

July 21, 2021

Ms. Client
VentureCo
Client@Ventureco.com

Dear Client:

This letter is in response to a request from VentureCo (the “Company”) for a high-level general overview of the criminal gambling law risks associated with sweepstakes such as the sweepstakes run by SweepCo.

This overview is based on prior research performed into the reported federal and state case law and criminal gambling statutes. Our analysis is based on common federal and state gambling provisions. If your Company desires a more thorough inquiry into sources that will require significant additional expense, for example, locating and reviewing unreported cases and county and municipal ordinances, please let us know.

We are not licensed to practice law in any jurisdiction other than Nevada and the relevant federal courts; therefore, this letter is intended only as an overview of the apparently relevant law, and our firm encourages the retention of local counsel in each jurisdiction in which you might have an interest. No assurance can be given that federal, state or local officials in any particular jurisdiction may not take a different view of the issues discussed herein. This letter and all information, assertions and statements herein are expressly subject to the “Limitations of the Analysis” discussion at the end of this letter, including, but not limited to, the restriction that this letter is not to be reproduced, distributed, or filed publicly without the express written consent of this firm.

Summary

Online sweepstakes, like those offered by SweepCo, in which free entry is easy and has the same opportunity to win the same prize as entries accompanying a purchase (“Sweepstakes”), are common and under modern interpretations of gaming laws present little risk of violating gambling laws. In general, criminal gambling laws are violated when an event consists of participants parting with consideration for the chance of winning a valuable prize. Most sweepstakes are carefully structured to avoid the consideration element. This is done by not requiring any payment for participation in drawings, having a common prize pool per event, and treating free entries with the same dignity and chance of winning as entries associated with a purchase. Therefore in most, and possibly all, jurisdictions, such Sweepstakes are unlikely to be deemed a gambling event because the consideration element is not present.

While measures have been taken for such Sweepstakes to minimize risk, risks cannot be completely eliminated and your company should be aware of such risks even if such risks are theoretical or infinitesimal and have not been the subject of any known recent enforcement actions. However, there is nothing to indicate any imminent enforcement of older opinions and theories of consideration, and the risks of enforcement using such older theories of consideration seem to be highly remote.

The General Legal Framework of Gambling

A discussion of the general legal framework of gambling is being provided below as background for the analysis contained in this letter.

Generally, in the U.S., gambling involves any activity in which a person places a bet or wager. Generally, a bet or wager occurs when a person risks something of value (consideration) on the outcome of an uncertain event: (i) in which the bettor does not exercise control (chance) or (ii) which is determined predominantly by chance, with the opportunity to win something of greater value than what was risked (prize).

In most, but not all, states, when any one of the three elements (consideration, chance or prize) is missing, the activity is not considered gambling. Gambling has many subcategories, including lotteries, pari-mutuel wagering, house-banked games, player-banked games, and bookmaking.

In general, with the exception of sports wagering and Native American gaming, gambling prohibitions are primarily the domain of state law. Federal law provides assistance to states in enforcing state gambling prohibitions across state and national borders.

With regard to interstate and international wagering, the courts in the U.S. have determined that such wagers occur both where the bettor resides and at the location from which the betting service provider offers such services.¹ Therefore, U.S. federal and state laws will apply to any operation that arguably allows bettors to risk something of value on a chance event to win something that could be deemed to be a prize.²

The Basic Elements

As stated above, the basic elements of most gambling transactions are (i) prize, (ii) chance and (iii) consideration. These three elements are, in general, consistently relied upon to identify a gambling activity. There are significant differences in interpretation between jurisdictions with regard to these elements.

¹ See *United States v. \$734,578.82 in United States Currency*, 286 F.3d 641 (3rd Cir. 2002). See also *United States v. Cohen*, 260 F.3d 68 (2d Cir. 2001).

² Generally there are three federal acts that assist states in enforcement of their gambling laws: the Illegal Gambling Business Act, the Wagering Paraphernalia Act, and the Travel Act.

Prize

The element of prize is generally uniform across jurisdictions and means any valuable prize or any prize with more than a nominal market value. The Sweepstakes on the SweepCo site have valuable prizes that are often accompanied by cash and therefore such Sweepstakes will be deemed to have prizes in all U.S. jurisdictions.

Chance

Jurisdictions can be divided into three general categories when evaluating the element of chance in an activity: (i) predominance jurisdictions, (ii) material element jurisdictions, and (iii) any chance jurisdictions or prohibited jurisdictions.

Predominance jurisdictions look at an activity to see if chance or skill is the dominant element in the activity. If a game is like chess, with skill dominating over chance in determining the winner, the activity will not be deemed to have the gambling element of chance. If a game is like a slot machine or video poker machine, then chance clearly dominates over skill in determining the winner, and the activity will be deemed to have the gambling element of chance.

Material element jurisdictions look at the character of the activity to see if chance plays a material role. For example, even if an activity is dominated by skill, as in golf, the activity is still deemed to have the gambling element of chance if chance has any significance in the activity.

The Sweepstakes are drawings and will thus meet the element of chance under any test used.

Consideration

Jurisdictions can be divided into three general categories when evaluating the element of consideration in an activity: (i) valuable consideration jurisdictions, (ii) promoter benefit jurisdictions, and (iii) any valuable consideration jurisdictions.

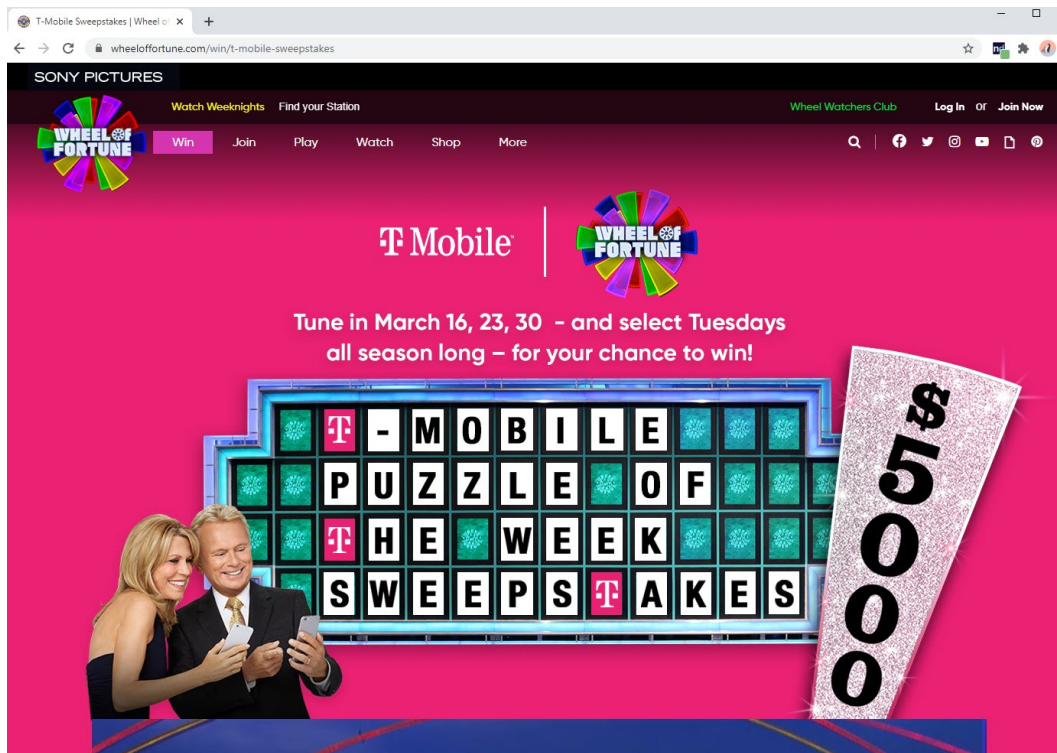
The modern view held by the federal jurisdiction and most state jurisdictions are "valuable consideration" jurisdictions. This means that participants must part with valuable consideration, usually money, in order to meet the gambling element of consideration. In these jurisdictions, an alternative free method of entry can be effective in eliminating the consideration element if it is: (i) readily available, (ii) is truly free, and (iii) offers the free players substantially the same opportunity to win a prize as all other players. Generally, such criteria are called the "Equal Dignity Rule." In essence, free entries must have the same or equal dignity with respect to the contest as entries associated with or ancillary to a purchase.

In a few states, there are existing statutes and court opinions that deem the consideration element to be present if the promoter derives a benefit from the event, even if the participants do not have to provide valuable consideration. Such jurisdictions are called “promoter benefit” jurisdictions.

In even fewer states, older court opinions hold that the element of consideration may be deemed to be present if any participant provides any valuable consideration, even if other participants provide no valuable consideration. Such jurisdictions are called “any valuable consideration” jurisdictions.

Modern Consideration Theories and Risks

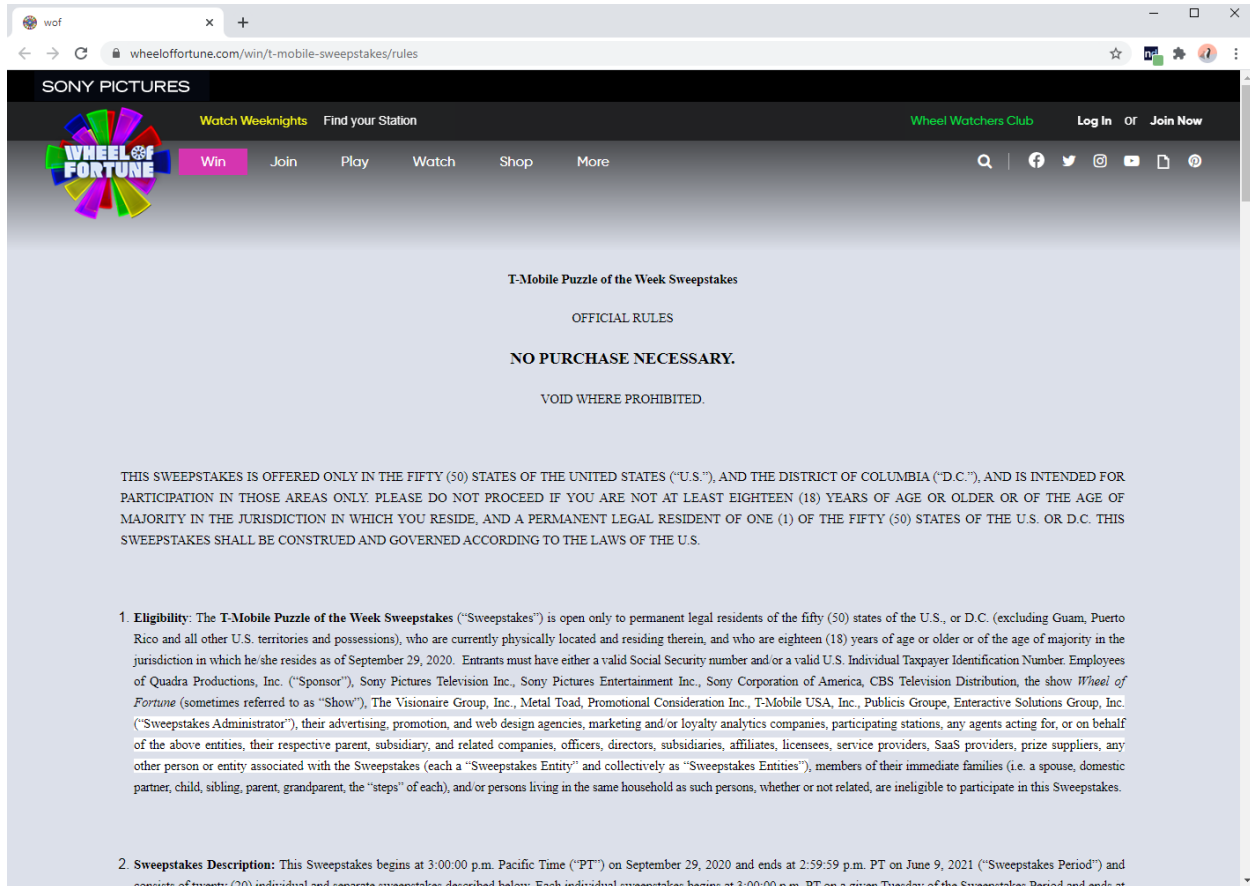
As you may have noticed, despite the promoter benefit and contract consideration theories mentioned, many contests from well-known brands and entities operate without any geographical limitations. For example, T-Mobile and Sony Pictures recently ran a contest with a \$5000 prize as seen in the screen shot below:



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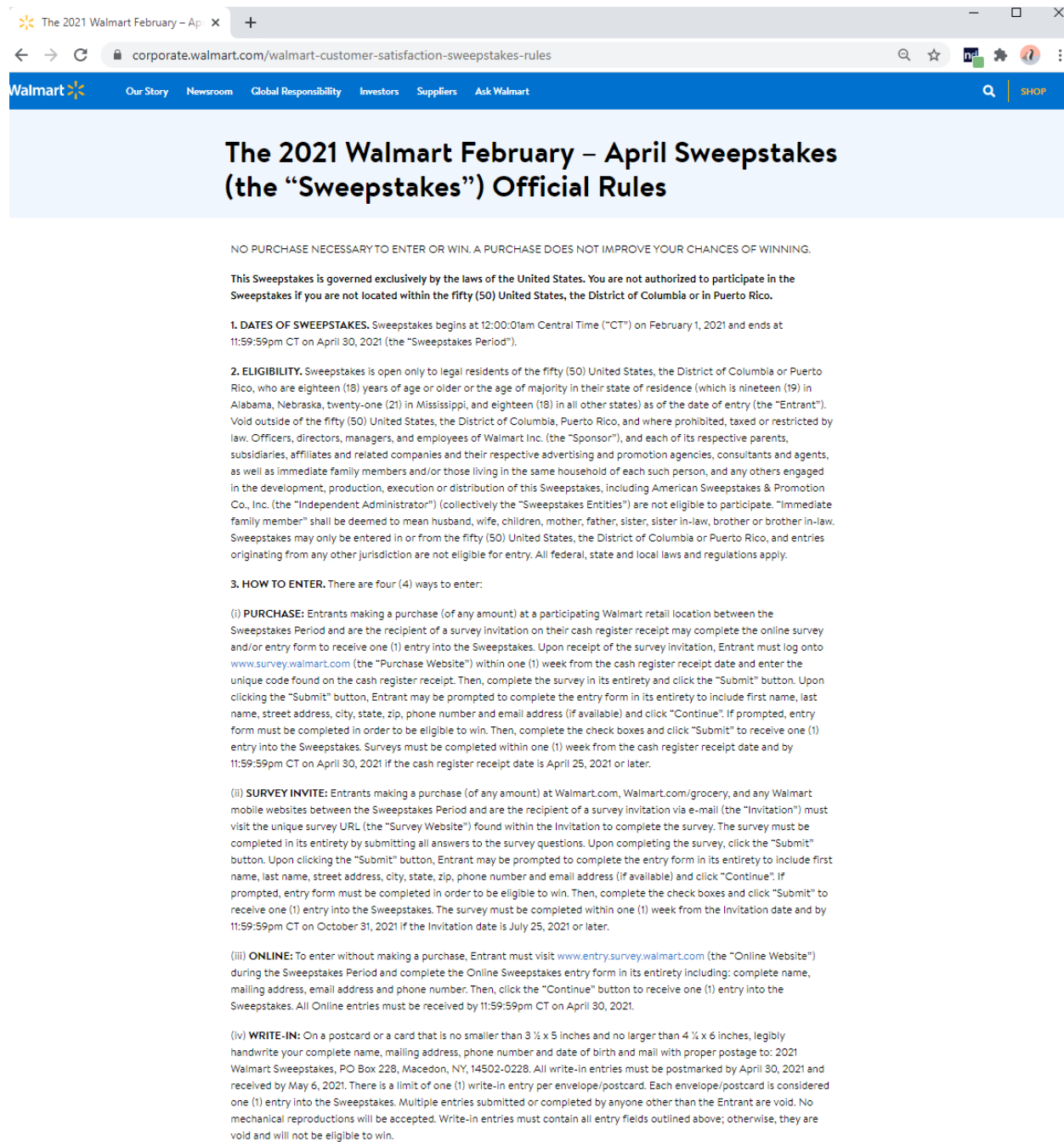
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A screen shot of the online rules are presented below:



Note that the rules permit anyone 18 and older (or the age of majority) from any state (excluding Puerto Rico) to enter and be eligible to win the drawing. Under promoter benefit and contract consideration theories all elements of gambling are likely present in this contest. However, T-Mobile, Sony Pictures and Quadra Productions (the Sponsors of the contest) are unlikely to face enforcement actions because modern enforcement under such theories is uncommon.

Similarly, Walmart recently ran a sweepstakes with a grand prize of \$1000. Entry may be made through accompanying purchases, survey completions, online entries, and entry by mail as shown in the rules below:



The screenshot shows a web browser window with the URL corporate.walmart.com/walmart-customer-satisfaction-sweepstakes-rules. The page title is "The 2021 Walmart February – April Sweepstakes (the “Sweepstakes”) Official Rules". The content includes the following sections:

NO PURCHASE NECESSARY TO ENTER OR WIN. A PURCHASE DOES NOT IMPROVE YOUR CHANCES OF WINNING.

This Sweepstakes is governed exclusively by the laws of the United States. You are not authorized to participate in the Sweepstakes if you are not located within the fifty (50) United States, the District of Columbia or in Puerto Rico.

1. DATES OF SWEEPSTAKES. Sweepstakes begins at 12:00:01am Central Time (“CT”) on February 1, 2021 and ends at 11:59:59pm CT on April 30, 2021 (the “Sweepstakes Period”).

2. ELIGIBILITY. Sweepstakes is open only to legal residents of the fifty (50) United States, the District of Columbia or Puerto Rico, who are eighteen (18) years of age or older or the age of majority in their state of residence (which is nineteen (19) in Alabama, Nebraska, twenty-one (21) in Mississippi, and eighteen (18) in all other states) as of the date of entry (the “Entrant”). Void outside of the fifty (50) United States, the District of Columbia, Puerto Rico, and where prohibited, taxed or restricted by law. Officers, directors, managers, and employees of Walmart Inc. (the “Sponsor”), and each of its respective parents, subsidiaries, affiliates and related companies and their respective advertising and promotion agencies, consultants and agents, as well as immediate family members and/or those living in the same household of each such person, and any others engaged in the development, production, execution or distribution of this Sweepstakes, including American Sweepstakes & Promotion Co., Inc. (the “Independent Administrator”) (collectively the “Sweepstakes Entities”) are not eligible to participate. “Immediate family member” shall be deemed to mean husband, wife, children, mother, father, sister, sister-in-law, brother or brother-in-law. Sweepstakes may only be entered in or from the fifty (50) United States, the District of Columbia or Puerto Rico, and entries originating from any other jurisdiction are not eligible for entry. All federal, state and local laws and regulations apply.

3. HOW TO ENTER. There are four (4) ways to enter:

- (i) **PURCHASE:** Entrants making a purchase (of any amount) at a participating Walmart retail location between the Sweepstakes Period and are the recipient of a survey invitation on their cash register receipt may complete the online survey and/or entry form to receive one (1) entry into the Sweepstakes. Upon receipt of the survey invitation, Entrant must log onto www.survey.walmart.com (the “Purchase Website”) within one (1) week from the cash register receipt date and enter the unique code found on the cash register receipt. Then, complete the survey in its entirety and click the “Submit” button. Upon clicking the “Submit” button, Entrant may be prompted to complete the entry form in its entirety to include first name, last name, street address, city, state, zip, phone number and email address (if available) and click “Continue”. If prompted, entry form must be completed in order to be eligible to win. Then, complete the check boxes and click “Submit” to receive one (1) entry into the Sweepstakes. Surveys must be completed within one (1) week from the cash register receipt date and by 11:59:59pm CT on April 30, 2021 if the cash register receipt date is April 25, 2021 or later.
- (ii) **SURVEY INVITE:** Entrants making a purchase (of any amount) at Walmart.com, Walmart.com/grocery, and any Walmart mobile websites between the Sweepstakes Period and are the recipient of a survey invitation via e-mail (the “Invitation”) must visit the unique survey URL (the “Survey Website”) found within the Invitation to complete the survey. The survey must be completed in its entirety by submitting all answers to the survey questions. Upon completing the survey, click the “Submit” button. Upon clicking the “Submit” button, Entrant may be prompted to complete the entry form in its entirety to include first name, last name, street address, city, state, zip, phone number and email address (if available) and click “Continue”. If prompted, entry form must be completed in order to be eligible to win. Then, complete the check boxes and click “Submit” to receive one (1) entry into the Sweepstakes. The survey must be completed within one (1) week from the Invitation date and by 11:59:59pm CT on October 31, 2021 if the Invitation date is July 25, 2021 or later.
- (iii) **ONLINE:** To enter without making a purchase, Entrant must visit www.entry.survey.walmart.com (the “Online Website”) during the Sweepstakes Period and complete the Online Sweepstakes entry form in its entirety including: complete name, mailing address, email address and phone number. Then, click the “Continue” button to receive one (1) entry into the Sweepstakes. All Online entries must be received by 11:59:59pm CT on April 30, 2021.
- (iv) **WRITE-IN:** On a postcard or a card that is no smaller than 3 1/2 x 5 inches and no larger than 4 1/2 x 6 inches, legibly handwrite your complete name, mailing address, phone number and date of birth and mail with proper postage to: 2021 Walmart Sweepstakes, PO Box 228, Macedon, NY, 14502-0228. All write-in entries must be postmarked by April 30, 2021 and received by May 6, 2021. There is a limit of one (1) write-in entry per envelope/postcard. Each envelope/postcard is considered one (1) entry into the Sweepstakes. Multiple entries submitted or completed by anyone other than the Entrant are void. No mechanical reproductions will be accepted. Write-in entries must contain all entry fields outlined above; otherwise, they are void and will not be eligible to win.

Note that, by its rules, the contest is open to anyone 21 years of age or older in any of the 50 states (not including D.C. or Puerto Rico). Again, under promoter benefit and contract consideration theories all elements of gambling are likely present in this contest. However,

Walmart is unlikely to face enforcement actions because modern enforcement under such theories is uncommon.

Even though prior research has shown that states like Alabama, Georgia, Minnesota, Ohio, Wisconsin have promoter benefit statutes, promoter benefit court opinions, or court opinions that reject the effectiveness of an AMOE that meets the equal dignity rule, I have not located any modern enforcement action against any sweepstakes with an AMOE that meets the equal dignity rule, and I have located no reports of enforcement against T-Mobile or Walmart despite both companies clearly conducting operations in these states.

General Legal Concepts of Note

There are a couple of general legal concepts that often get lost in gaming surveys, opinions, letters and similar documents. These concepts are important because someone that does not have a legal background may not understand the nuances in such letters, and the nuances embodied in these concepts are essential to understanding letters of this nature.

Questions of Law and Questions of Fact

It is important to understand that the legal standard used by a particular jurisdiction is only half of the equation in determining whether an event contains consideration. Although the standard or test used by a state to assess the question of whether consideration is present in an event is a question of law, whether any particular scheme meets such test is a question of fact. Legally, questions of fact are reserved to the interpretations and subjective analysis of triers of fact (usually juries). This means that even if states have common legal standards for assessing consideration in an event, the application of such standards may vary based upon subjective analysis.

Although this letter can identify the legal standards a particular jurisdiction is likely to employ in assessing whether consideration is present in an event, we cannot identify what level of proof is needed to meet such standards, because these questions are questions of fact that juries are tasked with determining.

Legal Risk vs. Enforcement

Often in emerging areas of gaming, enforcement lags significantly behind the emergence of any actualization of potential risk. For example, in early 2011 several online poker sites claimed their compliance with applicable laws based upon over six years of open operations without any interference from law enforcement. However, this changed in April of 2011, when those same sites were facing criminal indictments for violating federal gambling prohibitions.

This is not to imply that the online sweepstakes industry is facing imminent enforcement action, because that is something we simply do not know. Currently, several large publicly traded

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companies run promotions similar to the Sweepstakes and have done so for more than a decade. In addition, while online sweepstakes are a relatively new phenomenon, terrestrial and mail-in sweepstakes have been popular activities for decades. Despite such operations, I could locate no current public gaming law enforcement actions against any sweepstakes operator that is operating with an effective AMOE.

Particular Federal Laws

The Federal Wire Act

The Federal Wire Act is the federal statute that is most often cited as the most relevant federal gambling statute in the information age. This statute makes it illegal for providers to offer or take bets, or information that assists in placing bets, from U.S. gamblers over any electronic communications means, unless otherwise authorized by a particular state. The statute's relevant provision (Section 1084(a)) provides:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.³

Currently, the Federal Wire Act has been successfully applied in enforcement actions against those involved with online sports wagering sites. The view of the only published Federal Court of Appeals opinion on the subject is that the Federal Wire Act applies only to sports wagering activities.⁴ Conversely, a Federal District Court in Utah has opined that the Fifth Circuit Court of Appeal's Opinion may be limited to the prohibitions of the Federal Wire Act related to the transmission of bets; however, such analysis was for the purposes of analyzing a motion to dismiss Federal Wire Act charges against those engaged in transmitting information regarding winnings on poker and casino wagers for failure to state a valid charge.⁵ In 2011, the U.S. Department of Justice issued an opinion from its Office of Legal Counsel indicating that it

³ 18 U.S.C. § 1084(a) (2001).

⁴ See *In re MasterCard Int'l Inc.*, 132 F. Supp. 2d 468, 482 (E.D.La. 2001), affirmed, 313 F.3d 257 (5th Cir 2002).

⁵ See *U.S. v. Lombardo*, 639 F.Supp.2d 1271 (D. Utah 2007). Defendant Lombardo was engaged in providing funds transfers and wagering account management for online poker and casino sites. Lombardo was charged with violations of the Federal Wire Act. Lombardo sought to have the Federal Wire Act charges dismissed on the grounds that the prosecution failed to allege any sports wagering. The Court held that the standard for review was in a light most favorable to the non-moving party, and that the Fifth Circuit's opinion in *In re Master Card* did not address whether sports wagering was a requirement of all of the Federal Wire Act prohibitions, additionally, Utah is not in the Fifth Circuit; therefore, the opinion of the Fifth Circuit Court of Appeals is not precedential and the court denied the motion. The matter ultimately settled and an analysis on the merits was never performed or published.

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is the official opinion of the Department of Justice that the Federal Wire Act only applies to sports wagering activities (the "2011 Federal Wire Act Opinion").⁶

However, in 2018, the U.S. Department of Justice issued a new opinion from its Office of Legal Counsel indicating that it is the official opinion of the Department of Justice that the Federal Wire Act applies to all forms of gaming and applies to all gaming activities conducted over the internet (the "2018 Federal Wire Act Opinion").⁷ The 2018 Federal Wire Act opinion was challenged by the State Lottery of New Hampshire and one of its vendors that supplies the lottery with online lottery products, and in 2020, the Federal District Court in New Hampshire set aside the 2018 Federal Wire Act Opinion, citing that the 2011 Federal Wire Act Opinion was a better interpretation of the applicability of the Federal Wire Act.⁸ The U.S. Department of Justice appealed the decision of the New Hampshire District Court to the First Circuit Court of Appeals, which ultimately agreed with New Hampshire District Court, in finding that the 2018 Federal Wire Act Opinion was flawed and the analysis under the 2011 Federal Wire Act Opinion was a more reasoned analysis and that the Federal Wire Act Applies to sports wagering only.⁹

As cited by the First Circuit Court of Appeals, the 2018 Federal Wire Act Opinion was likely prepared based on lobbying efforts from a single large political donor and casino operator. Since the 2018 Federal Wire Act Opinion, there has been a change in the executive branch of the U.S. government, and there appears to be no appetite for the new administration to defend the political favors granted by the prior administration.

Therefore, at this time, while there is some disagreement over the Federal Wire Act, the more reasoned approach is that the Federal Wire Act is limited to sports wagering activities. As the Sweepstakes are not based on the outcome of sporting events or athletic performances of athletes, the Federal Wire Act should not apply to such Sweepstakes under currently prevailing interpretations.

⁶ See Department of Justice Memorandum Opinion Regarding *WHETHER PROPOSALS BY ILLINOIS AND NEW YORK TO USE THE INTERNET AND OUT-OF-STATE TRANSACTION PROCESSORS TO SELL LOTTERY TICKETS TO IN-STATE ADULTS VIOLATE THE WIRE ACT*. Drafted September 20, 2011, Released December 23, 2011.

⁷ See Department of Justice Memorandum Slip Opinion Regarding *RECONSIDERING WHETHER THE WIRE ACT APPLIES TO NON-SPORTS GAMBLING*, Drafted November 2, 2019, Released January 15, 2019.

⁸ See *NH Lottery Comm'n v. Barr*, 19-cv-163 (D.N.H. June 3, 2019).

⁹ See *NH Lottery Comm'n v. Rosen*, 19-1835 (1st Cir. Jan. 20, 2021).

The Illegal Gambling Business Act

The Illegal Gambling Business Act also is a companion law to the Federal Wire Act. This statute prohibits any person from conducting, managing, supervising, directing, owning, or operating an illegal gambling business. 18 U.S.C. § 1955. An illegal gambling business is defined as an operation that violates *state* law, involves five or more persons, and either is in substantially continuous operation for more than 30 days or has gross revenue of more than \$2,000 in any single day. *Id.*

Under this act, anyone who participates in a gambling business, other than as a bettor, may be subject to criminal liability. *Id.*; *see also United States v. Hunter*, 478 F.2d 1019, 1022 (7th Cir. 1973) (stating Section 1955 reaches both high level bosses and street level employees). Often the question is what constitutes “managing” or “conducting” an illegal gambling business. In *United States v. Rowland*, the Sixth Circuit Court of Appeals held that for purposes of conducting an illegal gambling business, participation and not financial interest is all that must be proven. 592 F.2d 327, 328-29 (6th Cir. 1979). “The pleasure of participation and association in a gambling enterprise . . . is sufficient . . . [for a conviction under Section 1955].” *Id.* at 329. In addition, the United States Supreme Court has concluded that “conduct” can be any degree of participation in the illegal gambling business except participation as a customer. *See Sanabria v. United States*, 437 U.S. 54, 70 (1978).

Most circuit courts have adopted a simple test: a person “conducts” a gambling business if he or she performs any function that is “necessary or helpful in” the illegal business. *See, e.g., United States v. Merrell*, 701 F.2d 53, 55 (6th Cir. 1983). Under this broad analysis, virtually all, if not all, employees of the business can be indicted. *See id.* (determining that a janitor who cleaned and straightened up gambling room “conducted” gambling operation); *see also United States v. Bennett*, 563 F.2d 879, 883-84 (8th Cir. 1977) (noting cocktail waitress in illegal casino could be participant).

The Illegal Gambling Business Act has been the primary federal statute employed by the Department of Justice in enforcement actions against online poker sites in 2011. The Illegal Gambling Business Act is a powerful tool for law enforcement and its use by the Department of Justice effectively ended the activities of PokerStars, Full Tilt, and Absolute Poker in the United States. Additionally, because the Illegal Gambling Business Act requires a predicate state offense as part of the federal law’s violation, it underscores the importance of the role of state law in online gaming events.

Provided the Sweepstakes are and remain compliant with state gaming laws, there should be no risks presented by the Sweepstakes under the Illegal Gambling Business Act.

The Unlawful Internet Gambling Enforcement Act.

The most modern federal act aimed at online gaming is the Unlawful Internet Gaming Enforcement Act (“UIGEA”). The UIGEA is a complex statute with many definitions but only two operative provisions. The first essentially prohibits the acceptance of any funds, in a laundry list of manners, to facilitate unlawful Internet gambling.¹⁰ The second requires the Board of Governors of the Federal Reserve System to adopt regulations applicable to financial institutions regarding a requirement for financial institutions to identify and block unlawful Internet gambling transactions.¹¹ In essence, the UIGEA is not a gambling prohibition statute, but it is a financial regulation and prohibition statute.

Many news reports claimed that the UIGEA expressly made certain forms of online gaming illegal while declaring other activities, such as fantasy sports, to not be gambling. However, the expressed rule of construction specifically states “**Rule of construction - No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.**”¹²

Violations of the UIGEA are not prohibited gambling violations, but funds transfer and financial transaction prohibitions. Certain financial transactions are exempted from the UIGEA even though such transactions may be gambling under other statutes. Among the exemptions are the following:

- Participation in any game or contest in which participants do not stake or risk anything of value other than—
 - personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or

¹⁰ 31 U.S.C. §5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling
No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling--

(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;

(3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or

(4) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

¹¹ 31 USC §5364.

¹² 31 USC §5361(b) (emphasis added).

- points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor.¹³

The UIGEA does not classify or reclassify any activity as gambling or not gambling itself. For example, the UIGEA does not classify online poker as illegal gambling, just as it did not make fantasy sports legal throughout the United States. Although some activities are exempted from the prohibitions of the UIGEA, such activities may still violate state law and thus subject operators to liability under state law and the IGBA.

As the Sweepstakes are available to play without risking anything of value, the Sweepstakes should not violate the UIGEA so long as they also comply with applicable state laws.

Other Legal Theories Applicable to Online Gambling

Other federal laws such as the Travel Act, the Wagering Paraphernalia Act, money laundering laws, and wire fraud laws may also be used against online gaming operations. However, there must be additional facts to support prosecution under such laws. For example, in the 2011 indictments of major online poker sites wire fraud law violations were charged because of alleged practices of coding poker transactions as the sale of gold supplies, pet supplies and cleaning supplies to disguise the true nature of the transactions.

State officials have also targeted Internet gambling operators under a variety of legal theories, from violation of consumer protection laws to illegal promotion of gambling.¹⁴ For example, the states of Missouri and Wisconsin brought civil suits against Unistar, the software supplier and contracted operator of the United States Lottery, owned by the Coeur d'Alene Tribe (Idaho), a Native American Indian tribe.¹⁵ These suits sought to enjoin the operation of the

¹³ 31 USC §5362(1)(E)(ix).

¹⁴ See *Nixon v. Interactive Gaming & Communications Corp.*, 164 F.3d 1102 (8th Cir. 1999) (prohibition against using Internet gambling site to receive wagers from Missouri residents); see also *Thompson v. Handa-Lopez, Inc.*, 998 F. Supp. 738 (W.D. Tex. 1998) (suit alleged breach of contract, fraud, and violations of Texas Deceptive Trade Practices Act where private litigant attempted to recover winnings from an Internet gambling site); *State v. World Interactive Gaming Corp.*, 1999 N.Y. Misc LEXIS 425 (N.Y. Co. Sup. Ct. 1999) (act of entering a bet and transmitting information from New York via Internet is enough to constitute gambling activity within New York State); *Haines v. Visa USA, Inc.*, No. CV 980858 (CA. Super. Ct. 1998) (counterclaim alleged credit card companies engaged in illegal business practices for granting merchant licenses to Internet casinos); *State v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715 (Minn. Ct. App. 1997) (consumer protection action for engaging in deceptive trade practices, false advertising, and consumer fraud by advertising to Minnesota residents that online gambling is legal).

¹⁵ See *Nixon v. Coeur d'Alene Tribe*, 164 F.3d 1102 (8th Cir. 1999); *Wisconsin v. Coeur d'Alene*, No. 97-C-711-S, at 4 (W.D. Wis. Feb. 18, 1998). The Wisconsin Court of Appeals held that “[o]nce a tribe leaves its own lands and conducts gambling activities on state lands, nothing in the Indian Gaming Regulatory Act suggests that Congress

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United States Lottery. Ultimately, both courts concluded that the states had jurisdiction over Unistar because it “solicited participation in the lottery through a ... [web] page expressly directed at [the state’s] residents.”¹⁶ (The Wisconsin suit was initially filed in state court and the Missouri suit was filed in federal court.)

In addition, there are legal issues regarding the business practices of the site that may fall under the Federal Trade Commission (“FTC”) definition of deceptive and unfair trade practices; however, analysis of these issues is beyond the scope of this letter and of our firm’s current assignment.¹⁷

State Registration and Bonding Requirements

A few states permit sweepstakes provided bonding and registration requirements are met. In New York, all games of chance with prizes in excess of \$5,000 are required to file a registration with the state division of corporations and are required to post a surety bond. Likewise, in Florida, all sweepstakes with prizes in excess of \$5000 are required to submit a filing fee, and register the contest with the state. In addition, the Florida requires contest promoters to post a securing bond or trust account to ensure the prize is awarded. Finally, Rhode Island, requires that all games of chance offered by retail businesses must register with the state if the prizes exceed \$500 in value.

Most state registration forms and procedures are available online. However, many sweepstakes with significant prizes will exclude New York, Florida, and/or Rhode Island to avoid the added administrative task of registering and obtaining bonds for each sweepstakes or drawing offered. Others will ensure that prizes do not exceed \$5000 and are not offered in conjunction with retail activity in Rhode Island.

intended to preempt the State’s historic right to regulate this controversial class of economic activities.” *Wisconsin* at 8. The Court of Appeals instructed the district court to initially determine whether the Tribe’s Internet lottery is a gaming activity conducted on Indian lands of the Tribe. “If the court concludes the lottery is not conducted on Indian lands when a participant plays from a computer located in Missouri, it must grant the State’s motion to remand, and the issue of tribal sovereignty will be decided in the first instance by the state courts.” *Id.*

¹⁶ See *Wisconsin*, supra at 8.

¹⁷ The Colorado Attorney General and the U.S. Department of Justice have both opined that all activities that appear to suggest that online gambling is legal are deceptive trade practices under the Federal Trade Commission Act and the Colorado Deceptive Trade Practices Act. See *Testimony of Deputy Assistant Attorney General John Malcom, before the Senate Committee on Banking Housing and Urban Affairs*, March 18, 2003. See also the *Attorney General of Colorado Information Release Regarding Online Gaming*, August 6, 2001. Additionally, the Attorney General of Colorado believes that disseminating information from an offshore gambling site violates the Colorado Organized Crime Control Act. See *id.*

Limitations of the Analysis

The law related to Internet gaming is evolving and often changes at a rapid pace and in response to changing public policy. This letter is based on our limited examination of materials we gathered for prior matters. We are not licensed to practice law in any state covered in this letter except Nevada; the coverage of laws of states other than Nevada is therefore intended only as an overview of apparently applicable laws. No assurance can be given that any court of law or any official authorized to enforce such laws, in any jurisdiction discussed in this letter, will not take a different view of these laws. Furthermore, courts and public officials in one jurisdiction may rely on decisions and opinions in another jurisdiction. Local counsel should therefore be retained in each jurisdiction in which you have an interest.

Although we strive to keep abreast of changes in the law that impact the online gaming industry, we can offer no assurance that we will always learn of all such changes, or learn about such changes in a timely manner. Because of these limitations, we expressly disclaim any responsibility to notify you, or to update this letter, in the event that any law, rule, regulation, or any other governing body changes, modifies, repeals, or adopts any law, rule, or regulation that may impact the analysis in this letter. Therefore, we recommend that your Company keeps current with industry news, since many of the issues addressed in this letter may be the subject of disputes that are resolved and reported in an informal manner that may not come to our attention.

This letter is a written reasoned expression of professional judgment by a member of the Nevada state bar related to the company's business and the provision of services to likely prospective adult customers in relation to historically applicable federal and state gaming laws. This letter is dependent on operational base assumptions regarding the Company's business as identified in the Basic Premise section and has analyzed such operations with regard to potentially applicable criminal gaming laws. However, this letter is not an opinion letter as set forth in the currently published American Bar Association (ABA) Accord governing opinion letters. While the ABA Accord recognizes 22 different letters that can be the subject of "opinion letters," the ABA Accord does not have rules for recognizing an analysis of criminal gambling laws as an approved opinion letter. Our firm has not examined, and makes no statement with respect to, any other aspect of the law in, or relevant to, any of the jurisdictions discussed in this letter. Our firm also makes no statement with respect to the licensing laws, tax laws, commercial laws, trade practice laws, state laws, state regulations, anti-terrorism laws, money laundering laws, federal regulations, municipal code, ordinances, treaties, accords, privacy laws, securities laws, racketeering laws, organized crime laws, banking laws, intellectual property laws, or any other laws as they may concern your business. The discussion in this letter does not encompass other business law limitations, regulations and/or requirements.

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This letter is intended solely for the use of VentureCo in connection with the factual circumstances described herein. It may not be relied upon or utilized by any other person or entity or for any other purpose, or reproduced, distributed, or filed publicly by any person or entity without the express written consent of this firm.

The statements made herein are based upon, and subject to, the veracity of the information our firm has been given and the assumptions, restrictions, limitations and qualifications stated herein.

Our firm trusts the analysis in this letter is helpful in identifying the criminal gambling laws present with the Sweepstakes. If you would like a more detailed analysis of any of the issues presented in this letter, please contact us.

Sincerely,

YOUR ATTORNEY