

SCHEDULE "A" – NOTICE OF MOTION

THE MOTION IS FOR:

- (a) An order striking out the Plaintiff's Claim (the "Claim") on the basis that it is inflammatory, a waste of time, a nuisance or an abuse of the court's process;
- (b) An order dismissing the Claim;
- (c) In the alternative, an order staying this action in favour of arbitration;
- (d) costs of this motion and the action; and
- (e) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Plaintiff commenced this action by way of Plaintiff's Claim dated February 8, 2023. The Claim alleges, among other things, that American Wagering, Inc. ("**AWI**") misinterpreted the applicable terms and conditions of the wagers such that it breached the contract between AWI and the Plaintiff. The Plaintiff appears to plead, in the alternative, that AWI was unjustly enriched by its conduct.
- (b) The Plaintiff initiated a formal dispute with iGaming Ontario ("**iGO**") on January 12, 2023 alleging the same breach of contract alleged in the Claim. iGO reviewed the Plaintiff's complaint and determined that the Plaintiff's wagers were settled properly pursuant to the applicable terms and conditions.

- (c) Given the determination of iGO, the Claim is inflammatory, a waste of time, a nuisance or an abuse of this Court's process because:
- (i) the Claim is *res judicata*. It raises the same issues between the Plaintiff and AWI as before iGO and which have already been finally determined, making it issue estopped.
 - (ii) the Claim is inflammatory and is intended to caste AWI in a negative light.
 - (iii) the Claim is part of the Plaintiff's business strategy to create publicity for his gambling and gambling education business.
 - (iv) this Court does not have the ability to judicially review the decision of iGO and it would be an abuse of process for this Court to consider the matter *de novo*.
- (d) As part of making the wagers, the applicable terms and conditions accepted by the Plaintiff contained an arbitration clause covering the matters alleged in the Claim. Pursuant to the *Arbitration Act, 1991*, SO 1991, c 17, as amended, this Claim must be stayed in favour of arbitration.
- (e) Rules 1.03 and 12.02 of the *Rules of the Small Claims Court*, O Reg 258/98, as amended;
- (f) Sections 7 and 17 of the *Arbitration Act, 1991*, SO 1991, c 17, as amended; and
- (g) Such further and other grounds as the lawyers may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Plaintiff's Claim and the documents incorporated by reference therein;
- (b) The affidavit of Lisa Rankin dated January 11, 2024; and
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

SCHEDULE “B” – SUMMARY OF ARGUMENT

PART I - INTRODUCTION

1. This is a motion by the Defendant, American Wagering, Inc. (the “**Moving Party**”) for an order pursuant to Rule 12.02(1) of the *Rules of the Small Claims Court*¹ (“**Small Claims Rules**”) striking out the Plaintiff’s Claim issued February 8, 2023 (the “**Claim**”) and dismissing the Claim pursuant to Rule 12.02(2).² The Claim, as plead, is inflammatory, a waste of time, a nuisance or an abuse of this Court’s process. In the alternative, the Moving Party seeks an order pursuant to s. 7(1) of the *Arbitration Act, 1991* (the “**Arbitration Act**”) staying the Plaintiff’s action in favour of arbitration.³

2. The issues underlying the Claim have been settled by iGaming Ontario (“**iGO**”) in accordance with law and the applicable standards. iGO is the subsidiary of the Alcohol and Gaming Commission (the “**AGCO**”) responsible for the conduct and management of internet gaming. The Plaintiff did not seek a review of iGO’s decision, and instead asks this Honourable Court to engage in the same inquiry but to come to the opposite conclusion. In the circumstances, the Claim ought to be struck and dismissed, or in the alternative, stayed in favour of arbitration in accordance with the agreement between the parties.

¹ *Rules of the Small Claims Court*, [O Reg 258/98](#) [Small Claims Rules], [Rule 12.02\(1\)](#).

² *Small Claims Rules*, [Rule 12.02\(2\)](#).

³ *Arbitration Act, 1991*, [SO 1991, c 17](#) [Arbitration Act] at s [7\(1\)](#).

PART II - SUMMARY OF FACTS

The Parties

3. The Plaintiff has an online presence and purports to be a professional gambler. He appears to operate a website, plusevanalytics.wordpress.com and also has an X (formerly Twitter) account, @PlusEVAanalytics, with 22.6k followers as of January 11, 2024.⁴ The Plaintiff also appears to sell and teach at least one course to the public on sports betting.⁵

4. The Defendant Moving Party is a Nevada corporation and subsidiary of Caesars Entertainment, Inc. In Ontario, the Moving Party operates an online sports betting and gaming website and mobile application known as Caesars Sportsbook. The Moving Party is a licensed iGaming Operator in Ontario by the AGCO and offers and administers games of chance as an agent for iGO.⁶

The Claim

5. The Plaintiff claims damages of \$2,250, costs of preparing the Claim, costs of effecting service, compensation for inconvenience, a representation fee, and any other applicable costs and disbursements available at law.⁷ The Plaintiff further requests that

⁴ Affidavit of Lisa Rankin dated January 11, 2024 (“**Rankin Affidavit**”) at para 3.

⁵ Rankin Affidavit at para 11(b).

⁶ Rankin Affidavit at para 2.

⁷ Rankin Affidavit, Exhibit “A”, Plaintiff’s Claim issued February 8, 2023, Schedule A (the “**Plaintiff’s Claim**”) at para 22.

the Moving Party be penalized and ordered to pay a penalty pursuant to Rule 19.06 of the *Small Claims Rules*.⁸

The Events Preceding the Claim

6. The Claim arises from events within the 2022-2023 National Football League (“NFL”) regular season. The Plaintiff is an account holder with the Moving Party’s online gaming and gambling platform.⁹ The Plaintiff placed nine wagers with the Moving Party relating to the win totals of the Indianapolis Colts, Buffalo Bills and Cincinnati Bengals (the “**Wagers**”).¹⁰

7. On January 5, 2023, the NFL announced that the NFL game between the Buffalo Bills and the Cincinnati Bengals would be cancelled.¹¹ Following the cancellation, the Moving Party settled the Wagers in accordance with its General Betting Rules (the “**House Rules**”). The Moving Party communicated this settlement to the AGCO on January 11, 2023 and the AGCO did not take issue with the Moving Party’s approach.¹² As a result, eight of the Wagers were settled as losses and one was voided.¹³

8. The Plaintiff contacted the Moving Party and ultimately disagreed with its interpretation of the House Rules.¹⁴ The Plaintiff then commenced a formal dispute with iGO on January 12, 2023.¹⁵ As part of his complaint to iGO, the Plaintiff alleged that the

⁸ Plaintiff’s Claim at para 22; *Small Claims Rules*, [Rule 19.06](#).

⁹ Plaintiff’s Claim at paras 1, 3 and 5.

¹⁰ Plaintiff’s Claim at para 3.

¹¹ Plaintiff’s Claim at paras 6 and 7.

¹² Rankin Affidavit at paras 6 and 7.

¹³ Rankin Affidavit at para 4; Plaintiff’s Claim at paras 11 and 12.

¹⁴ Rankin Affidavit at para 5; Plaintiff’s Claim at paras 15 to 17.

¹⁵ Rankin Affidavit at para 5; Plaintiff’s Claim at para 19.

Moving Party's treatment of the Wagers was inconsistent with the House Rules and that all of the Wagers should be settled as "void" such that the Moving Party is liable to the Plaintiff in the amount of \$2,250.¹⁶

9. iGO subsequently contacted the Moving Party and sought information relating to the Wagers and the Plaintiff's allegations. The Moving Party provided iGO with information consistent with what it previously provided to the AGCO on January 11, 2023. Ultimately, iGO agreed with the Moving Party's interpretation of the House Rules and informed the Plaintiff of its determination. The Plaintiff has not sought a review of that determination.¹⁷

10. Following iGO's determination, the Plaintiff commenced these proceedings.¹⁸

The Events Following the Claim

11. Following the issuance of the Claim, the Plaintiff engaged in various activities attempting to draw publicity to the Claim and his "dispute" with the Moving Party. To the knowledge of the Moving Party, the Plaintiff:

- (a) posted about the Claim to his website on February 8, 2023;
- (b) is quoted in an article by Canadian Gaming Business dated February 14, 2023;

¹⁶ Plaintiff's Claim, Appendix 5.

¹⁷ Rankin Affidavit at paras 6 to 9.

¹⁸ Rankin Affidavit at para 10.

- (c) participated in a podcast posted by Gambling with an Edge on February 23, 2023;
- (d) is quoted in an article by Sports Handle dated March 2, 2023;
- (e) posted about the Moving Party's defence to his website on March 6, 2023;
- (f) participated in a podcast posted by Always Betting on March 29, 2023;
- (g) participated in a podcast posted by The Theory of Daily Fantasy Sports on April 26, 2023; and
- (h) has made several posts on X regarding the Claim and his dispute with the Moving Party.¹⁹

12. Since commencing the Claim, the Plaintiff's following on X has increased by thousands of followers.²⁰

The Arbitration Agreement

13. The Plaintiff, as part of registering an account with AWI, agreed to the General Terms of Service (the "GTS").²¹ The GTS contains an arbitration agreement in section 30. In its entirety, it reads:

30. ARBITRATION. Excluding those disputes identified in Section 28 above and disputes which are subject to the iGaming Ontario Customer Care and Player Dispute Resolution Policy, any claims or controversy arising out of or relating to the Agreements, including the determination of the scope or applicability of the Agreements and our use of electronic services providers,

¹⁹ Rankin Affidavit at paras 11 and 13 to 16.

²⁰ Rankin Affidavit at paras 3 and 11(c).

²¹ Rankin Affidavit at para 18.

shall be determined by confidential arbitration by a single arbitrator seated in Toronto, Ontario. The arbitration shall be administered by ICDR Canada pursuant to its Canadian Arbitration Rules. The language of the arbitration shall be English. The award of the arbitrator shall be binding and final on all parties, and not subject to appeal on any question of law, fact, or mixed fact and law. Judgment on the award rendered may be entered in any court having jurisdiction. The prevailing party shall be entitled to reasonable legal fees and expenses. The arbitrator may not award any incidental, indirect, special, or consequential damages, including, but not limited to, damages for lost profits. If any part of the Agreements is found to be invalid, illegal or unenforceable in any respect, it will not affect the validity of the remainder of the Agreements, which shall remain valid and enforceable according to their terms. No waiver of any breach or default of the Agreements shall be deemed to be a waiver of any preceding or subsequent breach or default.²²

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

A. Issues to be Determined

14. There are two issues to be determined on this motion. First, should the Claim be struck pursuant to Rule 12.02(1) and dismissed pursuant to Rule 12.02(2)? Second, and in the alternative, should the Claim be stayed in favour of arbitration pursuant to the *Arbitration Act* and in accordance with the arbitration agreement contained in the GTS? The Moving Party submits that both issues ought to be answered in the positive, though the Moving Party need only succeed on one.

B. The Claim is Inflammatory, a Waste of Time, a Nuisance, and an Abuse of the Court's Process

15. Rule 12.02(1)(c) provides that the Court may, on motion, strike out all or part of any document that is inflammatory, a waste of time, a nuisance, or an abuse of the court's

²² Rankin Affidavit at para 19.

process.²³ Rule 12.02(2)(1) gives this Court the power to, in connection with an order pursuant to Rule 12.02(1), order that the action be stayed or dismissed.²⁴

a. Inflammatory, Waste of Time and Nuisance

16. Rule 12.02 serves a gatekeeping function to permit claims to be concluded by motion – rather than proceeding to trial – and on affidavit evidence. At its heart, it involves an analysis of whether a reasonable cause of action has been disclosed or whether the proceeding should be ended now because its continuation would be “inflammatory”, a “waste of time” or a “nuisance”.²⁵ Notably, a motion pursuant to Rule 12.02(1)(c) has a lower threshold than under Rule 21.01(3)(c) of the *Rules of Civil Procedure* as evidenced by the terms “inflammatory,” “waste of time,” and “nuisance”.²⁶ The language of Rule 12.02(1)(c) aligns with the nature of Small Claims Court and its ability to “make such order as is considered just and agreeable to good conscience”.²⁷

17. The Claim is a waste of time as it is issue estopped and therefore has no meaningful chance of success.²⁸ Issue estoppel, as a branch of *res judicata*, rests on the principle that “[a]n issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner”.²⁹ The requirements of issue

²³ *Rules of the Small Claims Court*, O Reg 258/98 at [Rule 12.02\(1\)\(c\)](#).

²⁴ *Rules of the Small Claims Court*, O Reg 258/98 at [Rule 12.02\(2\)\(1\)](#).

²⁵ *Carroca v River Park (Village)*, [2014 CanLII 67463](#) (ON SCSM) [*Carroca*] at para [4](#); *Van de Vrande v Butkowsky*, [2010 ONCA 230](#) at paras [17](#) and [19](#).

²⁶ *Carroca* at para [5](#); *Diler v Uppal*, [2012 CanLII 98399](#) (ON SCSM) at para [19](#); *Vuong v Toronto East General & Orthopaedic Hospital*, [2010 ONSC 6827](#) (Div. Ct.) [*Vuong*] at para [11](#); *Rules of Civil Procedure*, [RRO 1990, Reg 194](#) at [Rule 21.01\(3\)\(d\)](#).

²⁷ *Vuong* at paras [9 to 10](#); *Courts of Justice Act*, [RSO 1990, c C.43, s 25](#).

²⁸ *Lepp v Toronto Star Newspapers Limited*, [2022 CanLII 39874](#) (ON SCSM) at para [8](#).

²⁹ *Bryton Capital Corp. GP Ltd. v. CIM Bayview Creek Inc.*, [2023 ONCA 363](#) [*Bryton Capital*] at para [41](#).

estoppel are: (1) the issue must be the same as one decided previously; (2) the prior decision must be final; and (3) the parties must be the same.³⁰

18. The Claim raises the same issues as those decided by iGO, the Plaintiff did not seek a review of iGO's decision (making it final), and the parties to iGO's decision were the Plaintiff and the Moving Party.³¹ The Plaintiff is merely unhappy with iGO's decision, which he alleges contains "palpable and overriding errors", and seeks to re-litigate the same issues.³² To use the words of the Plaintiff, he has "been dismissed by regulators whose job it is to adjudicate disputes fairly" and "want[s] justice...and maybe a little revenge too".³³ In the circumstances, the Plaintiff should not be allowed to re-litigate the same issues to the harassment of the Moving Party.

19. If the Claim is not a waste of time, it is inflammatory and intended to be an attack on the Moving Party.³⁴ The Claim is nothing more than a publicity stunt by the Plaintiff. As the Plaintiff sets out on his website, his reasons for commencing the Claim include that he is a content creator, and the Claim is an opportunity for him to be part of a story that many find interesting. The Claim is merely an attempt to cast the Moving Party in a negative light because "they screwed us" and "thought they could get away with it".³⁵ The

³⁰ *Bryton Capital* at para 43; *Danyluk v Ainsworth Technologies Inc.*, [2001 SCC 44](#) at para 25.

³¹ Rankin Affidavit at paras 5 to 9; *Judicial Review Procedures Act*, [RSO 1990, c J.1](#), s 5.

³² Plaintiff's Claim at para 21.

³³ Rankin Affidavit, Exhibit "C".

³⁴ *Eira v Kulkami*, [2021 ONSC 7015](#) at paras 7 to 11.

³⁵ Rankin Affidavit, Exhibit "C".

Plaintiff's attempts at publicity following the issuance of the Claim only reiterate his motivations are in generating content, clicks, publicity and, potentially, revenue.³⁶

20. Finally, the Claim is a nuisance. While there is a dearth of case law interpreting the phrase "nuisance" in the context of Rule 12.02(1), the Moving Party submits that, read in context in its grammatical and ordinary sense harmoniously with the scheme, object and intention of the *Small Claims Rules*, "nuisance" means claims meant to cause inconvenience or annoyance to a defendant.³⁷ As the Plaintiff admits on his website, the Claim is not for a lot of money and is primarily being pursued because the Plaintiff thinks the Moving Party has "screwed" him.³⁸ The Claim is intended to be nothing more than an inconvenience or annoyance to the Moving Party so that the Plaintiff can extract his "revenge".

b. Abuse of Process

21. The doctrine of abuse of process codified in Rule 12.02(1)(c) is flexible and gives this Court the jurisdiction to grant relief necessary to prevent a litigant from abusing its process. The purpose of the doctrine of abuse of process is to protect the fairness and integrity of the administration of justice by preventing the unnecessary multiplicity of proceedings. Notably, this doctrine may be applied even where *res judicata* does not

³⁶ See Rankin Affidavit at paras 11 and 13 to 16.

³⁷ See *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998 CanLII 837](#) (SCC) at para 21.

³⁸ Rankin Affidavit, Exhibit "C".

strictly apply if allowing the litigation to proceed would effectively violate the principles of judicial economy, finality, and the integrity of the administration of justice.³⁹

22. A claim may be dismissed under Rule 12.02(1)(c) as an abuse of process where a litigant attempts to re-litigate previously decided matters.⁴⁰ In *Crook v Adler*, the plaintiff argued that a counterclaim brought by the defendants was an abuse of process given that the claims advanced were duplicative of the claims that the defendant had separately advanced before the Landlord and Tenant Board.⁴¹ Justice Morgan agreed that the defendants' claim was an abuse of process and noted that "where the causes of action and alleged damages claimed in multiple proceedings arise from the same factual matrix, the proceedings are considered duplicative and are an abuse of the court's process."⁴²

23. In the Claim, the causes of action and damages claimed by the Plaintiff arise from the same factual matrix tendered by the Plaintiff before iGO.⁴³ While the Plaintiff may not have alleged any specific causes of action before iGO, he alleged that the Moving Party misinterpreted the House Rules and that he was entitled to \$2,250 as a result. That is, in essence, the same cause of action and relief the Plaintiff seeks before this Court.⁴⁴

24. The Legislature has created iGO with the intention that it conduct and manage online lottery schemes (under the supervision of the AGCO) in accordance with the

³⁹ *Vuong* at para [7](#); *Toronto (City) v Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003 SCC 63](#) at para 37.

⁴⁰ *Vuong* at para [13](#); *MDG Newmarket Inc. v Symonds*, [2022 ONSC 6481](#) at para [36](#).

⁴¹ *Crook v. Adler*, [2021 ONSC 7719](#) [Adler] at para [1](#).

⁴² *Adler* at para [11](#); *Carbone v DeGroot*, [2018 ONSC 109](#) at paras [35](#) and [37](#).

⁴³ Plaintiff's Claim at paras 4 and 9 to 14 and Appendix 5; Rankin Affidavit at paras 6 to 9.

⁴⁴ Plaintiff's Claim at paras 4 and 9 to 14.

Criminal Code, the *Gaming Control Act* and the *Registrar's Standards for Internet Gaming*.⁴⁵ As part of its conduct and management of online lottery schemes, iGO has established a dispute resolution process.⁴⁶ In settling disputes, iGO is obligated to uphold the standards prescribed by the Registrar of the AGCO, including that disputes must be resolved under Ontario and Canadian law.⁴⁷

25. In the circumstances, the Legislature's intent to have iGO conduct and manage online lottery schemes, including the resolution of disputes between players and iGaming Operators, ought to be respected. While iGO's dispute resolution process is not mandatory, a player's choice to engage it must be considered with judicial economy, finality and the integrity of the administration of justice in mind. To allow the Plaintiff to continue these proceedings in light of iGO's decision violates those principles:

- (a) The courts will be inundated with small disputes from online gaming players unhappy with the results of their betting outcomes. This will undermine judicial economy whereas iGO and the AGCO are well-placed to handle such disputes given their industry knowledge and oversight. iGO's dispute resolution process directly addresses this issue.

⁴⁵ *Lottery Subsidiary – iGaming Ontario Regulation*, [O Reg 722/21](#) [*iGO Regulation*], s 4(3); *Gaming Control Act, 1992*, [SO 1992, c 24](#) [*Gaming Control Act*] at ss. [3.7](#) and [3.8](#).

⁴⁶ "Conduct and management" is not defined in the *iGO Regulation*, however, cases considering [section 207](#) of the *Criminal Code* – the exemption to the criminal prohibition on gambling – have considered "conduct and management" to be all-encompassing; see for example *Community Fundraising Corp. v Newfoundland and Labrador (Department of Government Services and Lands)*, [2004 NLTD 236](#) at para [70](#).

⁴⁷ *Gaming Control Act* at ss. [3.7](#) and [3.8](#); Rankin Affidavit, Exhibit "K", Customer Service, s 1.16.

- (b) Players will have the ability to first engage iGO's process and then commence proceedings in the courts if they are unhappy with its outcome. This undermines finality as it requires iGaming Operators, like the Moving Party, to justify their conduct in a specific factual matrix in multiple venues with potentially differing outcomes. Where one process has been chosen, it ought to be respected.
- (c) The integrity of iGO's dispute resolution process will be undermined as, practically, it will only have consequences for iGaming Operators, like the Moving Party, and not players.⁴⁸ Players could simply seek a determination and hold it against the iGaming Operator if favourable to the player, or subsequently seek court proceedings if favourable to the iGaming Operator. This brings the administration of justice into disrepute, particularly from the perspective of iGaming Operators like the Moving Party.

26. In the circumstances, the Plaintiff's attempt to re-litigate the issues before iGO is an abuse of process, and the Claim ought to be struck and this proceeding dismissed.

C. The Claim Must be Stayed in Favour of Arbitration

27. Section 7(1) of the *Arbitration Act* requires a court to stay a proceeding where an arbitration agreement applies:

“If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the

⁴⁸ Rankin Affidavit at para 9.

proceeded is commenced shall, on a motion of another party to the arbitration agreement, stay the proceeding.”⁴⁹ (emphasis added)

28. The law strongly favours giving effect to arbitration agreements. This is evidenced in the language of the *Arbitration Act* and the jurisprudence interpreting it. As the Court of Appeal for Ontario stated in *Haas v Gunasekaram* (“**Haas**”): “[t]he statutory language in s.7 of the current *Arbitration Act* is directory, not equivocal. It strongly favours giving effect to an arbitration agreement.”⁵⁰ The “competence-competence principle” developed in the case law further supports giving effect to arbitration agreements, such that any doubts to an arbitrator’s jurisdiction ought to first be decided by the arbitrator.⁵¹ The jurisprudence makes clear that arbitration clauses are to be given a large and liberal interpretation in furtherance of the policy goal of giving effect to the dispute resolution procedures chosen by the parties.⁵²

29. In *Haas*, the Court of Appeal set out a five-step framework to apply on motions to stay a proceeding in favour of arbitration:

- (a) Is there an arbitration agreement?
- (b) What is the subject matter of the dispute?
- (c) What is the scope of the arbitration agreement?

⁴⁹ *Arbitration Act* at s. [7\(1\)](#).

⁵⁰ *Haas v. Gunasekaram*, [2016 ONCA 744](#) [*Haas*] at para [12](#).

⁵¹ *Haas* at para [15](#); see also *Arbitration Act* at s [17](#); see also see also *Peace River Hydro Partners v. Petrowest Corp.*, [2022 SCC 41](#) [*Peace River*] at paras [39 to 41](#).

⁵² *Eurofins Experchem Laboratories, Inc. v BevCanna Operating Corp.*, [2023 ONSC 4015](#) [*Eurofins*] at para [22](#); see also *Peace River* at paras [49 to 50](#).

- (d) Does the dispute arguably fall within the scope of the arbitration agreement?
- (e) Are there grounds on which the court should refuse to stay the action?⁵³

30. The party seeking the stay need only establish an arguable case that the prerequisites are met to obtain a stay.⁵⁴

31. In the circumstances, there is an arguable case that the Claim must be arbitrated:

- (a) There is no doubt that an arbitration agreement between the Plaintiff and the Moving Party exists. The Plaintiff, as part of registering an account with the Moving Party, specifically agreed to the GTS. The GTS set out that by clicking on “Submit” or “I Agree” or by using the “Services”, the user agrees to be entering into a legally binding agreement with the Moving Party on the terms and conditions set out in the GTS. The Plaintiff’s creation of an account and subsequent clicking of “Submit” or “I agree” or by using the “Services” created a binding agreement between the parties.⁵⁵
- (b) The Claim, as plead by the Plaintiff, is a breach of contract dispute. Alternatively, the Claim potentially includes a claim for unjust enrichment.⁵⁶ At its heart, the Claim concerns the interpretation of the Moving Party’s House Rules.

⁵³ *Haas* at para [17](#); see also *Eurofins* at para [23](#).

⁵⁴ *Peace River* at para [84](#).

⁵⁵ Plaintiff’s Claim at para 1; Rankin Affidavit at paras 18 to 19; Rankin Affidavit, Exhibit “H”.

⁵⁶ Plaintiff’s Claim at paras 4 and 22.

- (c) The arbitration clause in the circumstances is broad. It covers “any claims or controversy arising out of or relating to the Agreements”. The Agreements include the House Rules. The use of the language “relating to” enjoys a generous interpretation.⁵⁷ The arbitration agreement is subject only to two narrow exceptions, one of which is the iGO dispute resolution process that the Plaintiff has already exhausted.⁵⁸
- (d) Arguably, the dispute contained in the Claim falls within the scope of the arbitration agreement. To the extent the Plaintiff seeks an interpretation of the House Rules, that is squarely a dispute “arising out of” the GTS. To the extent the Plaintiff seeks to make an unjust enrichment claim, that claim “relates” to the GTS as it is the basis of any relationship between the Plaintiff and the Moving Party. If there is any doubt as to whether the Claim falls within the scope of the arbitration agreement, under the competence-competence principle, that should first be determined by the arbitrator.⁵⁹

32. Where the prerequisites for a stay are established, this Court retains the discretion to refuse a stay in limited circumstances pursuant to section 7(2) of the *Arbitration Act*. This discretion is to be “exercised sparingly.”⁶⁰ The limited circumstances include:

- (a) A party entered into the agreement while under a legal incapacity.

⁵⁷ *Haas* at para [29](#).

⁵⁸ Rankin Affidavit at paras 19 to 23.

⁵⁹ *Haas* at para [15](#); see also *Arbitration Act* at s [17](#); see also see also *Peace River* at paras [39 to 41](#).

⁶⁰ *Khomovych v. Bomar 2 Inc. o/a Colony Park Homes*, [2019 ONSC 3982](#) at para [8](#).

- (b) The arbitration agreement is invalid.
- (c) The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.
- (d) The motion was brought with undue delay.
- (e) The matter is a proper one for default or summary judgment.⁶¹

33. The Plaintiff bears the onus of establishing that the proceeding falls within one of the limited exceptions.⁶² The Moving Party submits that the Plaintiff cannot make out any of the exceptions:

- (a) The Plaintiff's Claim makes no allegation of incapacity on the part of the Plaintiff at the time he agreed to the GTS;
- (b) The Plaintiff's Claim makes no allegation that the terms of the GTS are invalid – to the contrary, the Plaintiff's Claim rests on his interpretation of an otherwise valid agreement between the parties;
- (c) Contractual claims are arbitrable under Ontario law and there are no public policy reasons to suggest otherwise;
- (d) The Moving Party, following the direction of Deputy Judge Jamal Karmali on November 1, 2023, brought the within motion without delay; and

⁶¹ *Arbitration Act* at s. [7\(1\)](#).

⁶² *Leon v Dealnet Capital Corp.*, [2021 ONSC 3636](#) at para [36](#) citing *Kanitz v. Rogers Cable Inc.*, [2002 CanLII 49415](#) (ON SC) at para [14](#).

- (e) There is no default in these proceedings and summary judgment under the *Rules of Civil Procedure* is not available under the *Small Claims Rules*.

D. Conclusion

34. The Plaintiff's dispute has already been settled by iGO, and the Plaintiff is estopped from claiming against AWI. As the Plaintiff is seeking to re-argue the same facts argued before iGO and hoping for a different conclusion, the Plaintiff's Claim is inflammatory, a waste of time, a nuisance, and an abuse of process and should be struck and dismissed pursuant to Rule 12.02 of the *Small Claims Rules*.

35. In the alternative, AWI entered into a valid and enforceable agreement with the Plaintiff to arbitrate the disputes in the Plaintiff's Claim, and there is no reason to abrogate from the bargain between the parties. The Claim must be stayed in favour of arbitration pursuant to section 7(1) of the *Arbitration Act*. Any objections to the validity or scope of the arbitration agreement can and should be raised by the Plaintiff with the arbitrator.

36. The Claim ought to be struck and dismissed or stayed, with costs to AWI on the highest possible scale.

PART IV - ORDER REQUESTED

37. AWI requests an order:

- (a) striking out the Claim as against the Moving Party, without leave to amend, pursuant to Rule 12.02(1)(c) of the *Rules of the Small Claims Court*;
- (b) dismissing the Claim as against the Moving Party pursuant to Rule 12.02(2) of the *Rules of the Small Claims Court*;

- (c) in the alternative, staying the Claim as against the Moving Party pursuant to section 7 of the *Arbitration Act*; and
- (d) costs of this motion and this proceeding on a substantial indemnity scale to be paid within 30 days of this Court's order; and
- (e) Such further and other Relief as to this Honourable Court may seem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of January, 2024.

**SCHEDULE “A”
LIST OF AUTHORITIES:**

1. *Bryton Capital Corp. GP Ltd. v. CIM Bayview Creek Inc.*, [2023 ONCA 363](#)
2. *Carbone v DeGroot*e, [2018 ONSC 109](#)
3. *Carroca v River Park (Village)*, [2014 CanLII 67463](#) (ON SCSM)
4. *Community Fundraising Corp. v Newfoundland and Labrador (Department of Government Services and Lands)*, [2004 NLTD 236](#)
5. *Crook v. Adler*, [2021 ONSC 7719](#)
6. *Danyluk v Ainsworth Technologies Inc.*, [2001 SCC 44](#) at para 25.
7. *Diler v Uppal*, [2012 CanLII 98399](#) (ON SCSM)
8. *Eira v Kulkami*, [2021 ONSC 7015](#)
9. *Eurofins Experchem Laboratories, Inc. v BevCanna Operating Corp.*, [2023 ONSC 4015](#)
10. *Haas v. Gunasekram*, [2016 ONCA 744](#)
11. *Kanitz v. Rogers Cable Inc.*, [2002 CanLII 49415](#) (ON SC)
12. *Khomovych v. Bomar 2 Inc. o/a Colony Park Homes*, [2019 ONSC 3982](#)
13. *Leon v Dealnet Capital Corp.*, [2021 ONSC 3636](#)
14. *Lepp v Toronto Star Newspapers Limited*, [2022 CanLII 39874](#) (ON SCSM)
15. *MDG Newmarket Inc. v Symonds*, [2022 ONSC 6481](#)
16. *Peace River Hydro Partners v. Petrowest Corp.*, [2022 SCC 41](#)
17. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998 CanLII 837](#) (SCC)
18. *Toronto (City) v Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003 SCC 63](#)
19. *Van de Vrande v Butkowsky*, [2010 ONCA 230](#)
20. *Vuong v Toronto East General & Orthopaedic Hospital*, [2010 ONSC 6827](#) (Div. Ct.)

**SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS:**

1. *Arbitration Act, 1991, SO 1991, c 17*

Stay

7 (1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding. 1991, c. 17, s. 7 (1).

Exceptions

- (2) However, the court may refuse to stay the proceeding in any of the following cases:
1. A party entered into the arbitration agreement while under a legal incapacity.
 2. The arbitration agreement is invalid.
 3. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.
 4. The motion was brought with undue delay.
 5. The matter is a proper one for default or summary judgment. 1991, c. 17, s. 7 (2).

Rulings and objections re jurisdiction

Arbitral tribunal may rule on own jurisdiction

17 (1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement. 1991, c. 17, s. 17 (1).

Independent agreement

(2) If the arbitration agreement forms part of another agreement, it shall, for the purposes of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the main agreement is found to be invalid. 1991, c. 17, s. 17 (2).

Time for objections to jurisdiction

(3) A party who has an objection to the arbitral tribunal’s jurisdiction to conduct the arbitration shall make the objection no later than the beginning of the hearing or, if there is no hearing, no later than the first occasion on which the party submits a statement to the tribunal. 1991, c. 17, s. 17 (3).

Party’s appointment of arbitrator no bar to objection

(4) The fact that a party has appointed or participated in the appointment of an arbitrator does not prevent the party from making an objection to jurisdiction. 1991, c. 17, s. 17 (4).

Time for objections, exceeding authority

(5) A party who has an objection that the arbitral tribunal is exceeding its authority shall make the objection as soon as the matter alleged to be beyond the tribunal's authority is raised during the arbitration. 1991, c. 17, s. 17 (5).

Later objections

(6) Despite section 4, if the arbitral tribunal considers the delay justified, a party may make an objection after the time limit referred to in subsection (3) or (5), as the case may be, has expired. 1991, c. 17, s. 17 (6).

Ruling

(7) The arbitral tribunal may rule on an objection as a preliminary question or may deal with it in an award. 1991, c. 17, s. 17 (7).

Review by court

(8) If the arbitral tribunal rules on an objection as a preliminary question, a party may, within thirty days after receiving notice of the ruling, make an application to the court to decide the matter. 1991, c. 17, s. 17 (8).

No appeal

(9) There is no appeal from the court's decision. 1991, c. 17, s. 17 (9).

Arbitration may continue

(10) While an application is pending, the arbitral tribunal may continue the arbitration and make an award. 1991, c. 17, s. 17 (10).

2. *Courts of Justice Act*, RSO 1990, c C.43

Summary hearings

25 The Small Claims Court shall hear and determine in a summary way all questions of law and fact and may make such order as is considered just and agreeable to good conscience. R.S.O. 1990, c. C.43, s. 25.

3. *Criminal Code*, RSC, 1985, c C-46

Permitted lotteries

207 (1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

(a) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province;

(b) for a charitable or religious organization, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose;

(c) for the board of a fair or of an exhibition, or an operator of a concession leased by that board, to conduct and manage a lottery scheme in a province where the Lieutenant Governor in Council of the province or such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof has

(i) designated that fair or exhibition as a fair or exhibition where a lottery scheme may be conducted and managed, and

(ii) issued a licence for the conduct and management of a lottery scheme to that board or operator;

(d) for any person, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme at a public place of amusement in that province if

(i) the amount or value of each prize awarded does not exceed five hundred dollars, and

(ii) the money or other valuable consideration paid to secure a chance to win a prize does not exceed two dollars;

(e) for the government of a province to agree with the government of another province that lots, cards or tickets in relation to a lottery scheme that is by any of paragraphs (a) to (d) authorized to be conducted and managed in that other province may be sold in the province;

(f) for any person, pursuant to a licence issued by the Lieutenant Governor in Council of a province or such other person or authority in the province as may be designated by the Lieutenant Governor in Council thereof, to conduct and manage in the province a lottery scheme that is authorized to be conducted and managed in one or more other provinces where the authority by which the lottery scheme was first authorized to be conducted and managed consents thereto;

(g) for any person, for the purpose of a lottery scheme that is lawful in a province under any of paragraphs (a) to (f), to do anything in the province, in accordance with the applicable law or licence, that is required for the conduct, management or operation of the lottery scheme or for the person to participate in the scheme; and

(h) for any person to make or print anywhere in Canada or to cause to be made or printed anywhere in Canada anything relating to gaming and betting that is to be used in a place where it is or would, if certain conditions provided by law are met, be lawful to use such a thing, or to send, transmit, mail, ship, deliver or allow to be sent, transmitted, mailed, shipped or delivered or to accept for carriage or transport or convey any such thing where the destination thereof is such a place.

Terms and conditions of licence

(2) Subject to this Act, a licence issued by or under the authority of the Lieutenant Governor in Council of a province as described in paragraph (1)(b), (c), (d) or (f) may contain such terms and conditions relating to the conduct, management and operation of or participation in the lottery scheme to which the licence relates as the Lieutenant Governor in Council of that province, the person or authority in the province designated by the Lieutenant Governor in Council thereof or any law enacted by the legislature of that province may prescribe.

Offence

(3) Every one who, for the purposes of a lottery scheme, does anything that is not authorized by or pursuant to a provision of this section

(a) in the case of the conduct, management or operation of that lottery scheme,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years, or

(ii) is guilty of an offence punishable on summary conviction; or

(b) in the case of participating in that lottery scheme, is guilty of an offence punishable on summary conviction.

Definition of *lottery scheme*

(4) In this section, ***lottery scheme*** means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting other than

(a) three-card monte, punch board or coin table;

(b) bookmaking, pool selling or the making or recording of bets, including bets made through the agency of a pool or pari-mutuel system, on any horse-race; or

(c) for the purposes of paragraphs (1)(b) to (f), a game or proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g) that is operated on or through a computer, video device, slot machine or a dice game.

Definition of *slot machine*

(4.01) In paragraph 4(c), ***slot machine*** means any automatic machine or slot machine, other than any automatic machine or slot machine that dispenses as prizes only one or more free games on that machine, that

(a) is used or intended to be used for any purpose other than selling merchandise or services; or

(b) is used or intended to be used for the purpose of selling merchandise or services if

(i) the result of one of any number of operations of the machine is a matter of chance or uncertainty to the operator,

(ii) as a result of a given number of successive operations by the operator, the machine produces different results, or

(iii) on any operation of the machine, it discharges or emits a slug or token.

Exception — charitable or religious organization

(4.1) The use of a computer for the sale of a ticket, selection of a winner or the distribution of a prize in a raffle, including a 50/50 draw, is excluded from paragraph (4)(c) in so far as the raffle is authorized under paragraph (1)(b) and the proceeds are used for a charitable or religious object or purpose.

Exception re: pari-mutuel betting

(5) For greater certainty, nothing in this section shall be construed as authorizing the making or recording of bets on horse-races through the agency of a pari-mutuel system other than in accordance with section 204.

4. *Gaming Control Act, 1992, SO 1992, c 24*

Rules of play

3.7 The Board may approve in writing rules of play for the playing of lottery schemes conducted and managed by the Ontario Lottery and Gaming Corporation or by the lottery subsidiary if the regulations have not prescribed rules of play. 1999, c. 12, Sched. L, s. 19 (6); 2002, c. 18, Sched. E, s. 4 (4); 2011, c. 9, Sched. 17, s. 4; 2020, c. 36, Sched. 18, s. 2.

Other standards and requirements

3.8 (1) If the regulations have not prescribed standards and requirements for a matter described in this section, the Registrar may establish in writing standards and requirements for the conduct, management and operation of gaming sites, lottery schemes or businesses related to a gaming site or a lottery scheme or for goods or services related to that conduct, management or operation if the standards and requirements deal with,

(a) prohibiting or restricting certain persons from entering gaming sites or playing lottery schemes;

- (b) the prevention of unlawful activities;
- (c) the integrity of a lottery scheme;
- (d) surveillance, security and access related to gaming sites or lottery schemes;
- (e) internal controls;
- (f) the protection of assets, including money and money equivalents;
- (g) the protection of players and responsible gambling; and
- (h) the keeping of records, including financial records. 2011, c. 9, Sched. 17, s. 5.

Not regulations

(2) Standards and requirements that the Registrar establishes under subsection (1) are not regulations within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 2011, c. 9, Sched. 17, s. 5.

Duty of compliance

(3) Registrants shall comply with standards and requirements that the Registrar establishes under subsection (1). 2011, c. 9, Sched. 17, s. 5.

5. *Judicial Review Procedures Act, RSO 1990, c J.1*

Time for bringing application

5 (1) Unless another Act provides otherwise, an application for judicial review shall be made no later than 30 days after the date the decision or matter for which judicial review is being sought was made or occurred, subject to subsection (2). 2020, c. 11, Sched. 10, s. 2.

Extension

(2) The court may, on such terms as it considers proper, extend the time for making an application for judicial review if it is satisfied that there are apparent grounds for relief and that no substantial prejudice or hardship will result to any person affected by reason of the delay. 2020, c. 11, Sched. 10, s. 2.

Same, other Acts

(3) Subsection (2) applies with respect to any limitation of time for the bringing of an application for judicial review under any other Act, unless that Act expressly provides otherwise. 2020, c. 11, Sched. 10, s. 2.

Transition

(4) Subsection (1) applies with respect to the judicial review of a decision that is made

or of a matter that occurs on or after the day section 2 of Schedule 10 to the *Smarter and Stronger Justice Act, 2020* comes into force. 2020, c. 11, Sched. 10, s. 2.

6. *Rules of the Small Claims Court, O Reg 258/98*

General Principle

1.03 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 25 of the Courts of Justice Act. O. Reg. 258/98, r. 1.03 (1). Motion to Strike out or Amend a Document

Motion to Strike out or Amend a Document

12.02 (1) The court may, on motion, strike out or amend all or part of any document that,

- (a) discloses no reasonable cause of action or defence;
- (b) may delay or make it difficult to have a fair trial; or
- (c) is inflammatory, a waste of time, a nuisance, or an abuse of the court's process. O. Reg. 78/06, s. 26.

(2) In connection with an order striking out or amending a document under subrule (1), the court may do one or more of the following:

- 1. In the case of a claim, order that the action be stayed or dismissed.
- 2. In the case of a defence, strike out the defence and grant judgment.
- 2.1 In the case of a motion, order that the motion be stayed or dismissed.
- 3. Impose such terms as are just. O. Reg. 78/06, s. 26; Reg. 44/14, s. 11 (2).

Penalty

19.06 If the court is satisfied that a party has unduly complicated or prolonged an action or has otherwise acted unreasonably, the court may order the party to pay an amount as compensation to another party. O. Reg. 78/06, s. 39.

7. *Rules of Civil Procedure, RRO 1990, Reg 194*

Where Available

To Any Party on a Question of Law

21.01 (1) A party may move before a judge,

- (a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or
- (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (1).

(2) No evidence is admissible on a motion,

- (a) under clause (1) (a), except with leave of a judge or on consent of the parties;
- (b) under clause (1) (b). R.R.O. 1990, Reg. 194, r. 21.01 (2).

To Defendant

(3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

Jurisdiction

- (a) the court has no jurisdiction over the subject matter of the action;

Capacity

- (b) the plaintiff is without legal capacity to commence or continue the action or the defendant does not have the legal capacity to be sued;

Another Proceeding Pending

- (c) another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or

Action Frivolous, Vexatious or Abuse of Process

- (d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (3).

8. *Lottery Subsidiary – iGaming Ontario Regulation, O Reg 722/21*

Prescribed objects and duties

4. For the purposes of clause 6.1 (1) (b) of the Act, the following are prescribed as objects and duties of the Corporation:

1. To develop, undertake and organize prescribed online lottery schemes.
2. To promote responsible gaming with respect to prescribed online lottery schemes.
3. To conduct and manage prescribed online lottery schemes in accordance with the *Criminal Code* (Canada) and the *Gaming Control Act, 1992 and the regulations made under those Acts*.

SCHEDULE "C" - AFFIDAVIT

I, Lisa Rankin, of the City of Las Vegas, in the State of Nevada in the United States of America, AFFIRM AND SAY:

1. I am Vice-President of Compliance and Licensing at American Wagering, Inc. ("**AWI**"), and, as such, have knowledge of the matters contained in this Affidavit. In preparing my affidavit, I reviewed a copy of the Plaintiff's Claim dated February 8, 2023 (the "**Claim**"), a copy of which is attached as **Exhibit "A"**.

American Wagering, Inc.

2. AWI is a corporation incorporated pursuant to the laws of Nevada. AWI is a subsidiary of Caesars Entertainment, Inc. which is primarily a U.S.-based operator of casinos and other gaming- and gambling-related ventures, most commonly known for the Caesars brand of casinos and sportsbook. In Ontario, AWI operates an online sports betting and gaming website and mobile application known as Caesars Sportsbook. AWI is a licensed iGaming Operator in Ontario by the Alcohol and Gaming Commission of Ontario ("**AGCO**") and offers and administers games of chance as an agent for iGaming Ontario ("**iGO**"), the subsidiary of AGCO responsible for online gaming.

The Plaintiff

3. The Plaintiff, Matthew Daniel Buchalter, has an online presence and purports to be a professional gambler. He appears to operate a website, plusevanalytics.wordpress.com and also has an X (formerly Twitter) account, @PlusEVAalytics, with 22.6k followers as of the date of my affidavit. The Plaintiff's bio from his website, as contained in AWI's Defence, is attached

as **Exhibit “B”**. Since commencing the Claim, I understand that the Plaintiff’s X account has gained thousands of followers.

The Underlying Dispute

4. The Plaintiff placed 9 wagers using Caesars Sportsbook between June and August 2022. Those wagers are set out in paragraph 5 of Schedule A to the Claim (the “**Wagers**”). The Wagers bet on certain outcomes relating to the National Football League season. Ultimately, none of those outcomes occurred and in January 2023 all of the Wagers were settled as losses except one, which was voided. These settlements were in accordance with AWI’s General Betting Rules (the “**House Rules**”).

5. The Plaintiff disagreed with AWI’s interpretation of its House Rules and, based on the facts alleged in the Claim, initiated a formal dispute with iGO on January 12, 2023. The Plaintiff’s interactions with iGO and the basis for his complaint are set out in Appendix 5 to the Claim.

6. AWI learned of the Plaintiff’s complaint to iGO on January 27, 2023, when iGO contacted AWI and informed us that the Plaintiff had registered a complaint through iGO’s dispute resolution procedure. iGO requested an explanation as to the settlement of the Wagers and AWI’s interpretation of the House Rules.

7. On January 30, 2023, AWI provided iGO with the requested information. The information we provided was consistent with what AWI had previously provided to the AGCO on January 11, 2023 and which the AGCO had confirmed it had no concerns with.

8. On February 3, 2023, iGO informed AWI that it agreed with AWI’s interpretation of the House Rules and that the Wagers were settled correctly. From Appendix 5 of the Claim, the Plaintiff was informed of that on the same day.

9. To AWI's knowledge, the Plaintiff has not sought any review of iGO's decision. For AWI, and many other iGaming Operators in Ontario, such determinations by iGO are, in practice, final. A determination from the dispute resolution process is, in essence, a direction from iGO on AWI's regulatory obligations in the circumstances. Accordingly, we are required to respect iGO's decisions.

The Plaintiff's Commences this Proceeding

10. The Claim was commenced on February 8, 2023. I understand from our team that it was received via regular mail to AWI's offices in Las Vegas on February 13, 2023. That same day, the Plaintiff posted about the Claim to his website. A copy of that webpage, as contained in AWI's Defence, is attached as **Exhibit "C"**.

The Plaintiff's Attempts at Publicity

11. Following the commencement of the Claim, the Plaintiff engaged in a campaign trying to publicize his "dispute" with AWI:

(a) On February 14, 2023, Canadian Gaming Business released an article about the Plaintiff's dispute with AWI. The Plaintiff is quoted in the article and the author suggests that they also reached out to AWI and the AGCO for comment. A copy of the article, as contained in AWI's Defence, is attached as **Exhibit "D"**.

(b) On or about February 23, 2023, Gambling with an Edge posted a podcast on which the Plaintiff appeared. I listened to the Plaintiff's portion of the podcast and he discusses these proceedings as well as the course the Plaintiff teaches and sells on sports betting. The Plaintiff directs listeners to his website. The Plaintiff also makes a comment suggesting that he would never agree to any settlements that included confidentiality terms. The hosts also

encourage people to follow the Plaintiff on Twitter. I retrieved a copy of the podcast at this URL: <https://www.youtube.com/watch?v=zjZGwdtqJCA>.

- (c) On March 2, 2023, Sports Handle released an article about the Plaintiff's dispute with AWI. The Plaintiff is quoted in the article. At the time of its publication, the article notes that the Plaintiff had approximately 18.5k Twitter followers. A copy of the article, as contained in AWI's Defence, is attached as **Exhibit "E"**.

AWI Serves a Defence

12. While the Plaintiff did not properly name AWI nor did he properly serve the Claim, to avoid any potential default and the potential regulatory implications arising for AWI, AWI served its Defence on March 6, 2023.

The Plaintiff Continues His Publicity Campaign

13. The same day that AWI served its defence, the Plaintiff posted about AWI's Defence on his website. A copy of that webpage is attached as **Exhibit "F"**.

14. On March 29, 2023, Always Betting posted a podcast on which the Plaintiff appeared. I listened to the podcast and the Plaintiff discusses these proceedings. The Plaintiff also makes comments that these proceedings are "about the principle" and suggests that he feels wronged by the Moving Party and iGO and is not "going to let it slide". The Plaintiff also directs listeners to "follow along" on his "journey". The hosts also encourage people to follow the Plaintiff on Twitter. I retrieved a copy of the podcast at this URL: <https://podcasters.spotify.com/pod/show/alwaysbetting/episodes/S2-Ep-65---At-war-with-the-Roman-Empire-Feat--PlusEVAanalytics-e21agjj>.

15. On April 26, 2023, The Theory of Daily Fantasy Sports posted a podcast on which the Plaintiff appeared. I listened to the podcast and the Plaintiff discusses these proceedings and makes reference to Caesars as part of his “portfolio”. The Plaintiff also suggests that these proceedings are not about the money at issue and that iGO knows very little about the industry. I retrieved a copy of the podcast at this URL: <https://theoryofdfs.podbean.com/e/103-death-faking-budget>.

16. While I have not attempted to gather and append each and every post the Plaintiff has made about his “dispute” with AWI on X, the Plaintiff has made several such posts prior to and after commencing this proceeding. Some examples of those posts are on the Plaintiff’s website where he wrote about the Claim and are contained in Exhibit “C”.

Procedural History

17. Following service of AWI’s Defence, the parties attended a settlement conference on October 16, 2023. Deputy Judge Jamal Karmali’s endorsement was delivered to AWI’s legal counsel on November 1, 2023. A copy of the endorsement is attached as **Exhibit “G”**.

The Arbitration Agreement

18. The Plaintiff, as part of registering an account with AWI, agreed to the General Terms of Service (the “**GTS**”). A copy of the GTS, as contained in AWI’s Defence, is attached as **Exhibit “H”**.

19. The GTS contains an arbitration agreement at section 30:

30. ARBITRATION. Excluding those disputes identified in Section 28 above and disputes which are subject to the iGaming Ontario Customer Care and Player Dispute Resolution Policy, any claims or controversy arising out of or relating to the Agreements, including the determination of the scope or applicability of the Agreements and our use of electronic services providers, shall be determined by confidential arbitration by a single arbitrator seated in Toronto, Ontario. The

arbitration shall be administered by ICDR Canada pursuant to its Canadian Arbitration Rules. The language of the arbitration shall be English. The award of the arbitrator shall be binding and final on all parties, and not subject to appeal on any question of law, fact, or mixed fact and law. Judgment on the award rendered may be entered in any court having jurisdiction. The prevailing party shall be entitled to reasonable legal fees and expenses. The arbitrator may not award any incidental, indirect, special, or consequential damages, including, but not limited to, damages for lost profits. If any part of the Agreements is found to be invalid, illegal or unenforceable in any respect, it will not affect the validity of the remainder of the Agreements, which shall remain valid and enforceable according to their terms. No waiver of any breach or default of the Agreements shall be deemed to be a waiver of any preceding or subsequent breach or default.

20. The arbitration clause requires arbitration of any claims or controversy arising out of or relating to “the Agreements”. The Agreements in the GTS includes the House Rules, and so any claims or controversies relating to the House Rules were intended to be arbitrated. The arbitration is to be administered by ICDR Canada in Toronto pursuant to its Canadian Arbitration Rules. A copy of ICDR Canada’s fee schedule is attached as **Exhibit “I”**. A copy of ICDR Canada’s arbitration rules are attached as **Exhibit “J”**.

21. The arbitration clause contains two narrow exceptions: (1) disputes identified in section 28 of the GTS; and (2) disputes subject to iGO’s dispute resolution process.

22. Section 28 relates to, among other things, technical issues with wagers and the process to resolve those issues. For example, if a player had won a bet paying out \$100 and received only \$10 due to some technical issue with our software or platform, they would notify AWI pursuant to section 28 to resolve that issue. Section 28 does not relate to the legal interpretation of the House Rules.

23. Disputes subject to iGO’s dispute resolution process are broader and allow a player to seek iGO’s review of a dispute with an iGaming Operator, like AWI. This process covers complaints a player may have with a gambling product conducted and managed by iGO and offered by iGaming Operators as agents of iGO. Given the smaller amounts at issue in most

gambling disputes with iGaming Operators, iGO's dispute resolution process provides a proportionate remedy to players without the need for expensive court proceedings. As the Plaintiff admits in the Claim, he engaged iGO's dispute resolution process on January 12, 2023.

AGCO's Registrar's Standards for Internet Gaming

24. I understand that the AGCO's Registrar prescribes standards which are applicable to iGO and AWI in their supply of internet gaming. Excerpted copies of those standards are collectively attached as **Exhibit "K"**.

AFFIRMED remotely by Lisa Rankin of the City of Las Vegas, in the State of Nevada in the United States of America, before me at the City of Toronto, in the Province of Ontario, on January 11, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Lisa Rankin

Commissioner for Taking Affidavits

Sahil Kesar – LSO# 83583C

Lisa Rankin

This is Exhibit "A" referred to in the Affidavit of Lisa Rankin affirmed January 11, 2024.

Commissioner for Taking Affidavits (or as may be)

SAHIL KESAR - LSO# 83583C