIE - DIRECT / VIGILIA

1 Q. So when you selected a terminal, what happened next?

2 A. I sat down between two women, and then the cashier came up  
3 behind me and advised me to swipe my reader card that I had he  
4 had given me through the machine, which activated the screen.

5 Q. Okay. And what did the screen look like?

6 A. The screen had, as I recall, there was two icons that came  
7 up. One was for the Internet. The other was a gaming icon.

8 Q. And did you try the Internet icon when you were there?

9 A. While I was there, I did try it, but I didn't try that  
10 first.

11 Q. Okay. So you just tried that, the gaming icon first?

12 A. Yes.

13 Q. So what happened after you selected it?

14 A. The gentleman told me, because as I selected the icon, it  
15 looked like some legal terminology and things like that came up  
16 and it was like a full screen's worth, he told me to click  
17 through that so there was no opportunity to read any of it.

18 As I did that, I went to a site that had different games  
19 on it, and it had in the far right side of the screen there was  
20 an arrow that allowed me to select more games.

21 I believe there was three different icons came up on each  
22 screen; and as I cycled through them, I was able to get through  
23 I believe it was like 10 or 15 different games to select from.

24 Q. Then did you play your -- do you recall how many games you  
25 played?

## RITCHIE - DIRECT / VIGILIA

1 A. I probably played probably about six or eight of them.

2 Q. Okay. I'm going to show you what's been premarked as  
3 Exhibit Number 3, Defense Exhibit 3.

4 Mr. Ritchie, can you take a look at the exhibit,  
5 Defense 3? Do you recognize any of the images?

6 A. Yes, sir, I do.

7 Q. What do you recognize them to be?

8 A. This is one of the games that I selected to play that was  
9 on the -- this was the icon that was on the computer screen.

10 Q. Okay. Can you flip to the second page there?

11 A. (Witness complies.)

12 Q. Does that image look familiar?

13 A. Yes, sir, it does.

14 Q. How do you recognize it?

15 A. I recognize that this is the same format that I observed  
16 while on that computer.

17 Q. About how long would you have played this particular game,  
18 if you remember?

19 A. I was going to say I probably went through this one three  
20 or four different cycles.

21 Q. Okay.

22 A. Three or four different times I guess you'd say.

23 Q. Right. And this is the Lucky Buck game for specifics;  
24 correct?

25 A. Yes, sir.

## RITCHIE - DIRECT / VIGILIA

1 Q. Can you describe, I guess, what the game looked like when  
2 you played it? After you press a button, what happens? The  
3 Lucky Buck game specifically.

4 A. The icons come up across the bottom of the screen and it  
5 asks -- I can't remember the exact verbiage, but it was  
6 basically, because the gentleman behind me that was working  
7 with the establishment told me that's what I wanted to bet or  
8 wager, and it came in different denominations. I believe there  
9 were 50 cents, 75 cents, a dollar, \$2, \$3. I think \$3 was the  
10 maximum on it.

11 Q. Okay. So you can select a wage amount level?

12 A. Yes.

13 Q. And after you selected that, then what would you do?

14 A. Then off to the bottom right-hand corner of the computer  
15 screen it had the word "Reveal" on it, which basically it  
16 activated the screen and as if a folding page kind of went, the  
17 screen would clear, and then the icons that were on that piece  
18 of paper that you just showed me would come up.

19 Q. Okay. And would it let you know whether or not you won  
20 anything or not?

21 A. Yes.

22 Q. When you were playing this game, could you tell whether or  
23 not the outcome, whether or not you won or loss, could you tell  
24 whether or not that was predetermined ahead of time?

25 A. No.

## RITCHIE - DIRECT / VIGILIA

1 Q. Do you have experience playing -- have you played a slot  
2 machine before?

3 A. Yes, sir.

4 Q. Did the playing experience seem to be different at all  
5 from playing on the slot machine?

6 A. No. It was quite similar.

7 Q. Did you win any -- I guess you win points. Did you win  
8 any points or prizes?

9 A. Yes.

10 Q. Okay. What did you win?

11 A. At the end of my session, I had 129,000 and some odd  
12 points; and at the beginning the gentleman told me that the  
13 points actually were pennies. So I asked him, "Was that \$129  
14 and some change?" And he said, "Yes, it was."

15 Q. Okay. And how long did you play the games at this  
16 location?

17 A. I believe it was 20 minutes to a half an hour or so.

18 Q. And in that period of time you were able to accumulate  
19 129,000 points?

20 A. Correct.

21 Q. At the end of your gaming session, what did you do?

22 A. I asked the gentleman how I cashed out. He explained to  
23 me to log off of my computer, and bring my credit card or the  
24 card to the cash register or where he was behind the counter.

25 Q. Okay. And after you brought your card there, what

1 happened?

2 A. He swiped it again through the electronic reader that was  
3 affixed to the computer screen. He then handed me \$129 in  
4 various denominations. He stated the change, I believe it was  
5 43 cents, would be put on a credit onto the card, and he  
6 advised I could keep the card so if I want to come back and  
7 play again, that I would have 43 cents on the card. They only  
8 dealt in dollar denominations.

9 Q. That's with respect to paying prizes?

10 A. Yes, sir.

11 Q. Did they give you a tax form, or anything like that, for  
12 the prizes?

13 A. No, sir.

14 MR. VIGILIA: Nothing further, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. GRIFFIN:

17 Q. Good morning, Mr. Ritchie.

18 A. Good morning, sir.

19 Q. When did you visit Net Connection's store in Hayward,  
20 California?

21 A. It was March 25th, 2013.

22 Q. Was that the first time you visited Net Connection's  
23 facility in Hayward?

24 A. Yes, sir.

25 Q. Mr. Ritchie, while you were in Net Connection's store --

## RITCHIE - CROSS / GRIFFIN

1 you said for 20 to 30 minutes; is that right?

2 A. Yes.

3 Q. Is that the only time you've been there?

4 A. Correct.

5 Q. While you were there, did you see any prostitution  
6 occurring?

7 A. Not that I was aware of.

8 Q. You said you were looking around and trying to observe  
9 what other people were doing; is that right?

10 A. Correct.

11 Q. Did you observe any drug use?

12 A. No, I did not.

13 Q. Did you observe anybody drinking alcohol?

14 A. I did not.

15 Q. Did you observe any minors playing any sweepstakes games?

16 A. I did not.

17 Q. Did you observe any other disturbances in the facility  
18 that would have warranted a call to the police?

19 A. No, sir.

20 Q. At any point in time, Mr. Ritchie, had you done any  
21 technical analysis or forensic analysis of the software  
22 utilized by Net Connection?

23 A. No, sir.

24 Q. Do you know if anybody within the City of Hayward has done  
25 that?

1 A. I do not.

2 Q. Have you ever testified with respect to Net Connection's  
3 business in front of the Hayward City Council?

4 A. No, sir.

5 Q. Do you have any idea, Mr. Ritchie, as you sit here today,  
6 whether the Police Department in the City of Hayward has  
7 received calls for service from the Net Connection facility in  
8 the City of Hayward?

9 A. I do not know, sir.

10 Q. As far as you're aware, there have been no such calls?

11 A. I do not know, sir.

12 Q. Now, you mentioned that when you were at Net Connection,  
13 you played the sweepstakes; right?

14 A. Yes, sir.

15 Q. Okay. And Mr. Vigilia showed you some screen shots --

16 A. Yes.

17 Q. -- that were marked as Defendant's Exhibit 3?

18 Were these screen shots of the actual game you played?

19 A. From what I recall of the icons, yes. I do recall the  
20 name Lucky Buck, the first page, I recall that one; but the  
21 icons that are on the second page, I don't know exactly if  
22 those were the ones that I saw.

23 Q. Did you print this out personally?

24 A. No, sir.

25 Q. How did you obtain these screen shots?

1 A. Mr. Vigilia just handed them to me.

2 Q. Okay. So this is not something -- this is an example of  
3 the game you were playing, it's not a screen shot of a game you  
4 were actually playing at the time you were at the facility;  
5 correct?

6 A. Correct, sir.

7 Q. Did Mr. -- strike that.

8 Now, you also indicated that after you finished playing  
9 the sweepstakes, you played the Internet or you clicked over to  
10 the Internet?

11 A. Yes, sir, I did.

12 Q. Did I hear you correctly in that regard?

13 A. Yes.

14 Q. Now, when you clicked over to the Internet, did you browse  
15 around the Internet at all? Did you do anything on the  
16 Internet?

17 A. Yes, I did.

18 Q. And what did you do?

19 A. I went to several common Web sites that I look at.

20 Q. Such as?

21 A. Channel 2 News, Craigslist, and I think there was a soccer  
22 Web site that I viewed.

23 Q. Did you notice anything different about your experience on  
24 the Internet at Net Connection versus what you might do at your  
25 home?

1 A. The noticeable difference there was a time -- a timer on  
2 the bottom of the screen.

3 Q. And when did you first notice the timer at the bottom of  
4 the screen?

5 A. The first time that I logged onto the Internet, I noticed  
6 a -- I believe it was 60 minutes or 60 on the lower right-hand  
7 corner; and, as I stated earlier, I clicked off of the Internet  
8 to the gaming section and then back to the Internet on two or  
9 three different occasions, and I noticed that the time was  
10 increasing as I was continuing to game.

11 Q. Okay. So did you at any point -- well, let me back up.

12 THE COURT: What do you mean by the time was  
13 increasing?

14 THE WITNESS: That number -- because it stated on the  
15 bottom I believe it has the word "Time" or "Time Left," and  
16 when I first clicked onto it, when I first started playing, I  
17 noticed it said 60. And then I went back to the gaming; and as  
18 I was playing, I noticed as I was increasing my prizes or the  
19 winnings, I would click out of the gaming and back to the  
20 Internet and I noticed that 60 had gone up to 80 something I  
21 believe it was. So the time was increasing versus the time  
22 decreasing as if I was paying for the Internet time.

23 THE COURT: When you switched over from the games to  
24 the Internet, could you use some of your winning points on the  
25 games to play the Internet?

1           **THE WITNESS:** No.

2           **THE COURT:** How did you pay for the Internet?

3           **THE WITNESS:** When I signed up for the initial \$20  
4 that I gave the gentleman --

5           **THE COURT:** Yes.

6           **THE WITNESS:** -- he said I had \$20 in credit.

7           **THE COURT:** Yes.

8           **THE WITNESS:** So when you sign onto the computer, you  
9 have a choice of going to the Internet or going to the game.  
10 So I would sign out of the gaming and sign onto the Internet.

11           **THE COURT:** No. The point I'm -- suppose that you're  
12 playing on the games --

13           **THE WITNESS:** Yes.

14           **THE COURT:** -- and you made a hundred points.

15           **THE WITNESS:** Yes.

16           **THE COURT:** Can you use some of those hundred points  
17 to get over on the Internet? If you played the Internet for a  
18 few moments, would you lose some of your points?

19           **THE WITNESS:** I never noticed that, sir. I never  
20 noticed any diminished prizes or winnings when I was --

21           **THE COURT:** You said at one time you left the games to  
22 go on the Internet.

23           **THE WITNESS:** Yes.

24           **THE COURT:** When you left the games, you had a certain  
25 number of winning points; right?

1           **THE WITNESS:** Correct.

2           **THE COURT:** Then you went over to the Internet. How  
3 could you use the Internet if you didn't have any credits on  
4 the Internet? Where did you get the right to use the Internet?  
5 It was just free to you?

6           **THE WITNESS:** No. I believe when I paid the original  
7 \$20, I had I believed it was 60 minutes on the Internet to use  
8 the Internet if I wanted to. But when I went to the gaming  
9 section, I would go on the gaming section. Then when I went  
10 back to the Internet, my time was actually increased versus  
11 decreased.

12           **THE COURT:** Well, then when you went from the Internet  
13 time you had to the games, were you taking some points off your  
14 Internet time?

15           **THE WITNESS:** Not that I noticed, sir, no.

16           **THE COURT:** So the game was free?

17           **THE WITNESS:** I assume so if that's what you're asking  
18 me, is did any of my points deduct from the gaming section.

19           **THE COURT:** Yes.

20           **THE WITNESS:** That, I never looked at to see if any of  
21 the points deducted.

22           **THE COURT:** Oh, I see. Okay.

23 **BY MR. GRIFFIN:**

24 Q. Mr. Ritchie, when you were on the Internet, did you notice  
25 that the timer was decreasing at the time you were spending on