

Chancery Division Civil Cover Sheet
General Chancery Section

(12/01/20) CCCH 0623

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Gold Rush Amusements, Inc.
Plaintiff
v.
Accel Entertainment, Inc. and Accel Entertainment Gaming, LLC
Defendant

2022CH05996

Case No: _____

CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

Only one (1) case type may be checked with this cover sheet.

- 0005 Administrative Review
- 0001 Class Action
- 0002 Declaratory Judgment
- 0004 Injunction
- 0007 General Chancery
- 0010 Accounting
- 0011 Arbitration
- 0012 Certiorari
- 0013 Dissolution of Corporation
- 0014 Dissolution of Partnership
- 0015 Equitable Lien
- 0016 Interpleader
- 0017 Mandamus
- 0018 Ne Exeat
- 0019 Partition
- 0020 Quiet Title
- 0021 Quo Warranto
- 0022 Redemption Rights
- 0023 Reformation of a Contract
- 0024 Rescission of a Contract
- 0025 Specific Performance
- 0026 Trust Construction
- 0050 Internet Take Down Action (Compromising Images)
- Other (specify) _____

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Gold Rush Amusements, Inc.
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JURY DEMANDED

GOLD RUSH AMUSEMENTS, INC.’S COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF

Plaintiff Gold Rush Amusements, Inc., (“Gold Rush”) by and through its undersigned attorneys and for its Complaint against Defendant Accel Entertainment, Inc. and Accel Entertainment Gaming, LLC (collectively “Accel”), alleges and states as follows.

NATURE OF THE CASE

This case is about Accel’s illegal and tortious conduct directed at Gold Rush in furtherance of Accel’s campaign to dominate and control the video gaming industry in Illinois. Gold Rush and Accel are both terminal operators, meaning that they install and maintain video gaming terminals (“VGTs”) in various establishments, mostly restaurants and bars, throughout the state. Accel is the largest terminal operator in Illinois, and Gold Rush is the third largest, though it is only about a quarter of Accel’s size. Gold Rush and Accel compete for the right to place their VGTs in establishments, which they accomplish through contracts with establishments known as use agreements. The video gaming industry in Illinois is highly regulated, and both Accel and Gold Rush are licensed and regulated by the Illinois Gaming Board (“IGB”).

Over the years, Accel has acquired a number of smaller terminal operators and has continued to grow. Accel has made no secret that it would like to acquire Gold Rush. In July 2019, Accel made two loans to Gold Rush totaling \$30 million. In order to ensure repayment of those loans, Accel drafted and included a provision in the loan documents that would permit Accel to convert its debt into equity if Gold Rush were unable to repay the loans as agreed.

Prior to the 2019 execution of the loan documents, Accel CEO Andy Rubenstein expressly assured Rick Heidner of Gold Rush that Accel would not exercise the conversion rights unless Gold Rush was unable to pay back the loans. Rubenstein later also assured Heidner that Accel would not seek to convert the debt to equity because Accel was not interested in being a minority shareholder of Gold Rush. On multiple occasions thereafter, and in the presence of others, Rubenstein repeated these assurances, and Heidner relied on them in good faith. In December 2020, the loan documents were amended to grant Gold Rush an unequivocal right to repay the loans at any time with no prepayment penalty.

Beginning in 2019, after Accel executed the initial loan documents with Gold Rush, Accel's representatives began tortiously interfering with Gold Rush's business activities and spreading misinformation about Gold Rush in the market, including making false statements that:

- Gold Rush was going to lose its license and be out of business,
- Accel was going to own Gold Rush,
- Gold Rush's VGTs would be shut off, and
- Heidner was going to be indicted.

Accel's representatives knew that these statements were false. Gold Rush never lost its license, went out of business, granted Accel any ownership interest, or had its VGTs shut off, and

Heidner was never indicted. Indeed, Heidner obtained a non-target letter from the U.S. Attorney's office in June 2020.

Accel's top executives, including Rubenstein, had personal knowledge of Accel's unfair business tactics and did nothing to stop them, even while they assured Heidner that they had zero tolerance for any anti-competitive behavior. And the reason for their duplicity later was revealed: Rubenstein had issued a directive to his sales team that Accel would pay a "bounty" for any account that Accel could take away from Gold Rush. It is no surprise, then, that Accel's sales representatives sought to lure Gold Rush's customers away by any means possible. In light of Accel's bad behavior, Gold Rush concluded that it did not wish to have any further financial relationship with Accel.

In July 2021, Accel attempted to do what it promised it would not do: it sought to convert its loan into an equity interest in Gold Rush. At that time, Rubenstein told Heidner in the presence of others that Accel intended to convert its loans. Heidner responded that Rubenstein had promised otherwise and that Gold Rush would simply repay the loans. Rubenstein falsely claimed that Gold Rush needed Accel's permission to prepay the loans, despite the December 2020 amendment allowing prepayment without penalty.

After hearing about Accel's plans, Gold Rush quickly accumulated cash to pay off one of its loans and made a partial payment on the other one. On July 30, 2021, Accel received loan payments from Gold Rush via wire transfer, but Accel returned the payments a few days later. The same day Gold Rush sent the payments via wire, Accel failed to comply with its obligation to provide notice to Gold Rush by leaving a conversion notice in the lobby of Gold Rush's building with an employee of a non-Gold Rush entity. Only after Gold Rush wired funds on July 30, 2021, did Accel provide its conversion notice through an email communication to Gold Rush.

At the same time, Accel surreptitiously sought approval of the conversion from the IGB without even notifying Gold Rush. Accel's plans were foiled, however, when the IGB rejected the proposed conversion, reasoning that it was not in the best interest of the video gaming industry for Accel to own a portion of Gold Rush based on the potential for undue economic concentration, and because Accel was currently the subject of two disciplinary complaints brought by the IGB. Accel then did an about-face and claimed that the IGB's approval for the conversion was not actually required, and that the agency had no discretion to deny Accel's request.

In March 2022, Gold Rush informed Accel that it had funds available to repay the full amount due on the loans, including interest, and Gold Rush asked Accel for the exact payoff figures. But Accel again refused to provide the payoff amounts as requested or accept Gold Rush's payment. Accel then filed two lawsuits: one against Gold Rush for allegedly breaching the loan contract when Gold Rush, in conformity with the IGB's decision, prohibited the conversion of Accel's loan into equity. In a second lawsuit, Accel sued the IGB, challenging the IGB's decision to prohibit the conversion of Accel's debt interest into equity.

Gold Rush now brings this complaint to recover damages for the harm Accel has wrongfully inflicted upon it in the marketplace. In addition, Gold Rush seeks damages and declaratory relief regarding Accel's misconduct relating to the loans.

PARTIES, VENUE, AND JURISDICTION

1. Gold Rush is, and at all relevant times was, an Illinois company with its principal place of business in Hoffman Estates, Illinois. Rick Heidner is, and at all relevant times was, an officer of Gold Rush.

2. Accel Entertainment, Inc. is, and at all relevant times was, a Delaware corporation with its principal place of business in Burr Ridge, Illinois. Andy Rubenstein is, and at all relevant times was, the Chief Executive Officer of Accel.

3. Accel Entertainment Gaming, LLC is, and at all relevant times was, an Illinois limited liability company with its principal place of business in Burr Ridge, Illinois.

4. At all times relevant to this action, both Gold Rush and Accel have transacted business in the State of Illinois and in Cook County, Illinois.

5. This Court has jurisdiction over the parties and this action because it involves the transaction of business within this State; the making or performance of any contract or promise substantially connected with this State; the acquisition of ownership, possession, or control of any asset or thing of value within this State; and because the parties do business within this State. 735 ILCS 5/2-209(a)(1), (7), (10) & (b)(4).

6. Venue is proper in Cook County, Illinois pursuant to 735 ILCS 5/2-101 because Cook County is the county in which some part of the transaction at issue occurred from which this cause of action arose.

BACKGROUND

Gold Rush

7. Gold Rush is a terminal operator licensed under the Video Gaming Act, 230 ILCS 40/1, *et seq.*, to operate VGTs in Illinois establishments such as bars, restaurants, truck stops, and other eligible establishments. Since its founding in 2012, Gold Rush has grown steadily and now services approximately 3,656 VGTs at over 650 establishments throughout Illinois.

8. A significant factor in Gold Rush's growth and success is its reputation for quality service, knowledgeable technicians, and trustworthy representatives. Gold Rush's stated goal is to lead the industry in customer service.

9. Gold Rush's primary source of revenue is from the VGTs installed and maintained in third-party establishments. These establishments sign use agreements with Gold Rush that give

Gold Rush, subject to IGB authority, the exclusive right to install and maintain VGTs at their locations.

10. Gold Rush's relationships with establishments that host, or could potentially host, VGTs are essential to its financial success. Gold Rush invests significant resources to provide the highest level of service to win and keep its contracts with establishments.

11. Within the Illinois VGT industry, competing terminal operators can easily ascertain which terminal operator is servicing a particular location. In addition to prominent signage and logos, sales representatives for the leading terminal operators generally know which locations are serviced by whom, and they routinely talk to establishments about their terminal operators. The IGB also provides a searchable database on its website that indicates which terminal operator services each establishment in Illinois.

12. Due to its reputation for high quality service, Gold Rush has been very successful in obtaining use agreements and getting its customers to renew them. Accordingly, Gold Rush has a reasonable expectation that it will continue to do business, and sign subsequent contract extensions, with its existing customers. Based on its track record of sustained growth, Gold Rush also anticipates entering into use agreements with additional establishments each year.

Accel

13. Accel is the largest terminal operator in the country, and the largest operator by far in Illinois. Accel has at least 13,663 VGTs in 2,565 establishments, making its Illinois footprint alone about four times the size of Gold Rush's. A significant portion of Accel's size has come through acquiring competitors in its quest to control and dominate the VGT industry in Illinois.

14. The video gaming industry in Illinois is highly regulated, and Accel is licensed and regulated by the IGB. Due to the high barriers to entry and significant regulatory requirements

necessary to operate VGTs in Illinois, it is very likely that Accel will maintain its controlling position in the market.

15. Unfortunately, Accel has not achieved its level of dominance playing by the rules. Specifically, Accel has a documented history of engaging in improper conduct to win business from establishments. The IGB has initiated three disciplinary complaints against Accel, two of which remain pending. These two complaints—initiated in February 2020 and December 2020—accuse Accel of improper sales tactics, and one seeks a \$5 million fine.

16. In addition, in a recent 2022 hearing regarding Accel’s expansion into another state, the Nevada Gaming Control Board (“NGCB”) detailed Accel’s compliance issues and questioned its corporate culture. Among other issues, the NGCB noted Accel’s history of due diligence failures, issues with document retention, and the troubling way that Accel executives handled sexual harassment cases.

17. In keeping with its problematic reputation, beginning no later than the fall 2019, Accel embarked on an improper competitive strategy to harm Gold Rush’s business. To accomplish these ends, Accel engaged in wrongful conduct and unfair tactics, including spreading false information about Gold Rush to Gold Rush’s current and prospective customers.

18. In furtherance of its wrongful conduct, Accel’s employees knew which establishments had use agreements with Gold Rush, and they used this knowledge to engage in unfair and illegal competitive practices designed to harm Gold Rush and attempt to steal its customers.

19. Through these unfair and illegal tactics, Accel maliciously induced existing, and potential, Gold Rush customers not to enter into, or renew, use agreements with Gold Rush.

20. One tactic that Accel employed against Gold Rush was the creation of a “bounty” system where Accel’s executives promised to financially reward sales representatives who were able to convert establishments serviced by Gold Rush into Accel customers. Based on statements made to Gold Rush by a prominent Accel employee, this bounty system was in place from at least 2020 to 2021, and it was based on a directive given at the highest levels of the company.

21. Specifically, Accel’s CEO Rubenstein told Accel sales representatives that Accel would pay an increased commission if Accel sales representatives convinced an establishment to “switch” from Gold Rush to Accel. The increased commission was identified as a “competition bonus” on commission statements, and it was greater than the usual amount of commission for signing an establishment. At the same time as he advocated for the “bounty” against Gold Rush, Rubenstein instructed Accel’s salesforce that they should not seek to convert customers away from certain other terminal operators, and that they would be punished for doing so.

22. This conduct was intended to harm Gold Rush’s business and reduce the growth prospects for Gold Rush so that it would be more amenable to being acquired by Accel, potentially at a discount.

23. In one instance, when an Accel sales representative complained about Accel’s negative campaign against Gold Rush, Rubenstein allegedly fired him.

24. Accel’s anticompetitive actions were motivated by ill will and included wrongful acts such as fraud, deceit, deception, intimidation, threats, and deliberate disparagement, including:

a. In August 2019, an Accel representative falsely told another Gold Rush customer that Accel would be buying 30% of Gold Rush because Heidner needed money for his “racino” (at the time, Heidner was exploring the development of a casino and horseracing track in Tinley Park, Illinois).

b. In December 2019, Accel sales representatives told multiple Gold Rush customers that they should switch to Accel because Gold Rush was going to lose its license.

c. Between July 2020 and July 2021, multiple Accel representatives made false, disparaging, and defamatory statements to a Gold Rush customer. Specifically, Accel representatives told the Gold Rush customer that Gold Rush or Heidner was “going to lose its license,” was “going to be indicted,” and was “not going to be around for long.”

d. In the spring of 2021, multiple Accel representatives told multiple Gold Rush customers that Accel “was buying” Gold Rush, that Gold Rush “was going out of business,” and that Accel was “going to be buying 51%” of Gold Rush and “taking over” the company. In addition, Accel representatives falsely told multiple Gold Rush customers that “if they go with” Gold Rush, “their machines are going to be shut off” and they will be “months without machines.”

e. In the spring of 2021, an Accel representative offered a Gold Rush customer an illegal inducement, saying that if the customer switched to Accel, Accel would pay half of its municipal licensing fee, in violation of a municipal ordinance.

f. In April 2021, an Accel representative made false, disparaging, and defamatory statements to yet another Gold Rush customer. When the customer nonetheless decided to sign a use agreement with Gold Rush, the Accel representative told the customer in a text message that Gold Rush was “not a good choice you’ll find out. They won’t be around for long.” In addition, the Accel representative told the Gold Rush customer that Accel was “going to own Gold Rush.”

g. In April 2021, when a customer persisted in telling the Accel representative he was going with Gold Rush and that he wanted to arrange for the removal of Accel’s

VGTs from his establishment, an Accel representative stated to the customer that if he persisted in attempting to get Accel's machines moved, "you are going to meet people that you don't want to meet." The customer interpreted this as a physical threat.

h. In May 2021, when an Accel employee informed Rubenstein that he was going to leave Accel to work for Gold Rush, Rubenstein responded, "that's stupid. I'm going to own him in a year."

i. In August 2021, just days after Accel's attempt to convert its Gold Rush debt into equity, an Accel representative contacted a Gold Rush customer and told the customer that Accel was acquiring Gold Rush and that he was now a customer of Accel's.

25. Accel representatives made the above statements with either full knowledge that they were false or, at a minimum, a reckless disregard for the truth. They also knew that the statements were likely to cause confusion and misunderstanding in the marketplace. Accel never owned any percentage of Gold Rush,¹ Gold Rush did not go out of business or lose its license, and Heidner was never indicted. On the contrary, Heidner obtained a non-target letter from the U.S. Attorney's Office in June 2020, which made clear that he was not the target of a federal criminal probe.

26. Accel's false, deceptive, disparaging, and confusing comments about Gold Rush's business and Heidner were made with the intent to deceive and scare establishments and cause them to cease doing business with Gold Rush, or not transact with Gold Rush in the future.

27. These comments also misrepresented the nature of Accel and Gold Rush's relationship and purposely concealed and omitted material facts, such as the fact that Gold Rush and Accel never entered into an agreement regarding an acquisition of Gold Rush.

¹ Even if the IGB approved Accel's request to convert Gold Rush's debt to equity, Accel would only have owned a small minority stake in Gold Rush.

28. These statements also disparaged the quality of Gold Rush's service by insinuating that Gold Rush was not reliable or trustworthy, and that Gold Rush would not be able to continue to maintain and service its VGTs.

29. In light of Accel's bad behavior directed at Gold Rush that was revealed to Gold Rush over time, and the related inability of Accel to acknowledge Gold Rush's true value in negotiations, Gold Rush concluded that it did not wish to remain in any type of business relationship with Accel.

Results of Unfair Competition

30. As a result of Accel's wrongful conduct and unfair competition, Gold Rush's standing, reputation, prestige, good will, and business were damaged.

31. Multiple establishments who had long-term, successful relationships with Gold Rush ceased doing business, or chose not to renew use agreements, with Gold Rush as a result of Accel's conduct.

32. These lost use agreements with establishments, current and future, resulted in a loss of revenue and profits for Gold Rush.

33. As a consequence of Accel's conduct, Gold Rush was also forced to devote resources to combat the rumors and falsehoods spread by Accel representatives.

34. Accel's conduct also harmed consumers by seeking to reduce consumer options for high quality VGTs and service. Accel's wrongful conduct also eroded public trust in the gaming industry in general and Gold Rush specifically.

Promissory Notes

35. In 2019, Rubenstein and Heidner began to discuss various financing arrangements to meet Gold Rush's operational needs. They agreed to structure a loan through two promissory notes between Accel and Gold Rush.

36. On July 19, 2019 and October 11, 2019, Gold Rush signed the promissory notes (collectively, the "Notes") in favor of Accel that, along with other ancillary documents (collectively, the "Loan Documents"), evidenced two loans from Accel to Gold Rush in the aggregate principal amount of \$30 million (collectively, the "Loans"). One of the Loans was in the principal amount of \$5 million, and the other Loan was in the principal amount of \$25 million.

37. In order to ensure that Accel had a source of ultimate repayment for its Loans, Accel drafted and requested the inclusion of a provision in the loan documents that offered Accel an option to convert the then current loan balance into shares of Gold Rush common stock (collectively, the "Conversion Option").

38. Rubenstein told Heidner that he was requesting the Conversion Option because of the possibility that Gold Rush would be unable to pay back the Loans and that the Conversion Option would only be exercised under that scenario. He later told Heidner that Accel had no interest in exercising the Conversion Option to become a minority shareholder of Gold Rush. According to Rubenstein, because Accel is a publicly traded company, holding a minority share of another company would not allow for balance sheet consolidation and could cause regulatory issues.

39. Rubenstein was aware that Heidner was relying on Rubenstein's promises in good faith, and that Heidner agreed to the Conversion Option because of Rubenstein's assurances that Accel would not seek to convert the debt unless Gold Rush could not repay the Loans, a circumstance that never came to fruition.

40. Rubenstein repeated his promises on multiple occasions both before and after Gold Rush and Accel signed the Notes.

41. Rubenstein made these repeated representations regarding the intent and purpose of the Conversion Option in the presence of others, including representatives of Accel and Gold Rush.

42. After coming to an agreement on the Loans, Accel began to engage in the improper competitive conduct discussed above in an apparent attempt to force Heidner to sell Gold Rush to Accel at a lower price.

43. In December 2020, and further reflecting the parties' intent that the Loans would be paid back without the Conversion Option being exercised, Accel and Gold Rush executed an amendment to the Loan Documents that provided Gold Rush an unequivocal right to prepay the Loans, including interest, "in whole or in part, at any time without premium or penalty" (the "Second Amendment").

44. Even after Gold Rush and Accel signed the Notes and Second Amendment, Rubenstein repeated his false promises regarding Accel's intention to only exercise the Conversion Option in the event of default to dissuade Heidner from exercising his right to prepay the loans.

45. As to a potential Accel-Gold Rush combination, based on Accel's bad behavior directed at Gold Rush, Gold Rush concluded that it did not want Accel to own any part of Gold Rush.

46. In July 2021, even though Gold Rush was fully able to make payments on the Loans, and contrary to Rubenstein's repeated assurances, Rubenstein told Heidner in the presence of others that Accel was going to exercise the Conversion Option to convert Accel's debt into shares of Gold Rush's common stock, thereby making Accel a minority owner of Gold Rush.

47. Heidner responded that Gold Rush would simply pay Accel back as was permitted under the Second Amendment, but Rubenstein falsely claimed that Gold Rush needed Accel's permission to prepay the loan.

48. Anticipating that Accel would follow through on its threat to convert, Gold Rush quickly accumulated cash to make a prepayment on the Loans. On July 30, 2021, Gold Rush tendered a payment via wire transfer to Accel for \$8.6 million, which would have fully repaid the amount due under the \$5 million Note and partially repaid amount due on the \$25 million Note. Accel received the prepayment but returned it three days later.

49. Also on July 30, 2021, Accel attempted to deliver written notice of its intention to convert the debt into equity—as was required under the Loan Documents—via courier. The notice was not delivered to Heidner or a Gold Rush agent as required, but instead was left in the lobby of Gold Rush's building with an employee of a different company.

50. After Gold Rush sent the \$8.6 million wire to Accel, Accel emailed a copy of the conversion notice to a Gold Rush lawyer.

51. Around the same time, Accel surreptitiously sought approval of the conversion from the IGB without notifying Gold Rush. After learning of Accel's effort to persuade the IGB to approve the conversion, Gold Rush incurred legal costs to present its position to the IGB and argue its case at an IGB hearing.

52. The IGB rejected Accel's proposed conversion for two stated reasons. First, the IGB held that it was not in the interest of the video gaming industry for the largest terminal operator in Illinois to own a portion of the third largest due to the potential for undue economic concentration in the VGT market, which "would undoubtedly facilitate the 'actual or potential domination of video gaming in Illinois.'" And second, the IGB held that allowing the conversion

“would adversely affect public trust and confidence in Illinois gaming and discredit the Illinois gaming industry” because Accel was currently the subject of two disciplinary complaints.

53. After realizing that the IGB was not going to “rubber stamp” its request, Accel reversed course and claimed that the IGB’s approval was not actually required for the conversion, and/or that the agency had no discretion to deny Accel’s request.

54. On or about February 24, 2022, Gold Rush procured financing for the full amount needed to repay the Loans.

55. On March 2, 2022, Gold Rush advised Accel in writing that it had the funds necessary to repay the Loans in full and requested payoff letters for each of the Loans. Accel refused Gold Rush’s attempt to repay the Loans, it declined to provide the payoff letters, and it continues to refuse to provide Gold Rush with payoff figures for the Loans.

56. Accel also demanded that Gold Rush hold the funds necessary to repay the Loans in escrow. Gold Rush deposited the funds into an escrow account, and it is paying interest on those funds to its lender. In the meantime, Accel is continuing to purport to charge Gold Rush interest for the remainder of the balance of the Loans (although Gold Rush staunchly maintains that it is not obligated to pay that interest).

57. Thus, Gold Rush is currently being charged double interest on the funds in escrow, and it is unable to use those funds for any purpose besides repaying the Loans. Moreover, because Accel has refused to permit Gold Rush to repay the Loans, Gold Rush is paying a 1.25% higher rate of interest on its primary credit facility, which amounts to approximately \$2,250,000 in additional interest annually.

CAUSES OF ACTION

Count I – Tortious Interference with Prospective Economic Advantage

58. Gold Rush adopts and re-alleges paragraphs 1 through 57 and incorporates them by reference as if fully set forth herein.

59. Gold Rush had a reasonable expectancy of entering into future business relationships with existing customers and new establishments where VGTs are permitted.

60. Accel was aware of Gold Rush’s expectancy to continue business with existing customers and obtain use agreements with new establishments.

61. Accel purposefully, wrongfully, and intentionally interfered with Gold Rush’s efforts to obtain renewals and new use agreements.

62. Accel’s actions were motivated by ill will and included wrongful acts such as fraud, deceit, intimidation, threats, and deliberate disparagement. Accel and its representatives knew many of their statements were false or made them with a reckless disregard for the truth.

63. This conduct was the actual and proximate cause of damages to Gold Rush. Gold Rush suffered and will continue to suffer a pecuniary loss and irreparable harm as a result of the reputational harms, lost customers, lost profits, and consequential losses that ensued when Gold Rush was forced to spend money to counter Accel’s actions.

WHEREFORE, Gold Rush respectfully requests that this Court enter judgment in its favor, enter an order enjoining Accel from engaging in further unfair competition and improper conduct intended to harm Gold Rush and award Gold Rush compensatory damages, punitive damages, interest, attorney’s fees and costs, and such other and further relief as this Court deems appropriate.

**Count II – Illinois Consumer Fraud and Deceptive Business Practices Act
(815 ILCS 505)**

64. Gold Rush adopts and re-alleges paragraphs 1 through 57 and incorporates them by reference as if fully set forth herein.

65. Accel engaged in unfair methods of competition and unfair and deceptive acts including deception, fraud, misrepresentation, and concealment, suppression, and omissions of material facts.

66. Accel and its representatives, in the course of trade and commerce, intentionally disparaged Gold Rush's goods, services, and business by spreading false and misleading representations of fact about Gold Rush and Heidner to establishments.

67. Accel and its representatives intentionally engaged in conduct that created a likelihood of confusion and misunderstanding by establishments regarding facts, such as the ownership of Gold Rush, whether Gold Rush would lose its license as a terminal operator, and whether Heidner would be indicted.

68. Accel's disparaging and confusing comments not only impugned Gold Rush's business but also implied that it could not be trusted, thereby disparaging the quality of its service and ability to continue servicing VGTs, which is a fundamental aspect of Gold Rush's relationship with its customers.

69. Accel engaged in unfair competition and made disparaging, confusing, deceptive, and fraudulent statements with the intention to influence existing and potential customers not to do business with Gold Rush and to cause Gold Rush financial loss.

70. Accel and its representatives knew their statements about Gold Rush were false or made them with a reckless disregard for the truth and intended for establishments to rely on the statements.

71. Accel and its representatives knew that the statements were likely to cause establishments to be confused.

72. These unfair practices were directed at the market generally and affected consumers by limiting their gaming options and the quality of VGTs available. Accel's conduct also eroded public opinion and trust in the gaming industry generally and Gold Rush specifically. Establishments also suffered because of Accel's threats against their safety and wellbeing.

73. This conduct was the actual and proximate cause of damages to Gold Rush. Gold Rush suffered and will continue to suffer a pecuniary loss and irreparable harm as a result of the reputational harms, lost customers, lost profits, and consequential losses that ensued when Gold Rush was forced to spend money to counter Accel's actions.

WHEREFORE, Gold Rush respectfully requests that this Court enter judgment in its favor and award Gold Rush compensatory damages, punitive damages, interest, attorney's fees and costs, and such other and further relief as this Court deems appropriate.

**Count III – Illinois Antitrust Act
(740 ILCS 10)**

74. Gold Rush adopts and re-alleges paragraphs 1 through 57 and incorporates them by reference as if fully set forth herein.

75. The relevant market is the Illinois market for VGTs. The market has high barriers to entry and Accel is the largest market participant.

76. Accel attempted to monopolize the Illinois VGT market through engaging in anticompetitive actions motivated by ill will including wrongful acts such as fraud, deceit, deception, intimidation, threats, and deliberate disparagement.

77. This conduct was intended to harm Gold Rush's business and reduce the growth prospects for Gold Rush to force a sale to Accel.

78. Accel engaged in this predatory and anticompetitive conduct with the specific intent to monopolize the Illinois VGT market by destroying competition.

79. Accel had the capacity to acquire monopoly status, and there was a dangerous probability of it obtaining monopoly power through its conduct.

80. There is no business necessity or other pro-competitive justification for Accel's conduct.

81. This conduct was the actual and proximate cause of damages to Gold Rush. Gold Rush suffered and will continue to suffer a pecuniary loss and irreparable harm as a result of the reputational harms, lost customers, lost profits, and consequential losses that ensued when Gold Rush was forced to spend money to counter Accel's actions.

WHEREFORE, Gold Rush respectfully requests that this Court enter judgment in its favor, enter an order enjoining Accel from engaging in anticompetitive conduct intended to harm Gold Rush and other attempts to monopolize the VGT market in Illinois, and award Gold Rush triple the amount of compensatory damages, as well as punitive damages, interest, attorney's fees and costs, and such other and further relief as this Court deems appropriate.

Count IV – Fraudulent Inducement

82. Gold Rush adopts and re-alleges paragraphs 1 through 57 and incorporates them by reference as if fully set forth herein.

83. Accel, through Rubenstein, made repeated false statements of material fact regarding its intention that the Conversion Option would function solely as an assurance for repayment and that it would exercise the Notes' Conversion Option only if Gold Rush were unable to repay the Loans.

84. Rubenstein's statements were material to Gold Rush's decision to enter into a contract with Accel. Gold Rush would not have agreed to the Loans or the Conversion Option but for Rubenstein's repeated promises.

85. Rubenstein knew his statements were false at the time he made them. Despite assuring Gold Rush that Accel would seek to convert its interests only if Gold Rush were unable to repay the Loans, Rubenstein intended to exercise the Conversion Option to obtain an ownership interest in Gold Rush regardless of Gold Rush's ability to repay.

86. On multiple occasions before and after Gold Rush agreed to the Loans, Rubenstein repeated this false promise and representation to Heidner both in and outside the presence of others. This pattern of repeated false statements was part of an overall scheme to defraud Gold Rush. Rubenstein made the statements with the intent to induce Gold Rush to enter into the Loan Documents that included the Conversion Option.

87. Gold Rush reasonably and justifiably relied on the repeated false statements made by Rubenstein.

88. Rubenstein did not honor his promises and he attempted to exercise the Conversion Option despite Gold Rush's ability to pay back the debt.

89. Due to Accel's fraud, the Notes and Loan Documents do not reflect the true intention of the parties.

90. Gold Rush suffered and will continue to suffer damages. Gold Rush is at risk of losing ownership of part of its business and as a consequence, it has been forced to spend resources fighting the attempted conversion, such as hiring counsel to represent it before, and during, the IGB hearing on Accel's request to convert the debt, defending against an Accel lawsuit seeking

conversion of the debt, and the payment of interest accruing on funds Gold Rush procured to prepay the debt and extricate itself from the fraudulently induced Loan Documents with Accel.

WHEREFORE, Gold Rush respectfully requests that this Court enter judgment in its favor, enter an order severing the Conversion Option or reforming the contracts, and award Gold Rush compensatory damages, punitive damages, interest, attorney's fees and costs, and such other and further relief as this Court deems appropriate.

Count V – Breach of Contract

91. Gold Rush adopts and re-alleges paragraphs 1 through 57 and incorporates them by reference as if fully set forth herein.

92. At all times relevant to this litigation, Accel and Gold Rush were parties to the Notes, which are valid and enforceable contracts between Accel and Gold Rush.

93. Due to the IGB's binding decision, the Conversion Option in the Loan Documents is not enforceable because it is contrary to public policy.

94. Gold Rush fulfilled all of its obligations under the Notes.

95. Pursuant to the terms of the Loan Documents, Gold Rush had the absolute right to repay the balance due under the Notes at any time.

96. Gold Rush procured financing to repay the total balance due under the Notes.

97. Accel breached the Notes by refusing to accept Gold Rush's offers of payment on July 30, 2021, and March 2, 2022, and demanding that Gold Rush hold the funds necessary to repay the Notes in escrow.

98. As a direct result of the breach, Gold Rush suffered and will continue to suffer damages in the amount of the interest accruing under the Notes. And Gold Rush incurred additional damages in the amount of additional interest on the funds that it procured and put in

escrow to pay the balance due under the Notes. Gold Rush is also paying a higher rate of interest on its entire primary facility with its lender, amounting to approximately \$2,250,000 annually, because the funds earmarked for repayment of the Notes remain in escrow.

WHEREFORE, Gold Rush respectfully requests that this Court enter judgment in its favor and award Gold Rush compensatory damages, punitive damages, interest, attorney's fees and costs, and such other and further relief as this Court deems appropriate.

**Count VI – Illinois Declaratory Judgment Act
(735 ILCS 5/2-701)**

99. Gold Rush adopts and re-alleges paragraphs 1 through 57 and incorporates them by reference as if fully set forth herein.

100. Gold Rush brings this claim pursuant to the Illinois Declaratory Judgment Act, 735 ILCS 5/2-701(a), because there is an ongoing actual controversy regarding the amount owed to Accel on the Notes and whether Accel should accept Gold Rush's tendered payment as well as what, if any, interest should continue to accrue under the Notes.

101. The Notes are negotiable instruments controlled by Article 3 of the Illinois Uniform Commercial Code ("UCC").

102. Under the Second Amendment agreement, Gold Rush had the absolute right to prepay the Notes, including all interest accrued thereon, "in whole or in part, at any time without premium or penalty."

103. Gold Rush tendered \$8.6 million for the full amount due on the \$5 million Note and a partial payment for the \$25 million Note on or about July 30, 2021. Gold Rush offered in writing to pay the full remaining balance of the Notes on March 2, 2022. Gold Rush was fully able to pay off the Notes on that date.

104. Accel was aware of Gold Rush's ability, and right, to prepay the Notes, but it wrongfully refused Gold Rush's tender of available funds by returning its wire transfer in July 2021 and refusing to offer payoff figures for the Loans or accept payment in March 2022.

105. Pursuant to the UCC, 810 ILCS 5/3-603, the tender discharged Gold Rush's obligation to pay interest after the date it was due, which was "at any time" according to the amended agreement.

106. Accordingly, Gold Rush should not be charged any interest after July 30, 2021, for the \$8.6 million of the Notes for which it wired payment, which Accel wrongfully refused to accept.

107. Gold Rush also should not be obligated to pay interest on the remaining balance of the Notes as of March 2, 2022, the date it offered to fully repay the Loans.

WHEREFORE, Gold Rush respectfully requests that this Court declare that (1) Gold Rush had a right to repay a portion of the Loans in July 2021, and Accel should have accepted payment (2) Gold Rush properly requested a payoff letter and tendered payment in March 2022, and Accel should have provided the payoff letter and accepted the tender, (3) to the extent that Accel continues to refuse Gold Rush's efforts to prepay and repay the Loans, interest on the amounts tendered shall not continue to accrue, thus (4) interest ceased accruing on \$8.6 million of the balance as of July 30, 2021, and no further interest shall accrue under the Notes as of March 2, 2022.

JURY TRIAL DEMAND

Gold Rush hereby demands a jury trial on all issues so triable.

Dated: June 22, 2022

Respectfully submitted,

/s/ Patrick M. Collins

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