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STATE OF ALABAMA

January 28, 2009

Mr. Michael Fletcher, CEO
Nova Gaming, LLC
Suite 600
220 North Main Street
Greenville, South Carolina 29601

Dear Mr. Fletcher:

RE: Illegal Slot Machines

On December 29, 2008, I signed Executive Order No. 44, which established a statewide Task Force to crack down on illegal gambling operations across Alabama. I also appointed a special prosecutor to lead the Task Force. It is the policy of my Administration to promote and support the uniform enforcement of Alabama's anti-gambling laws. As a result of preliminary investigations conducted by the Task Force, it has been discovered that several manufacturers and/or providers of gambling devices appear to be engaged in unlawful gambling activity in Alabama. We understand that at least one provider has already begun the process of removing its gambling devices from establishments in Alabama. The purpose of this letter is to put your company on clear notice of the law and our intent to enforce it.

Slot machines and other gambling devices, as defined in Ala. Code § 13A-12-20 (1975), are patently illegal in all 67 counties in Alabama under Section 13A-12-27 of the *Code of Alabama* and Section 65 of the Alabama Constitution.²⁵ While several local constitutional amendments have authorized "bingo" in certain counties, no constitutional amendment has authorized slot machines or other illegal gambling devices in any county. Thus in *Foster v. State*,²⁶ a unanimous Alabama Court of Criminal Appeals, in an opinion authored by now Chief Justice Sue Bell Cobb, rejected the appellant's "bingo" defense and upheld his conviction and 12-month prison sentence for unlawful possession of a gambling device. The Court held that the term "bingo," as used in a local constitutional amendment, means nothing other than "the ordinary game of bingo" and is a "narrow exception to the prohibition of lotteries in the Alabama Constitution." The Court further held that local regulations governing the operation of bingo pursuant to a local

²⁵ See *State ex rel. Tyson v. Ted's Game Enterprises*, 893 So. 2d 376, 380 (Ala. 2004) ("[W]e hold that Article IV, § 65, means what it says, and prohibits the Legislature from authorizing 'lotteries or gift enterprises' that involve games or devices in which chance predominates the outcome of the game, even if 'some skill' is involved" (emphasis added)).

²⁶ 705 So. 2d 534, 537-538 (Ala. Crim. App. 1997) (emphasis added).

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constitutional amendment may not be enacted or construed so as to broaden the scope of bingo. In addition, the Alabama Supreme Court has emphatically declared that it will not countenance attempts by gambling interests to invest slot machines with legitimacy by altering or manipulating them or calling them by another name: "Alabama's gambling law . . . is not so easily evaded. It is 'the policy of the constitution and laws of Alabama [to prohibit] the vicious system of lottery schemes and the evil practice of gaming, in *all their protean shapes*.'"²⁷

Given the force of these controlling judicial opinions, a company in this business would be taking an extraordinary risk of criminal liability were it to conclude that the Alabama Constitution's "narrow exception" for "the ordinary game of bingo" somehow authorizes the use of machines that are slot machines or gambling devices as defined in § 13A-12-20 (1975), and are patently illegal in all 67 counties in Alabama under Section 13A-12-27.

As Governor, I am deeply concerned that many manufacturers, providers, and business operators may have a mistaken impression about the legality of certain activities. It is out of this concern that I provide you this notice of the law and a fair opportunity to withdraw from any business activity in Alabama which could be determined to constitute unlawful gambling activity or use of illegal gambling devices. So that there is no misunderstanding, I fully intend to carry out my constitutional duty to faithfully execute the laws of Alabama.

Thank you for your consideration and quick action to address this matter and to ensure that your activities in Alabama do not include any illegal activities relating to the operation of slot machines and other illegal gambling devices in Alabama.

Sincerely,



Bob Riley
Governor

BR/sr

²⁷ See *Barber v. Jefferson County Racing Assoc.*, 960 So. 2d 599, 614 (Ala. 2006).