

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

QUEEN OF VIRGINIA SKILL &  
ENTERTAINMENT, LLC, and BELLE  
HOLDINGS, INC.,

Plaintiffs,

v.

SHANNON L. TAYLOR, in her  
official capacity as Commonwealth  
Attorney for Henrico County, and  
JASON MIYARES, in his official  
capacity as Attorney General  
of the Commonwealth of Virginia,

Defendants.

Civil Case No. CL24-

**PETITION TO SET ASIDE CIVIL INVESTIGATIVE DEMAND AND COMPLAINT  
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

NOW COME Plaintiffs Queen of Virginia Skill & Entertainment, LLC (“QVS”) and Belle Holdings, Inc. (“Belle”) (collectively, “Plaintiffs”), through the undersigned counsel, who state as follows for their Petition to Set Aside Civil Investigative Demand and Complaint for Declaratory Judgment and Injunctive Relief against Defendants Shannon L. Taylor, in her official capacity as Commonwealth Attorney for Henrico County (“Taylor”), and Jason Miyares, in his official capacity as Attorney General of the Commonwealth of Virginia (“Attorney General Miyares”) (collectively, “Defendants”):

## INTRODUCTION

1. Plaintiffs have filed this action to set aside a civil investigative demand served by Attorney General Miyares against Belle, to stop ongoing harassment by Defendants, and to obtain an adjudication of their rights that, to date, Defendants have obstructed.

2. Belle owns and operates a Buffalo Wild Wings restaurant franchise in Henrico County ("BWW").

3. QVS is a manufacturer of games of skill that has operated in Virginia since 2016. QVS prides itself on following the law and being a good citizen in the community. QVS has contributed over \$1.5 million dollars to charitable causes in Virginia since it began operating.

4. QVS's skill games, referred herein as QVS2 Games, are legal games in the Commonwealth of Virginia and do not violate the recently enacted skill game ban in Virginia Code § 18.2-325. That statute provides the following specific definition of an illegal skill game:

"Skill game" means an electronic, computerized, or mechanical contrivance, terminal, machine, or other device *that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game*, the outcome of which is determined by any element of skill of the player and that may deliver or entitle the person playing or operating the device to receive cash or cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash or cash equivalents whether the payoff is made automatically from the device or manually.

Va. Code § 18.2-325(6).

5. As explained herein, the QVS2 Games are not prohibited "skill games" because they do not "require the insertion of a coin, currency, ticket, token, or similar object to operate, active, or play a game," which is one of the required elements of an illegal skill game under Va. Code § 18.2-325(6).

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6. Despite this fact, Defendants have baselessly accused QVS and its retail customers, like Belle, of operating illegal skill games and, as a result, being subject to severe civil penalties.

Beginning in September 2024, Plaintiffs' reputations have been tarnished as a result of baseless threats leveled against them by Defendants. Defendants have threatened Plaintiffs with civil litigation to be brought by either or both Defendants, seeking the assessment of civil penalties, the seizure of their property and an injunction against the operation of their business.

7. The Attorney General has also harassed QVS retail customers, like Belle, by issuing a civil investigative demand ("CID") under the Virginia Fraud Against Taxpayers Act ("VFATA") seeking voluminous information regarding its association with QVS. *See* Exhibit A, CID. The VFATA investigation was designed to imply wrongdoing by QVS and its business partners, and it is intended as yet another threat of civil enforcement carrying significant penalties. Moreover, the CID, in particular, was intended to intimidate Belle and influence QVS's business partners to stop working with QVS. VFATA imposes significant civil penalties of up to \$21,916 adjusted for inflation, plus treble damages sustained by the Commonwealth, and anyone found to have violated the law is additionally liable for the Commonwealth's reasonable attorney's fees and costs.

8. Along with the CID, Defendant Attorney General Miyares publicly released a memo directed to Virginia Commonwealth Attorneys specifically and falsely accusing QVS and its retailers, like BWW, of violating Virginia's ban on skill games, which carries significant civil penalties of \$25,000 and the seizure of any gaming equipment.

9. Attorney General Miyares' memo was extraordinary. It was not a formal legal opinion on a question of law that had been requested by a government official and prepared pursuant to statute governing formal attorney general opinions. Instead, the memo functioned as a public declaration—on Office of the Attorney General ("OAG") letterhead—that the QVS2 Game was illegal, and that QVS and its business partners, like Belle, were engaged in illegal conduct. Attorney General Miyares used the unofficial memo to act as both judge and prosecutor, purporting

to apply the law to QVS and its business partners without affording them the due process to formally respond or defend themselves in the appropriate tribunal.

10. Meanwhile and in response to Attorney General Miyares' unofficial memorandum, Commonwealth Attorneys, like Taylor, have directed law enforcement to issue warnings to retail locations, like BWW, that operate QVS2 Games, falsely accusing them of operating prohibited skill games and threatening civil penalties and the seizure of the gaming devices that Virginia businesses like Belle operate.

11. Defendants are threatening Plaintiffs with such extreme penalties not because of any illegal conduct. As explained herein, the QVS2 Game is legally compliant and is not a prohibited "skill game." Instead, Defendants are retaliating against Plaintiffs because Defendants resent QVS's lobbying efforts to repeal the skill game ban and QVS's public support of a lawsuit challenging the constitutionality of the skill game ban. The Attorney General has not enforced the skill game ban against any of the other games that are operating in Virginia. Nor has the Attorney General issued any public statements or memorandum regarding skill games other than the QVS2 Game, despite the proliferation of similar games in the Commonwealth. The Attorney General is specifically targeting QVS games because of QVS's exercise of its constitutional right to petition the Government.

12. Moreover, while Defendants publicly accuse Plaintiffs of violating the law and being subject to significant civil penalties, Defendants have not brought any legal action against Plaintiffs. Thus, Plaintiffs have no ability to defend themselves. Defendants are depriving Plaintiffs of the ability to present the issue to a court to resolve.

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13. This conduct has caused ongoing irreparable harm to the Plaintiffs and their business, and it continues to unjustly malign their reputations.

14. Moreover, Defendants' conduct violates the due process guarantee of the Virginia Constitution because Defendants have effectively endeavored, in their capacities as prosecutors or executive officials, to rewrite Virginia statutory law in order to support their baseless theory, and to declare that Plaintiffs have violated the law.

15. This declaratory judgment action is the only avenue for Plaintiffs to vindicate and clarify their rights, clear their good names, and put a stop to the innuendo, accusations, and unsupported declarations of wrongdoing from Defendants.

16. Accordingly, Plaintiffs have filed this action in order to have the CID against Belle set aside, and obtain from this Court the finality denied them by the Defendants, and a declaratory judgment that their conduct, the facts of which are not in dispute, is not subject to the civil penalties threatened by Defendants.

#### **THE PARTIES**

17. QVS is a Wyoming limited liability company with its principal place of business in Georgia. It is authorized to do business in the Commonwealth of Virginia.

18. Belle is a Virginia corporation with its principal place of business in Henrico County.

19. Attorney General Miyares is the current Attorney General of the Commonwealth of Virginia. He is named as a defendant in his official capacity.

20. Taylor is the current Commonwealth Attorney for Henrico County. She is named as a defendant in her official capacity.

#### **JURISDICTION AND VENUE**

21. This Court has subject matter jurisdiction over this dispute pursuant to Va. Code §§ 17.1-513 and 8.01-184.

22. This Court has personal jurisdiction over Defendants as citizens and officers of the Commonwealth and/or pursuant to Va. Code § 8.01-328.1(A)(1).

23. Venue is proper in this Court pursuant to Va. Code § 8.01-261(2) because this action is brought in the county in which the official office of the Henrico County Commonwealth Attorney is situated, and alternatively pursuant to Va. Code § 8.01-262(4) because this action arose in Henrico County.

### **FACTS**

#### **A. Plaintiffs**

24. QVS manufactures and distributes legal games of skill throughout the country. It has operated in Virginia since 2016, only occasionally suspending operations to comply with applicable law.

25. Belle was founded in 1997 and owns eight franchised Buffalo Wild Wings Restaurants in Virginia including the BWW in Henrico.

26. Over the past 27 years, Belle has been an active member of the community, sponsoring and/or donating to numerous schools, youth leagues, churches and nonprofits.

27. Belle has also been a leader in Buffalo Wild Wings' philanthropic initiatives, including a yearly fundraising program to benefit St. Jude's Children's Hospital and the Team Up for Kids program to benefit local Boys and Girls Clubs in Virginia.

#### **B. The QVS2 Game**

28. In August 2024, QVS developed the QVS2 Game.

29. Shortly thereafter, Belle began to offer the QVS2 Game to its customers.

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30. The QVS2 Game is a video touch screen game of skill played on cabinets or terminals that requires puzzle-solving skills to successfully play. Each game displays symbols that

are arranged in grids and the player uses his or her memory, dexterity, pattern recognition and skillful strategy to solve the puzzle. A careful and skillful player can win more than the cost to play the game every time.

31. In order to play the QVS2 Game at BWW, a customer interested in playing must tell the cashier on duty how much money he or she wants to play on the QVS2 Game, and the customer pays by handing cash to the cashier. No other form of payment is accepted. The cashier takes the funds and secures them in a secure cash box or bag separate from and unconnected to any game devices.

32. Once a prospective player has paid, the cashier accesses a touchscreen point of sale system for the QVS2 Game (the "POS") behind the counter that only the cashier can reach and use. The POS is a computerized device with a touchscreen display, much like an iPad, and a printer for printing receipts. The POS is electronically connected to the QVS2 Game via an ethernet cable connection.

33. The POS operates much like how any other point of sale system works at restaurants and convenience stores. The cashier signs onto the POS by waving an RFID access card and typing in his or her PIN code. Using the icons on the POS touchscreen, the cashier records the customer's purchase of credits on the QVS2 Game. The POS system remotely communicates with the QVS2 Game terminal and applies credits to the QVS2 Game based on the amount of cash received from the customer. The POS records the amount of credits purchased and played on the QVS2 Games and can print a summary of all transactions.

34. No coin, currency, ticket, token, or similar object is ever inserted into the QVS2 Game or the POS system for the game to activate or operate.

35. The QVS2 Game, like other games of skill that Belle has operated at BWW over the years, has provided Belle—a local small business—with a sustainable, supplemental stream of income that offset decreasing margins as a result of inflation.

### C. The Applicable Law

36. Historically, in Virginia and the United States and under the common law, games of skill have been legal, while games of chance have been deemed gambling devices.

37. For several years, and based on that distinction, QVS freely offered its games of skill in Virginia.

38. In 2020, that bright-line distinction changed in Virginia. That year, the General Assembly voted to ban so-called “skill games.”

39. At all applicable times, Plaintiffs complied and continue to comply with this ban, except during the two-year period when the ban was enjoined as unconstitutional by the Greensville Circuit Court in *Sadler Bros. Oil Co. v. Commonwealth*, CL21-207 (“*Sadler*”).

40. Under the current statutory framework initiated by the ban, a prohibited “skill game” is:

an electronic, computerized, or mechanical contrivance, terminal, machine, or other device **that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game**, the outcome of which is determined by any element of skill of the player and that may deliver or entitle the person playing or operating the device to receive cash or cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash or cash equivalents whether the payoff is made automatically from the device or manually. “Skill game” includes (i) a device that contains a meter or measurement device that records the number of free games or portions of games that are rewarded and (ii) a device designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than the amount that is ordinarily required to play the game. “Skill game” does not include any amusement device, as defined in § 18.2-334.6.

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Va. Code § 18.2-325(6) (emphasis added).



41. Under section 18.2-325, an unlawful “skill game” is distinguished from the separately defined unlawful chance-based gambling device, which is identified in subsection (3)(b) as:

[a]ny machine, apparatus, implement, instrument, contrivance, board, or other thing, or electronic or video versions thereof, *including but not limited to those dependent upon the insertion of a coin or other object for their operation*, which operates, either completely automatically or with the aid of some physical act by the player or operator, in such a manner that, depending upon elements of chance, it may eject something of value or determine the prize or other thing of value to which the player is entitled....

Va. Code § 18.2-325(3)(b) (emphasis added).

42. The operation of either a “skill game” or gambling device of chance subjects one to liability for a civil penalty of \$25,000 for each device and the possible forfeiture and attachment of all such devices “and any moneys within” via an action in equity that may be brought by the Attorney General, a Commonwealth Attorney, or an attorney for the locality. Va. Code § 18.2-331.1

43. The difference between the consideration/payment requirements in the definitions of “skill games” and gambling games of chance could not be starker. While an unlawful skill game requires the *insertion* of a coin or similar *object*, an unlawful gambling game of chance is broadly construed as “including but not limited to” devices that, *inter alia*, “require the insertion of a coin or other object for their operation.”

44. Under remedial principles of statutory interpretation, the exclusion of the broader payment language in the definition of “skill game” must be deemed intentional.

45. Why would the General Assembly establish this distinction? One reason was to lessen the impact of the sea change that the General Assembly had wrought when it removed the distinction between skill versus chance under Virginia law.

46. Undoubtedly, the General Assembly recognized that Virginians have long enjoyed playing games of skill, and that the removal of the element of chance from the definition of unlawful gambling would render illegal scores of games that Virginians have played for fun and profit for decades, if not centuries. Some of these games are played on electronic devices like smart phones, computers, and gaming consoles, that do not have a bill, coin or currency acceptor and do not require the “insertion” of a tangible object to pay to play the games. By defining “skill games” in the way the General Assembly did, the legislature aimed to limit the impact and scope of the new prohibition.

47. Since the change in the law in 2020, the Office of the Virginia Attorney General has recognized and even emphasized the distinction and the “insertion” requirement.

48. In defending the constitutionality of the “skill game” language in *Sadler*, in which Attorney General Miyares was a defendant, the OAG characterized the language as imposing a content-neutral ban based on the operational elements of the targeted devices. The Attorney General repeatedly argued that the ban on skill game devices applies “*only* [to] those that (1) ‘require the insertion of a coin, currency, ticket, token, or similar object to operate,’ (2) include an outcome determined by any element of skill of the player and (3) that may deliver or entitle the person playing or operating the device to receive cash or cash equivalents...” (emphasis added). The Attorney General emphasized that in order to be an illegal device, a game must, in addition to meeting the other two elements “require ‘insertion’ of consideration.”

49. Importantly, QVS publicly supported the efforts of the Plaintiffs to overturn the skill game ban in *Sadler*, which has drawn the ire of both Attorney General Miyares and Governor Glenn Youngkin.

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50. In the 2024 General Assembly session, both the House of Delegates and Senate passed legislation to overturn the “skill game” ban and instead tax and regulate games of skill. QVS likewise supported this legislative effort.

51. Despite the bicameral passage of the legislation and broad approval for the taxing and regulation of games of skill, Governor Youngkin vetoed the legislation.

**D. The QVS2 Game Is not an Unlawful “Skill Game.”**

52. The QVS2 Game does not require the insertion of a coin, currency, ticket, token, or similar object to operate. Therefore, it does not violate the ban on “skill games.” Because it does not violate the ban on skill games, its operation or manufacture does not trigger the civil penalties available under VFATA or Va. Code § 18.2-331.1.

53. The conclusion that the QVS2 Game does not fall within the definition of “skill game” is supported by several legal opinions—including two by former Virginia Attorneys General. Under basic principles of statutory construction and the unambiguous language of the statute, the prohibition on “skill games” does not apply to games like the QVS2 Game that do not require the insertion of an object to operate.

54. The electronic activation of the QVS2 Game by the cashier with the POS does not qualify as “insertion,” let alone insertion of the required tangible “object.”

55. QVS heard rumors that the Attorney General was considering taking adverse action against QVS. In an attempt to prevent any hasty and ill-considered action by the Attorney General, on the morning of September 26, 2024, attorneys for QVS sent a letter to the Attorney General reminding him of representations made by his office in the *Sadler* litigation and attaching the opinion letters, which outline the legal authorities supporting the QVS2 Game. These letters are attached as Exhibit B. Apparently this correspondence was ignored, because later that day the

Attorney General issued a memorandum accusing QVS and its retailers of illegally operating skill games and subject to a \$25,000 civil penalty.

#### **E. Defendants' Threatened Enforcement**

56. Defendants have ignored the unambiguous language of the applicable statutes and asserted that the QVS2 Game is unlawful, and they have cited Plaintiffs' manufacture and operation of the QVS2 Game as unlawful.

57. On September 26, 2024, Attorney General Jason Miyares issued a "memorandum" on official letterhead determining the QVS2 Game to be an illegal skill game ostensibly because the General Assembly *intended* to ban even games of skill that do not require insertion of an object to operate and invoking the threat of a civil penalty under Va. Code § 18.2-331.1. The Attorney General's memorandum is attached as Exhibit C.

58. Attorney General Miyares offered no support for that assertion, and no legislative history exists in support of that assertion. Instead, Attorney General Miyares' memo effectively eliminates the "insertion" requirement, imputes words to the statute that do not exist, obfuscates the dictionary definition of "object," and ignores the case law and other legal arguments presented in the opinion letters obtained by QVS.

59. Attorney General Miyares' memo also specifically declares that the QVS2 Game is illegal, asserting that "[t]he QVS2 device ... is a 'skill game,' meaning that it is a banned 'gambling device.'"

60. The memo itself particularly unusual because, although it appeared on OAG letterhead and offered a clearly flawed legal conclusion with respect to the definitions in Va. Code § 18.2-325, it was not released as an official advisory opinion pursuant to Va. Code § 2.2-505, which provides that the "Attorney General shall give his advice and render official advisory

opinions in writing *only when requested in writing to do so by*” specified government officials, including the Governor, legislators, judges, and Commonwealth Attorneys. (emphasis added).

61. Instead, Attorney General Miyares’ informal and ill-considered “opinion” applied his legal conclusion to a specific set of facts and accused QVS and its business partners of wrongdoing without providing them any opportunity to respond or defend themselves.

62. Essentially, Attorney General Miyares has wielded an unofficial legal memorandum (albeit on official OAG letterhead) to act as both prosecutor and judge against QVS and its business partners. All the while, Attorney General Miyares has not initiated the civil action provided for in Va. Code § 18.2-331.1 and intimated in the memorandum, thereby depriving QVS and its business partners, including Belle, of the opportunity to defend themselves and rebut the accusations in a court of jurisdiction.

63. Attorney General Miyares did not notify QVS that he was going to publicly declare their games illegal. Attorney General Miyares did not provide QVS with an opportunity to respond or defend itself against his baseless and erroneous accusation.

64. On October 2, 2024, former Attorney General Anthony Troy sent a letter to Commonwealth Attorneys (distributed by the Virginia Association of Commonwealth Attorneys (“VACA”)) responding to the Attorney General memo and pointing out the egregious flaws in the facts and legal analysis.

65. On October 7, 2024, former Attorney General Jerry W. Kilgore sent a letter to Commonwealth Attorneys care of VACA similarly opining that the QVS2 Game “cannot satisfy the second element” of the “skill game” definition “because it does not require the insertion of any physical object to operate.” The Troy and Kilgore letters to Commonwealth Attorneys are attached hereto as Exhibit D.

66. Despite the letters from former Attorneys General Troy and Kilgore, Attorney General Miyares has not corrected his erroneous memo and Defendants continue to threaten Plaintiffs with civil penalties and falsely accuse them of operating illegal skill games.

67. As a result, Commonwealth Attorneys from across Virginia, including Taylor, have threatened businesses operating the QVS2 Game with civil penalties.

68. On or around October 21, 2024, Taylor and the Henrico County Police Division coordinated visits to local businesses operating the QVS2 Game, including BWW, at which the businesses were advised that their QVS2 Game was not legal and threatening businesses, employees, and patrons with civil penalty.

69. For example, on or around November 4, 2024, Taylor and the Henrico County Police Division again coordinated another round of visits at which they directly demanded that locations offering the QVS2 Game, including BWW, disable the games and, and again threatened civil actions.

70. As part of both visits, fliers bearing the imprimatur of Taylor's office and the Henrico County Police Division asserting that the QVS2 Game and similar games were illegal were delivered to Belle.

71. On November 12, 2024, Taylor's office and the Henrico Police Division delivered yet another flier to Belle, and, upon information and belief, other businesses in Henrico, again threatening the imposition of a "civil proceeding . . . seeking 1. A civil penalty in the amount of \$25,000 per gambling device, [and] 2. Seizure of the gambling device."

72. Faced with this pressure, Belle has made the difficult decision to temporarily suspend its operations of the QVS2 Game.

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73. Several of QVS's other business partners throughout the Commonwealth have made similar decisions to turn off their QVS2 Games in response to baseless legal threats of seizure and civil penalties from local Commonwealth Attorneys and police who have decided to follow Attorney General Miyares' memo.

74. The suspension of QVS2 Game operations by Belle and others has caused irreparable, ongoing harm to QVS, including, but not limited to a drastic diminution of revenue that if not allayed will result in QVS's insolvency and dissolution.

75. In addition to Taylor's threats, on or around October 15, 2024, Attorney General Miyares served Belle with a Civil Investigative Demand ("CID") pursuant to the VFATA, Va. Code § 8.01-216.10 seeking documents related to the QVS2 Game.

76. Attorney General Miyares issued the CID, a copy of which is attached as Exhibit A, "in connection with an investigation ... into possible violations of [VFATA], specifically the manufacture for sale, sale, and distribution of illegal gaming devices in violation of" Va. Code § 8.01-216.3(A)(6), and "conspiracy to do the same in violation of" Va. Code § 8.01-216.3(A)(3). In other words, Attorney General Miyares has imputed to QVS a violation of VFATA, but he has not initiated an action against QVS to test that theory. As discussed above, persons exposed to VFATA liability risk civil penalties of over \$20,000 and liability for treble damages and the Commonwealth's attorney fees and costs.

77. The CID should be set aside because Attorney General Miyares lacks a reasonable basis to believe that there is a violation of VFATA with respect to the QVS2 Game. *See* Count I, *infra*.

78. While Attorney General Miyares' memorandum and press statements have expressed certainty that the QVS2 Game is illegal, he has refused to initiate the threatened civil

action against QVS, Belle or any other location offering the QVS2 Game. Instead, he has taken the oblique approach of “investigating” QVS pursuant to VFATA and further harassing QVS’s business partners.

79. Similarly, while Taylor has coordinated and participated in sweeps of local businesses threatening them with a similar civil action if they do not turn off their QVS2 Games, she has yet to formally act on the threats of “imminent” action.

80. In both cases, the simple explanation is that Defendants are aware of their untenable legal position.

81. Defendants have ignored the “insertion” requirement and adopted broad interpretations of the statute’s scope, including that the use of the word “token” as an example of an “object” in the definition of “skill game” is evidence of legislative intent that the statute apply even to games that require payment by intangible digital means. These interpretations are at odds with basic canons of statutory interpretation, including the rule of lenity, *ejusdem generis*, and *noscitur a sociis*.

82. The position articulated by Defendants is untenable and amounts to an effort to redefine and redraft the statute to say and mean something other than what it actually does.

83. But while Defendants have not yet filed any case against either Plaintiff, their conduct, including the issuance of the CID against Belle and the ongoing threat of imminent action, harms Plaintiffs and artificially creates legal uncertainty with respect to a simple, easily resolved question of law.

84. Defendants’ refusal to directly test their legal theory and their continuing threats and declarations of wrongdoing have besmirched and maligned Plaintiffs’ good reputation in the

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community by baselessly accusing them of unlawful activity, and they have denied Plaintiffs the opportunity for vindication.

85. Defendants' conduct has also directly harmed Plaintiffs. Defendants have declared that Plaintiffs are violating the law and that anyone who plays the QVS2 Game is "subject to" the penalties for gambling. These ongoing threats have forced Belle to suspend operations of the QVS2 Game at the BWW, which has diminished Plaintiffs' revenue. Defendants' accusations have also caused the BWW to lose patronage from potential customers falsely led to believe that Plaintiff Location is involved in wrongdoing.

86. Likewise, Defendants' unfounded declarations that the QVS2 Game is illegal have caused retail locations that enter into agreements to operate QVS games to either remove previously installed QVS2 Games or to decline offers to install the QVS2 Game.

87. This has caused ongoing irreparable harm to QVS that threatens QVS's continued existence in the Commonwealth.

88. QVS has also suffered irreparable harm in the form of the reputational harm that has been exacerbated by the CID and Defendants' accusations in the press, which have spread unfounded innuendo about nonexistent wrongdoing by Plaintiffs. *See, e.g.,* Graham Moomaw, "AG Jason Miyares says new Queen of Virginia skill games are still illegal," Sept. 26, 2024, <https://www.richmonder.org/ag-jason-miyares-says-new-queen-of-virginia-skill-games-are-still-illegal/>. Defendants' conduct has unfairly painted QVS as a scofflaw and a lawbreaker based on its manufacturing and distribution of a legal gaming device in Virginia.

89. Defendants have also targeted and singled out Plaintiffs—and not the epidemic of plainly illegal gaming that has run rampant in Virginia since 2020—in retaliation for their development and operation of legal games. Defendants have bizarrely decided to target Plaintiffs

with threatened criminal enforcement *because* Plaintiffs comply with the law, while ignoring endemic illegal gambling throughout the Commonwealth.

90. Upon information and belief, Defendants' efforts to malign Plaintiffs and the QVS2 Game are also motivated, in part, by a desire to retaliate against QVS2 for its public advocacy against the ban on "skill games" in Virginia.

91. Defendants' conduct violates the due process clause of the Virginia Constitution, Va. Const. Art. I § 11, which provides that "no person shall be deprived of his life, liberty, or property without due process of law."

92. In their official capacities, Defendants have excised an unambiguous requirement from the statutory definition of a "skill game"—insertion of an object—that was previously recognized by the OAG. In doing so, Defendants have accused Plaintiffs of wrongdoing based on a willfully erroneous interpretation of the applicable statutes. Defendants have declared the applicable law to be something other than what it is in order to threaten Plaintiffs with enforcement of the civil penalty provision of Va. Code § 18.2-331.1.

93. In unilaterally declaring Plaintiffs to be engaged in illegal conduct based on a knowingly erroneous interpretation of the applicable law but refusing to test their theory, Defendants are not only usurping the legislative and judicial roles separately reserved in the Virginia Constitution, but they are denying Plaintiffs the opportunity to respond to and challenge Defendants' allegations and to defend their honorable reputations.

94. By selectively targeting Plaintiffs, in part as retaliation for QVS's civic participation in support of the *Sadler* plaintiffs and lobbying to repeal of the "skill game" ban, Defendants have tarnished Plaintiffs' reputation, harmed their business, and impeded their ability to engage in the lawful occupation of their choosing.

95. In the alternative, if the statute *is* somehow susceptible to the Defendants' and Attorney General Miyares' interpretation that electronic activation of the game counts as an "insertion" of some object, then the statute is void for vagueness because no person of ordinary intelligence could know from the text of the statute what it actually requires, permits or forbids, including what forms of payment fall within the scope of the prohibition on "skill games" and what forms of payment do not.

### **COUNT I – PETITION TO SET ASIDE THE CID**

#### **As to Attorney General Miyares**

96. Plaintiffs incorporate all prior paragraphs as though fully restated herein, verbatim.

97. On October 15, 2024, Attorney General Miyares caused to be issued the CID, which was sent to Belle via certified mail on the same day. The OAG later agreed to extend the return date until November 15, 2024.

98. Attorney General Miyares purports to have issued the CID "in connection with an investigation ... into possible violations of [V]FATA, specifically the manufacture for sale, sale, and distribution of illegal gaming devices in violation of" Va. Code § 8.01-216.3(A)(6), and "conspiracy to do the same in violation of" Va. Code § 8.01-216.3(A)(3).

99. Attorney General Miyares' "investigation" purports to relate to the QVS2 Games, which, as described herein, are not "illegal gaming devices" because the QVS2 Game does not require the insertion of cash or an "object" to operate. Accordingly, the QVS2 Game cannot be an illegal gambling device under Va. Code § 18.2-325, subsections (3) and (6).

100. The CID is premised on a mistake of law that this Court can and should resolve: that video games of predominant skill that do not "require the insertion" of currency to operate

and which are made available to BWW, are somehow illegal despite plainly falling outside the definition of an illegal gambling device in Va. Code § 18.2-325.

101. In order for the OAG to issue a CID under VFATA, it must have “reason to believe” that a violation of VFATA has occurred, and it must “state the nature of the conduct constituting the alleged violation” of VFATA. Va. Code §§ 8.01-216.10, 8.01-216.11.

102. Attorney General Miyares lacks a “reason to believe” in any wrongdoing or violation of VFATA with respect to the operation of the QVS2 Game, and the CID at issue fails to state the nature of any conduct with respect to the QVS2 Game that constitutes a violation of VFATA.

103. Accordingly, this Court should set aside the CID. Va. Code § 8.01.216.18(B).

104. Belle preserves all rights, objections and defenses afforded by law.

## **COUNT II- DECLARATORY JUDGMENT**

### **As to Both Defendants**

105. Plaintiffs incorporate all prior paragraphs as though fully restated herein, verbatim.

106. Actual, justiciable, and substantial controversies exist with respect to the following questions of:

- i. Whether the QVS2 Game is a prohibited “skill game” within the definition of Va. Code § 18.2-325(6) despite the fact that it does not “require” or allow for the “insertion of a coin, currency, ticket, token, or similar object” to operate.
- ii. Whether Plaintiffs are subject to the civil penalties and liability for operation of illegal skill games or illegal gaming devices under Va. Code §§ 18.2-331.1 and 8.01-216.3; and

~~whether Defendants’ threatened imminent enforcement of civil penalty or equitable proceedings against Plaintiffs’ or their property violates the Virginia Constitution’s guarantees of due process.~~

107. There are no facts in dispute as to how the QVS2 Game operates.

108. The QVS2 Game does not require the insertion of an object in order to operate.

109. The applicable statute is clear that only games requiring the insertion of an object may fall within the definition of a prohibited "skill game" in Va. Code § 18.2-325.

110. Accordingly, the QVS2 Game is not a "skill game" as defined in the Virginia Code, and Plaintiffs cannot be subjected to the penalties or civil proceeding enumerated in Va. Code § 18.2-331.1.

111. Other than in the instant action, Plaintiffs have no forum in which to assert the propriety of their conduct and safeguard their reputation, as well as their property and liberty rights, if Defendants continue to threaten Plaintiffs and issue declarations of Plaintiffs' conduct as unlawful.

112. Plaintiffs therefore request the entry of a declaratory judgment in Plaintiffs' favor that:

- i. The QVS2 Game does not require the insertion of an object to operate and therefore does not fall within the definition of "skill game" appearing in Va. Code § 18.2-325(6);
- ii. The manufacturing, distribution and/or operation of the QVS2 Game by Plaintiffs does not subject them to liability under Va. Code §§ 18.2-331.1 and 8.01-216.3 because the QVS2 Game is not a "skill game" and is not otherwise a gambling device or illegal gaming device under Virginia law; and
- iii. Defendants' actions as described and alleged in this Complaint violate Art. I § 11 of the Virginia Constitution.

**COUNT III - VIOLATION OF THE DUE PROCESS CLAUSE  
OF THE VIRGINIA CONSTITUTION**

**As to Both Defendants**

113. Plaintiffs incorporate all prior paragraphs as though fully restated herein, verbatim.

114. The due process clause of the Virginia Constitution provides that “no person shall be deprived of his life, liberty, or property without due process of law.” Va. Const. Art. I § 11.

115. Defendants’ conduct as described in this complaint, including Defendants’ threatened deliberate misapplication of a Virginia statute, violates this Constitutional guarantee in several ways.

116. First, Defendants have exploited their official capacities and declared that an unambiguous requirement in the statutory definition of a “skill game”—insertion of an object—does not exist. In doing so, Defendants have accused Plaintiffs of wrongdoing based on a willfully erroneous interpretation of the applicable statutes in order to threaten Plaintiffs with enforcement of the civil penalty provision of Va. Code § 18.2-331.1. Defendants have also denied Plaintiffs the opportunity to defend themselves and their reputations by refusing to test their theory in court.

117. Second, Defendants have selectively targeted Plaintiffs for enforcement in retaliation for Plaintiffs developing and operating a game that complies with the applicable law, and for QVS’s public support for the *Sadler* litigation and lobbying efforts to repeal the “skill game” ban.

118. Lastly, if the statute is somehow susceptible to the Defendants’ interpretation that excises the “insertion” requirement, then the statute is void for vagueness because no person of ordinary intelligence could know from the text of the statute what forms of payment fall within the scope of the prohibition and what forms of payment do not.

119. Plaintiffs have been harmed as a direct result of Defendants’ conduct and are entitled to the requested declaratory judgment and temporary and permanent injunctive relief.

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**COUNT IV – Request for Temporary and Permanent Injunctive Relief**

**As to Both Defendants**

120. Plaintiffs incorporate all prior paragraphs as though fully restated herein, verbatim.

121. Temporary injunctive relief is necessary to preserve the *status quo ante* and remedy the ongoing harm from Defendants' violation of the Virginia Constitution pending litigation.

122. Moreover, Plaintiffs have been and will continue to be irreparably harmed absent the issuance of a temporary and permanent injunction by virtue of the Defendants' constitutional violations and the threats Defendants' actions pose to Plaintiffs' continuing business operations. Taylor and Miyares' conduct has directly caused a loss in Plaintiffs' revenue, and has compelled QVS's business partners, including Belle to suspend operation of the QVS2 Game.

123. Plaintiffs have no adequate remedy at law.

124. Defendants will not be harmed if a temporary and/or permanent injunction is granted.

125. Plaintiffs are likely to succeed on the merits.

126. The public interest in the preservation of the Virginia Constitution's guarantees of due process, and separation of powers, and the principle that no one should be required at peril of life, liberty or property to speculate as to the meaning of penal statutes is served by the issuance of a preliminary and/or permanent injunction.

127. including, but not limited to, those based on the Virginia and United States Constitutions.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment in Plaintiffs' favor declaring that:

- i. The QVS2 Game does not require the insertion of an object to operate and therefore does not fall within the definition of “skill game” appearing in Va. Code § 18.2-325(6);
  - ii. The manufacturing, distribution and/or operation of the QVS2 Game by Plaintiffs does not subject them to liability under Va. Code §§ 18.2-331.1 and 8.01-216.3 because the QVS2 Game is not a “skill game” and is not otherwise a gambling device or illegal gaming device under Virginia law; and
  - iii. Defendants’ actions as described and alleged in this Complaint violate Art. I § 11 of the Virginia Constitution;
- B. Enter temporary and permanent injunctive relief enjoining Defendants from enforcing the prohibition on “skill games” against Plaintiffs’ manufacturing, distribution, and operation of the QVS2 Game;
- C. Set aside the CID pursuant to Va. Code § 8.01.216.18(B); and
- D. Award Plaintiffs all such further relief as the Court deems just and equitable.

Dated: November 15, 2024

Respectfully submitted,



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