

COMMONWEALTH OF KENTUCKY  
HENDERSON CIRCUIT COURT  
CIVIL ACTION NO. 22-CI-\_\_\_\_\_

AMY JO ARMSTEAD,  
on behalf of herself and all others similarly situated,

PLAINTIFF,

v.

**CLASS ACTION COMPLAINT**  
**AND DEMAND FOR JURY TRIAL**  
*(Electronically Filed)*

VGW MALTA LTD, and

**Serve:**

**VGW Malta LTD**

**5-7 Matilda Court, Giuseppe Cali Street**

**Ta' Xbiex, XBX 1423 Malta**

VGW LUCKYLAND INC.,

DEFENDANTS.

**Serve:**

**VGW Luckyland, Inc.**

**1209 North Orange Street**

**Wilmington, DE 19801-1120**

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Plaintiff Amy Jo Armstead (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Defendants VGW Malta Ltd. and VGW Luckyland Inc. (collectively, “VGW” or “Defendants”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which are based on personal knowledge.

**INTRODUCTION**

1. Defendants own and operate a video game development company. Amongst the games Defendants own and operate are popular virtual casino games, including virtual casino games under the names “Chumba Casino” (“Chumba”) and Luckyland Slots (“Luckyland”)

(hereinafter, collectively, the “games” or “casino games”).

2. In these casino games, Defendants offer a multitude of electronic versions of slot machine games. The games are available to play online at chumbacasino.com and luckylandslots.com.

3. Defendants provide a bundle of free “Gold Coins” to first-time visitors of their virtual casinos that can be used to wager on their slot machine games. After consumers inevitably lose their initial allotment of coins, Defendants attempt to sell them additional coins. Purchases start at \$1 for 200,000 Gold Coins in Chumba, and at \$1.98 for 4,000 Gold Coins in Luckyland.

4. Freshly topped off with additional coins, consumers wager to win more coins. The coins won by consumers playing Defendants’ games of chance are identical to the coins that Defendants sell. Thus, by wagering 200,000 coins that were purchased for \$1, consumers have the chance to win millions of additional coins that they would otherwise have to purchase.

5. These coins permit consumers to have the privilege of playing Defendants’ games.

6. By operating their virtual casinos, Defendants have violated Kentucky law, which governs Plaintiff’s and the Class’s claims, and have illegally profited from tens of thousands of consumers. Accordingly, Plaintiff, on behalf of herself and a Class of similarly situated individuals, brings this lawsuit to recover their losses, as well as costs and attorneys’ fees.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action as a court of general jurisdiction.

8. This Court has personal jurisdiction over Defendants pursuant to KRS § 454.210 (2)(a) because Defendants have transacted business in this Commonwealth and contracted to supply services or goods in this Commonwealth, and Plaintiff’s claims against Defendants arise

from those acts.

9. Venue is proper in this County pursuant to KRS § 452.450 because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County, and because the contracts between Plaintiff and Defendants were made and performed in this County.

### **PARTIES**

10. Plaintiff Amy Jo Armstead is a natural person and a citizen of the Commonwealth of Kentucky, residing in Henderson, Kentucky. Plaintiff made multiple purchases of “Gold Coins” in both Chumba and Luckyland within the applicable five-year limitations period. In total, Plaintiff gambled and lost approximately \$7,000 playing the Games.

11. Defendant VGW Malta Ltd. is an unlisted Australian public company with a registered address in Malta. VGW Malta Ltd. also maintains offices in Australia. VGW Malta Ltd. conducts business throughout this County, the Commonwealth of Kentucky, and the United States.

12. Defendant VGW Luckyland, Inc. is a Delaware Corporation. VGW Luckyland Inc. maintains an office in San Francisco, CA. VGW Luckyland Inc. conducts business throughout this County, the Commonwealth of Kentucky, and the United States.

### **FACTUAL ALLEGATIONS**

#### **Free-to-Play and the New Era of Online Gambling**

13. The proliferation of internet-connected mobile devices has led to the growth of so-called “free-to-play” videogames. With free-to-play games, developers encourage consumers to download and play games for free while selling many low-cost items within the game itself. Developers aim to recoup their costs (and make a profit) by selling thousands of “in-game” items

that start at \$0.99 (purchases known as “micro-transactions”) instead of charging an up-front fee.

14. The free-to-play model has become particularly attractive to developers of games of chance (e.g., slot machine mobile video games), because it allows them to generate huge profits. In 2012, free-to-play games of chance generated over \$1.6 billion in worldwide revenue.

15. With free-to-play games of chance, developers have begun exploiting the same psychological triggers as brick-and-mortar casinos. As one respected videogame publication put it:

If you hand someone a closed box full of promised goodies, many will happily pay you for the crowbar to crack it open. The tremendous power of small random packs of goodies has long been known to the creators of physical collectible card games and companies that made football stickers a decade ago. For some ... the allure of a closed box full of goodies is too powerful to resist. Whatever the worth of the randomised [sic] prizes inside, the offer of a free chest and the option to buy a key will make a small fortune out of these personalities. For those that like to gamble, these crates often offer a small chance of an ultra-rare item.”<sup>1</sup>

16. *Game Informer*, another respected videogame magazine, reported on the rise (and danger of) micro-transactions in free-to-play games and concluded:

[M]any new mobile and social titles target small, susceptible populations for large percentages of their revenue. If ninety-five people all play a [free-to-play] game without spending money, but five people each pour \$100 or more in to obtain virtual currency, the designer can break even. These five individuals are what the industry calls whales, and we tend not to be too concerned with how they’re being used in the equation. While the scale and potential financial ruin is of a different magnitude, a similar profitability model governs casino gambling.<sup>2</sup>

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<sup>1</sup> PC Gamer, *Microtransactions: the good, the bad and the ugly*, <http://www.pcgamer.com/microtransactions-the-good-the-bad-and-the-ugly/> (last visited September 1, 2022)

<sup>2</sup> Game Informer, *How Microtransactions Are Bad For Gaming - Features* - [www.GameInformer.com](http://www.GameInformer.com), <https://www.gameinformer.com/b/features/archive/2012/09/12/how-microtransactions-are-bad-for-gaming.aspx> (last visited September 1, 2022)

17. Academics have also studied the socioeconomic effect free-to-play games have on consumers. In one study, the authors compiled several sources analyzing free-to-play games of chance (called “casino” games below) and stated that:

[Researchers] found that [free-to-play] casino gamers share many similar sociodemographic characteristics (e.g., employment, education, income) with online gamblers. Given these similarities, it is perhaps not surprising that a strong predictor of online gambling is engagement in [free-to-play] casino games. Putting a dark line under these findings, over half (58.3%) of disordered gamblers who were seeking treatment stated that social casino games were their first experiences with gambling.

...

According to [another study], the purchase of virtual credits or virtual items makes the activity of [free-to-play] casino gaming more similar to gambling. Thus, micro-transactions may be a crucial predictor in the migration to online gambling, as these players have now crossed a line by paying to engage in these activities. Although, [sic] only 1–5% of [free-to-play] casino gamers make micro-transactions, those who purchase virtual credits spend an average of \$78. Despite the limited numbers of social casino gamers purchasing virtual credits, revenues from micro-transactions account for 60 % of all [free-to-play] casino gaming revenue. Thus, a significant amount of revenue is based on players’ desire to purchase virtual credits above and beyond what is provided to the player in seed credits.<sup>3</sup>

18. The same authors looked at the link between playing free-to-play games of chance and gambling in casinos. They stated that “prior research indicated that winning large sums of virtual credits on social casino gaming sites was a key reason for [consumers’] migration to online gambling,” yet the largest predictor that a consumer will transition to online gambling was “micro-transaction engagement.” In fact, “the odds of migration to online gambling were approximately

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<sup>3</sup> Hyoun S. Kim, Michael J. A. Wohl, *et al.*, *Do Social Casino Gamers Migrate to Online Gambling? An Assessment of Migration Rate and Potential Predictors*, Journal of gambling studies / co-sponsored by the National Council on Problem Gambling and Institute for the Study of Gambling and Commercial Gaming (Nov. 14, 2014), *available at* <http://link.springer.com/content/pdf/10.1007%2Fs10899-014-9511-0.pdf> (last visited Sept. 1, 2022).

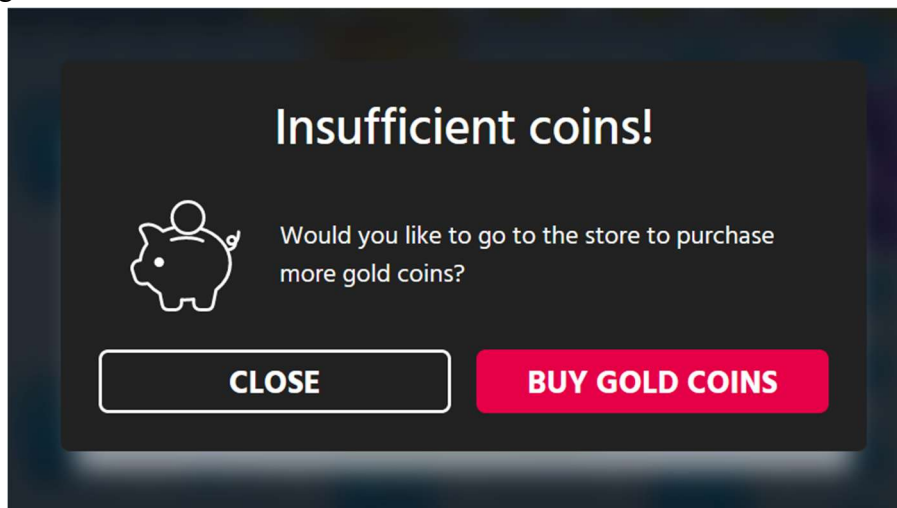
eight times greater among people who made micro-transactions on [free-to-play] casino games compared to [free-to-play] casino gamers who did not make micro-transactions.”

### **A Brief Introduction to Defendants and Their Games**

19. Defendants operate two popular, casino-oriented internet games: Chumba Casino and Luckyland Slots. Both operate in much the same way.

20. Consumers visiting the games for the first time are awarded an allocation of free “Gold Coins” (hereinafter, “GC”) and “Sweeps Coins” (hereinafter, “SC”) (together, the “Coins”). Consumers can play games on the Platform in “standard mode,” using GC, or “promotional mode” using SC:

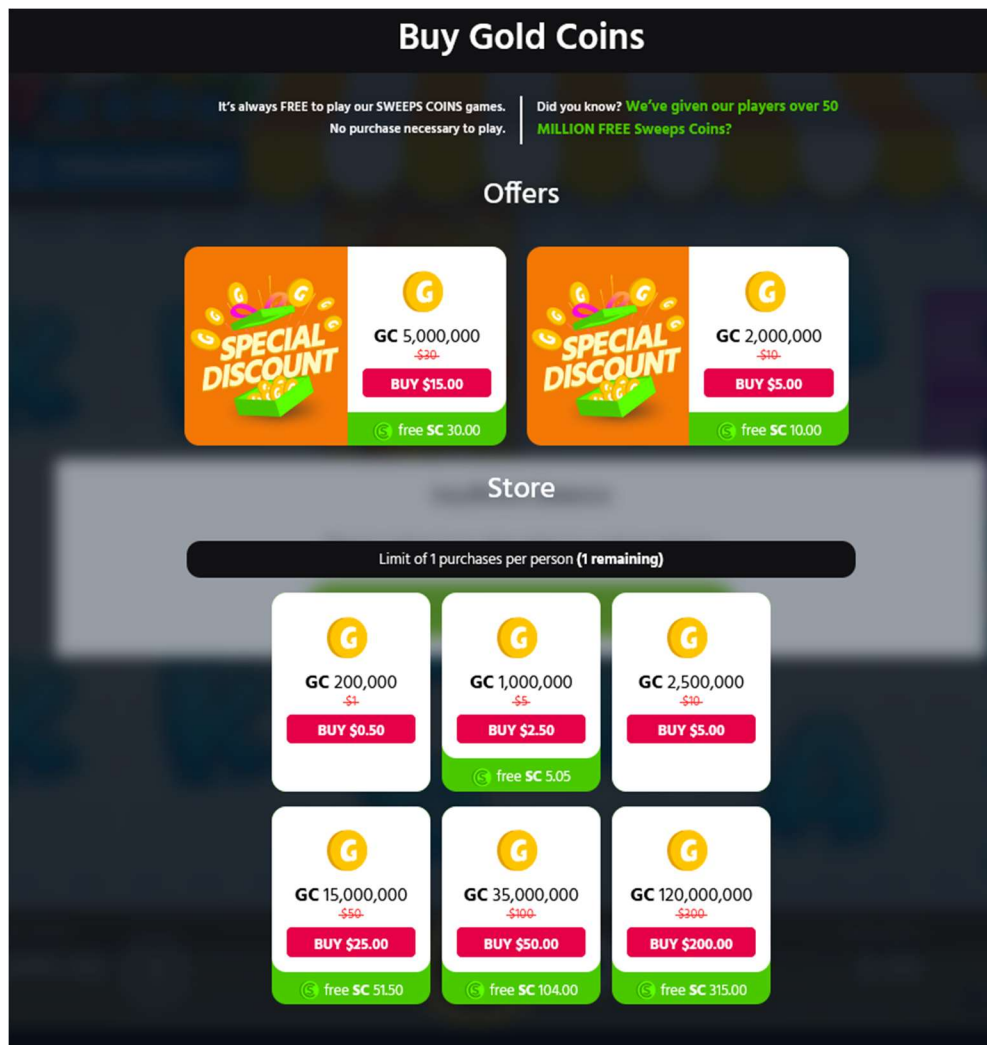
21. When consumers play in “standard mode,” they can win or lose GC. However, after they begin playing, consumers quickly lose their initial allotments of Coins. Immediately thereafter, Defendants inform them that they have insufficient coins to place a wager, which prevents them from continuing to play the game. In Chumba Casino, users are presented with the below message:



In LuckyLand Slots, users are taken directly to the “Luckyland Store.” (pictured *infra* ¶ 22)

22. Either way, to continue playing the games, consumers must purchase additional

coins. Consumers are presented with options to purchase additional GC at prices ranging from \$1 for 200,000 GC to \$200 to 120,000,000 GC for Chumba Casino:



and ranging from \$1.98 for 4,000 Gold coins to \$19.99 for 40,000 for Luckyland Slots:



23. Some GC purchases also provide promotional SC bonuses. Armed with their new Gold Coins, consumers can resume playing Defendants' games. If they win GC, players can use the GC to continue playing the games. Inevitably, however, customers eventually lose their entire GC balance and must spend more money to continue playing.

24. In contrast to GC, which are purchased directly with money by consumers and used to play the games normally as outlined above, consumers can also play Defendants' games on the Platform using SC.

25. In Defendants' own words, "Sweeps Coins cannot be purchased and [have] no inherent value."<sup>4</sup> Rather, SC are free promotional credits used by Defendants to entice players to purchase additional GC and to continue gambling on the games. Much like how a brick-and-mortar casino tempts players to stay at a blackjack table with free drinks, or how online sportsbooks provide promotional "free wagers" for sports bets in jurisdictions where sports gambling is legal, SC are an advertising and customer retention strategy for Defendant.

26. Consumers can receive SC in multiple ways, including as a bonus upon the

<sup>4</sup> E.g. <https://www.chumbacasino.com/about-us>

purchase of specifically marked packs of Gold Coins, by entering “Sweeps Coins no-cost giveaway contests” on the games’ Facebook pages, by sending a request by mail to Defendants, and as a “Daily Bonus” given when logging into the player’s account (once per day).<sup>5</sup>

27. Players can enter “sweepstakes” by playing the same games using SC that they would play with GC. When playing with GC, a player can only win or lose GC. A player cannot “lose” SC - they are free sweepstakes entries. Only SC “that has been won through game play (rather than collected using one of the methods described [] above) can be redeemed for a prize with value being equivalent to US \$1.”<sup>6</sup>

28. While SC may provide an incentive to purchase GC, winning any actual money through Sweeps Coins is a pipe dream. “A Participant’s Customer Account must have a balance of at least 100 redeemable Sweeps Coins before requesting a prize redemption.”<sup>7</sup> Thus, if a customer never reaches 100 Sweeps Coins won, they can never receive anything from Defendant.

29. Regardless of what mode a player is using, once a consumer spins the slot machine by pressing a button, none of Defendants’ games allow (or call for) any additional user action. Instead, the consumer’s device communicates with and sends information to Defendants’ servers. Defendants’ servers then execute the games’ algorithms that determine the spin’s outcome. Notably, none of Defendants’ games depend on any amount of skill to determine their outcomes – all outcomes are based entirely on chance.

30. If a player makes a wager the player can either win and be awarded additional coins or lose and lose the coins. For example, a player may make a 10,000-coin wager and win 300,000 coins. In other words, absent the win, the 300,000 coins would have cost the player approximately

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<sup>5</sup> <https://www.chumbacasino.com/sweeps-rules>

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

\$0.75 to buy. Now, however, the newly won coins provide the player additional free plays.

31. Consumers can continue playing with the coins that they won, or they can exit the game and return at a later time to play because Defendants maintain win and loss records and account balances for each consumer. Indeed, once Defendants' algorithms determine the outcome of a spin and Defendants display the outcome to the consumer, Defendants adjust the consumer's account balance. Defendants keep records of each wager, outcome, win, and loss for every player of the games.

### **CLASS ALLEGATIONS**

32. Plaintiff seeks to represent a class defined as all individuals who, in the Commonwealth of Kentucky, spent \$5.00 or more within a 24-hour period on Chumba Casino or Luckyland Slots during the applicable limitations period. (the "Class").

33. Specifically excluded from the Class are Defendants, Defendants' officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint ventures, or entities controlled by Defendants, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendants and/or Defendants' officers and/or directors, the judge assigned to this action, and any member of the judge's immediate family.

34. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint.

35. **Numerosity.** On information and belief, tens of thousands of consumers fall into the definition of the Class. Members of the Class can be identified through Defendants' records, discovery, and other third-party sources.

36. **Commonality and Predominance.** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) Whether Plaintiff and Class members' play on Defendants' virtual casino games constitutes gambling under Kentucky law;
- (b) Whether Plaintiff and the Class lost money gambling to Defendants as defined by KRS § 372.010 *et. seq.*; and
- (c) Whether Plaintiff and the Class are entitled to recover their monies spent on Defendants' casino games pursuant to KRS § 372.020.

37. **Typicality.** Plaintiff's claims are typical of the claims of the other members of the Class in that, among other things, all Class members were similarly situated and were comparably injured through Defendants' wrongful conduct as set forth herein. Further, there are no defenses available to Defendants that are unique to Plaintiff.

38. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel that is highly experienced in complex consumer class action litigation, and Plaintiff intends to vigorously prosecute this action on behalf of the Class. Furthermore, Plaintiff has no interests that are antagonistic to those of the Class.

39. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members are relatively small compared to the burden and expense of individual litigation of their claims against Defendants. It would thus be virtually impossible for the Class obtain effective redress for the wrongs committed against the members on an individual basis. Furthermore, even if Class members could afford such individualized litigation, the court system

could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Violation of KRS § 372.010, *et. seq.* (On Behalf Of The Class)**

40. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

41. The Commonwealth of Kentucky's "Recovery of money lost at gambling" statute, KRS § 372.020, provides a losing gambler with a first-party cause of action to recover any losses suffered. It reads:

If any person loses to another at one (1) time, or within twenty-four (24) hours, five dollars (\$5) or more, or anything of that value, and pays, transfers or delivers it, the loser or any of his creditors may recover it, or its value, from the winner, or any transferee of the winner, having notice of the consideration, by action brought within five (5) years after the payment, transfer or delivery. Recovery may be had against the winner, although the payment, transfer or delivery was made to the endorsee, assignee, or transferee of the winner. If the conveyance or transfer was of real estate, or the right thereto, in violation of KRS 372.010, the heirs of the loser may recover it back by action brought within two (2) years after his death, unless it has passed to a purchaser in good faith for valuable consideration without notice.

KRS § 372.020.

42. Defendants' casino games constitute gambling because the players provide consideration (e.g., purchase coins and wager the coins) and by an element of chance (e.g., by

spinning a virtual slot machine) create a right to credits and/or other things of value (e.g., additional coins that would otherwise be purchased for cash and that award additional replays).

43. As such, Plaintiff and the Class gambled when they purchased coins to wager at Defendants' games. Plaintiff and each member of the Class staked money, in the form of coins purchased with money, at Defendants' games of chance (e.g., Defendants' slot machines within Chumba and Luckyland) for the chance of winning additional things of value (e.g., coins that grant additional free plays).

44. The "Gold Coins" Plaintiff and the Class had the chance of winning in Defendants' virtual casino games, including Chumba and Luckyland, are "things of value" under Kentucky law because they are credits that involve the extension of entrainment and a privilege of playing a game without charge.

45. As a direct and proximate result of Defendants' operation of their games, Plaintiff and each member of the Class have lost money wagering at Defendants' games of chance. Plaintiff, on behalf of herself and the Class, seeks an order (1) requiring Defendants to cease operation of their gambling devices; and/or (2) awarding the recovery of all lost monies, interest, and reasonable attorneys' fees, expenses, and costs to the extent allowable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- (a) For an order certifying this action as a class action, appointing Plaintiff as Class Representative, and appointing Plaintiff's counsel as Class Counsel;
- (b) For compensatory damages on all applicable claims and in an amount to be proven at trial;

- (c) For restitution on all applicable claims and in an amount to be proven at trial;
- (d) For an order requiring Defendants to disgorge, restore, and return all monies wrongfully obtained together with interest calculated at the maximum legal rate;
- (e) For an order enjoining the wrongful conduct alleged herein;
- (f) For other appropriate injunctive and other equitable relief;
- (g) For costs;
- (h) For pre-judgment and post-judgment interest as provided by law;
- (i) For attorneys' fees under the account contracts, the common fund doctrine, and all other applicable rules and law; and
- (j) For such other relief as the court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Dated: September 7, 2022

Respectfully submitted,

By: /s/ Joseph H. Langerak

**STOLL KEENON OGDEN PLLC**

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*Attorneys for Plaintiff and the Putative Class**\* Pro hac vice application forthcoming*



Case #: **22-CI-00553**  
Court: **CIRCUIT**  
County: **HENDERSON**

## CIVIL SUMMONS

*Plaintiff, ARMSTEAD, AMY JO VS. VGW MALTA LTD ET AL, Defendant*

TO: **VGW MALTA LTD**  
**5-7 MATILDA COURT, GIUSEPPE CALI STREET**  
**TA ' XBIEX**  
**XBA 142 MALTA,**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Clyde Gregory Sutton,  
Henderson Circuit Clerk  
Date: **9/7/2022**

### Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

☐ Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Served By

\_\_\_\_\_  
Title





Case #: **22-CI-00553**  
Court: **CIRCUIT**  
County: **HENDERSON**

## CIVIL SUMMONS

*Plaintiff, ARMSTEAD, AMY JO VS. VGW MALTA LTD ET AL, Defendant*

**TO: VGW LUCKYLAND, INC.**  
**1209 NORTH ORANGE STREET**  
**WILMINGTON, DE 198011120**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

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/s/ Clyde Gregory Sutton,  
Henderson Circuit Clerk  
Date: **9/7/2022**

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To: \_\_\_\_\_

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Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Served By

\_\_\_\_\_  
Title





Commonwealth of Kentucky  
Clyde Gregory Sutton, Henderson Circuit Clerk

Case #: 22-CI-00553

Envelope #: 5013835

Received From: JOE LANGERAK

Account Of: JOE LANGERAK

Case Title: ARMSTEAD, AMY JO VS. VGW MALTA LTD ET , Confirmation Number: 149572180

Filed On 9/7/2022 5:30:04PM

#	Item Description	Amount
1	Court Facilities Fee	\$25.00
2	Access To Justice Fee	\$20.00
3	Money Collected For Others(Court Tech. Fee)	\$20.00
4	Money Collected For Others(Postage)	\$15.52
5	Money Collected For Others(Attorney Tax Fee)	\$5.00
6	Library Fee	\$3.00
7	Civil Filing Fee	\$150.00
8	Charges For Services(Copy - Photocopy)	\$1.70
9	Charges For Services(Jury Demand / 12)	\$70.00
TOTAL:		\$310.22