

CAUSE NO. D-1-GN-14-005114

JAMES STEELE, et al.,
Plaintiffs

V.

GTECH CORPORATION,
Defendant.

§ **IN THE DISTRICT COURT OF**
§
§
§
§ **TRAVIS COUNTY, TEXAS**
§
§
§ **201st JUDICIAL DISTRICT**
§
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§

PLAINTIFFS’ SECOND AMENDED PETITION

Plaintiffs, James Steele et al., file this second amended petition against Defendant, GTECH Corporation, and allege as follows:

A. DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4, and affirmatively plead that this suit is not governed by the expedited actions process in Texas Rule of Civil Procedure 169.

B. RELIEF

2. Plaintiffs seek monetary relief of over \$1,000,000.

C. PARTIES

3. Plaintiffs are as follows:
- a. The names of Plaintiffs who are residents of Texas are listed on Exhibit “A” which is attached hereto and incorporated herein for all purposes.
 - b. The following plaintiff is a resident of the State of Colorado: Anton Bailey.
 - c. The following plaintiff is a resident of the State of Maryland: Lena Kelley.

- d. The following plaintiffs are residents of the State of Connecticut: Eva Muriel Kendrick and Frederick A. Kendrick.
- e. The following plaintiff is a resident of the State of Illinois: Samuel W. Kostis.
- f. The following plaintiffs are residents of the State of Florida: Kristine Rios and Danielle Lavertu.
- g. The following plaintiff is a resident of the State of Rhode Island: Derrick Torres.
- h. The following plaintiff is a resident of the State of Louisiana: Robert T. Thomas.
- i. The following plaintiff is a resident of the State of Arkansas: Jacob-Daniel Honea.
- j. The following plaintiffs are residents of the State of Kansas: Kim & Phil Moore.
- k. The following plaintiff is a resident of the State of Tennessee: Larry Washington.
- l. The following plaintiffs are residents of the State of Minnesota: Dave & Jennifer Wigen.

4. Defendant, GTECH Corporation, has been served with service of process and has filed its Answer. A copy of this 2nd Amended Petition is being served on GTECH Corporation's attorney, Kenneth Broughton.

D. JURISDICTION

5. The court has jurisdiction over the lawsuit because the amount in controversy exceeds the court's minimum jurisdictional requirements.

E. VENUE

6. Venue is proper in Travis County under Texas Civil Practice & Remedies Code section 15.002 because Defendant, a corporation, maintains its principal office in Travis County.

F. FACTS

7. According to its website¹, GTECH, along with its Italian parent corporation, GTECH S.p.A.,

- Is the largest global company in the regulated gaming space;
- Has €3 billion in revenues with 8,600 employees globally;
- Provides products and services in approximately 100 countries;
- Has a 79% market share for U.S. lottery draw-based games and instant tickets;
- Is the leading revenue generator in government-sponsored video lottery markets;
- Is the largest single-end user of satellite technology in the world, providing VSAT communications to more than 140,000 lottery terminals in the U.S.;
- Is the instant ticket partner of choice for more than 50 lotteries around the world; and,
- Employs the best solutions in the market to grow lotteries, to maximize profits, and to generate more money.

8. In November of 1991, an amendment to the Texas Constitution was adopted to allow the operation of the Texas Lottery. GTECH was awarded the initial lottery operator

¹ www.gtech.com

contract and has held the contract to date. GTECH's contract is, in large part, a matter of public record and can be accessed on the Texas Lottery's website.²

9. Part 2 of GTECH's contract stipulates that GTECH will act "as an independent contractor and not as an employee or agent of the TLC."

10. Paragraph 3.8 of GTECH's contract describes the relationship of the parties as follows:

GTECH and the Texas Lottery agree and understand that GTECH shall render the goods, services and requirements under this Contract as an independent contractor, and nothing contained in the Contract will be construed to create or imply a joint venture, partnership, employer/employee relationship, principal-agent relationship or any other relationship between the parties.³

11. GTECH provides the terminals, sales staff, mainframe computer that tracks and administers the lottery games, communication (dedicated circuits, satellite, radio) that transmit the transactions between terminals and the main frame computer, research and sales support, customer service and repair support, instant ticket storage, ordering, printing, and distribution.

12. GTECH's fee is based upon a percentage of gross ticket sales. Accordingly, GTECH is financially benefitted by increased lottery ticket sales.

13. The contract between GTECH and the TLC sets a very high standard of care and conduct for GTECH. Specifically, Paragraph 3.71 of the GTECH contract provides, in relevant part, as follows:

"The Texas Lottery is an extremely sensitive enterprise because its success depends on maintaining the public trust by protecting and ensuring the security of Lottery Products. The Texas Lottery incorporates the highest standards of security and integrity in the management and sale of entertaining lottery products, and lottery vendors are held to the same standards. Therefore, it is essential that operation of the Texas Lottery, and the

²<http://txlottery.org/export/sites/lottery/Documents/procurement/RFP2011/Lottery%20Operations%20and%20Services%20Contract.pdf>


³ Id.

operation of other enterprises which would be linked to it in the public mind, **avoid not only impropriety, but also the appearance of impropriety.** Because of this, GTECH shall:

- (a) **Offer goods and services only of the highest quality and standards.**
- (b) **Use its best efforts to prevent the industry from becoming embroiled in unfavorable publicity.**
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- (d) **Avoid activities, operations, and practices that could be interpreted as improper and cause embarrassment to the Texas Lottery and/or to the industry.”**

(Emphasis added).

14. In 2014, GTECH proposed that the TLC begin selling a new instant scratch-off game to be given the official title of “Instant Game No. 1592” but to be marketed to the public as the “Fun 5’s” game.

15. GTECH had used games identical to or substantially similar to the Fun 5’s game in other states, including Kansas, Nebraska, and Indiana. GTECH proposed language for game 5 of the Fun 5’s game identical to or substantially similar to the language used in its Fun 5’s game in those other states. The proposed language would convey the message that 100% of tickets that revealed a winning symbol would win five times the amount printed in a prize box on the ticket. The winning symbol decided upon by the TLC and printed on the tickets by GTECH was the Money Bag “” symbol.

16. The TLC and GTECH worked together to create and design the Fun 5’s scratch-off tickets. The Fun 5’s ticket they jointly designed and that GTECH printed and distributed is illustrated below:

-TEXAS LOTTERY-

\$5

Over 200,000 \$50 Winners!

FUN 5's

GAME 1 ▼ Reveal two "5" symbols, win the PRIZE. Reveal three "5" symbols, win 5 times the PRIZE.

GAME 2 ▼ Reveal three matching prize amounts, win that amount. Reveal two matching prize amounts and a "5" symbol, win 5 times that amount.

GAME 3 ▼ Reveal a "5" symbol, win the PRIZE for that symbol.

Over \$50,000,000 in Prizes!


GAME 4 ▼ Reveal three "5" symbols in any one ROW across, win PRIZE for that ROW. Reveal two "5" symbols and a Star "★" symbol in any one ROW across, win 5 times the PRIZE for that ROW.

ROW 1	\$	\$	\$	PRIZE
ROW 2	\$	\$	\$	PRIZE
ROW 3	\$	\$	\$	PRIZE
ROW 4	\$	\$	\$	PRIZE
ROW 5	\$	\$	\$	PRIZE


WIN UP TO \$100,000!


GAME 5 ▲ Reveal three "5" symbols in any one row, column or diagonal, win PRIZE in PRIZE box. Reveal a Money Bag "5" symbol in the 5X BOX, win 5 times that PRIZE.



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17. Under the parameters for the game initially proposed by GTECH to the TLC 100% of the tickets that revealed a Money Bag “” symbol would be programmed into GTECH’s computers as being “winning” tickets. This was the same parameter used by GTECH for the Fun 5’s game in other states and was consistent with the language proposed by GTECH.


18. The language on the ticket that GTECH and the TLC jointly developed, stated as follows:

Reveal three “5” symbols in any one row, column or diagonal, win PRIZE in PRIZE box. Reveal a Money Bag “” symbol in the 5X BOX, win 5 times that PRIZE.

19. Under the proposed parameters of the game, this language would have accurately represented to lottery players that 100% of the tickets that revealed a Money Bag “” symbol would be “winning” tickets.

20. Before GTECH printed the Fun 5’s tickets, GTECH and the TLC jointly decided to change the parameters of Game 5 so that a significant percentage of tickets that revealed a Money Bag “” symbol would be “non-winning” tickets. GTECH changed the game’s parameters and programmed its computers to remove a significant percentage of the tickets with a Money Bag “” symbol from the list of “winning” tickets. This was a substantial change in the parameters of the game.

21. Although the TLC and GTECH changed the game’s parameters, they did not change the ticket language they jointly developed. With the change in game parameters, the language they chose became highly misleading and inaccurate.

22. The language on the tickets misrepresented to lottery players that all Fun 5’s tickets with a Money Bag “” symbol would be “winning” tickets when, in reality, a significant

percentage of Fun 5's tickets with a Money Bag "👛" symbol were not programmed into GTECH's computers to be "winning" tickets.


23. As operator of the lottery, GTECH is responsible for providing the Texas Lottery with computer terminals that are programmed to validate tickets bearing certain serial numbers as "winning" tickets. This is an important function inasmuch as Paragraph 1.2(L) of the official game procedures for Instant Game No. 1592, defines a "Non-Winning Ticket" in relevant part as "[a] ticket which is not programmed to be a winning Ticket...."


24. In other words, under the official game procedures for Instant Game No. 1592, a ticket must be treated as a "Non-Winning Ticket" by the TLC if GTECH fails to validate the ticket as a "Winning Ticket", even if the ticket otherwise meets all the criteria of being a winning ticket under the language on the ticket and the official game procedures. Because the validation of winning scratch-off tickets was an act uniquely within the power and control of GTECH, players of the Texas Lottery, including these Plaintiffs, placed a high degree of trust and confidence in GTECH and were dependent on GTECH to act in the best interest of the citizens who purchased scratch-off lottery tickets.

25. The Texas Lottery Commission began selling Fun 5's tickets to the public on or about September 1, 2014. Almost immediately after the first tickets were sold, consumers began complaining to the TLC that their tickets revealed a Money Bag "👛" symbol in Game 5 but GTECH's computer program was not validating their tickets as "winning" tickets.

26. GTECH's computer validation program did not conform to the language on the Fun 5's ticket. GTECH's non-conforming computer program added a requirement for a ticket to be validated as a "Winning Ticket" that was not present in the language printed on the Fun 5's

tickets. Specifically, GTECH programmed its computer validation program to treat the instructions for Game 5 as if the following language had been added:

Reveal three “5” symbols in any one row, column or diagonal, win PRIZE in PRIZE box. [*And, if you also*] Reveal a Money Bag “

27. GTECH learned, in the early days of September 2014, of complaints from lottery players who had purchased tickets with a Money Bag “

Pls’ 2nd Amended Petition

28. The language jointly developed by the TLC and GTECH, and which GTECH printed on the tickets, misled Plaintiffs into believing that 100% of Fun 5's tickets with a Money Bag "☺" symbol in Game 5 would be "winning" tickets.

29. Plaintiffs purchased Fun 5's tickets that revealed a Money Bag "☺" symbol in Game 5. Plaintiffs' Fun 5's tickets were amongst the significant percentage of tickets with a Money Bag "☺" symbol that the TLC and GTECH originally designed to be "winning" tickets but which were later programmed by GTECH to be "non-winning" tickets. When Plaintiffs presented their tickets to the TLC for a prize payout, the serial numbers on their tickets were not on the list of "winning" tickets provided by GTECH to the TLC. Therefore, Plaintiffs tickets were automatically defined as "Non-Winning Tickets" in accordance with Paragraph 1.2(L) of the official game procedures for Instant Game No. 1592 and were not eligible for a prize payout.

30. On October 21, 2014, the Texas Lottery issued a press release to announce that it was closing the Fun 5's game early and would discontinue selling the tickets, citing "confusion" expressed by players and the Texas Lottery's responsibility to create games that are "clear to understand for our players."

G. COUNT 1- COMMON LAW FRAUD

31. GTECH worked with the TLC to jointly develop the language GTECH printed on the Fun 5's tickets and to jointly develop the parameters of the game. GTECH printed and distributed the Fun 5's tickets for sale to Plaintiffs. GTECH received a fee based on a percentage of the gross sales of the Fun 5's tickets and therefore had an incentive to maximize the sale of Fun 5's tickets.

32. Each of the Fun 5's tickets contained a written representation that if the ticket revealed a Money Bag "☺" symbol in Game 5, the ticket would be a "winning" ticket.

33. This representation was material.

34. The representation made on the Fun 5's tickets was false. In fact, a significant percentage of such tickets were not "winning" tickets.

35. GTECH knew that the representation was false. It used nearly identical language on Fun 5's tickets in other states and programmed its computers in those states to recognize 100% of tickets that revealed a winning symbol as "winning" tickets. However, in Texas, GTECH programmed its computers to leave off from the list of "winning" tickets a significant percentage of tickets that revealed a Money Bag "👛" symbol.

36. GTECH knew that if it left off from the list of "winning" tickets a significant percentage of tickets that revealed a Money Bag "👛" symbol, those tickets would not be eligible for prize payouts.

37. GTECH had reason to know that the representation it helped to craft and that it printed on the Fun 5's tickets would reach a class of which Plaintiffs were members.

38. The representation GTECH printed on the Fun 5's tickets was a false statement of fact.

39. GTECH made the representation knowing that it was a false representation.

40. GTECH intended for a class of lottery players, of which Plaintiffs were members, to rely on the false representation.

41. Plaintiffs justifiably relied on GTECH's false representation.

42. The false representation caused Plaintiffs injury.

43. Plaintiffs seek benefit-of-the-bargain damages from GTECH. In particular, Plaintiffs are entitled to the difference between the value of the Fun 5's tickets as represented by GTECH and the value actually received by Plaintiffs.

44. Exemplary Damages. Plaintiffs' injuries resulted from Defendant's actual fraud or malice, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

COUNT 2 – FRAUD BY NONDISCLOSURE

45. GTECH failed to disclose to Plaintiffs material facts related to Game 5 of the Fun 5's game.

46. GTECH had a duty to disclose to Plaintiffs that a significant percentage of the tickets with a Money Bag symbol would not be on the list of "winning" tickets. GTECH disclosed limited information to Plaintiffs in the language it chose to print on the tickets, which created a substantially false impression. Such language was not originally designed to include losing tickets.

47. The information was material because the language printed on the tickets left the false impression that every ticket with a Money Bag symbol would be a "winning" ticket.

48. GTECH knew that Plaintiffs and other similarly situated lottery players were ignorant of the information and did not have an equal opportunity to discover the truth.

49. GTECH deliberately remained silent and did not disclose the truth to Plaintiffs.

50. By deliberately remaining silent, GTECH intended for Plaintiffs to act without the information.

51. Plaintiffs justifiably relied on GTECH's deliberate silence.

52. By deliberately remaining silent, GTECH proximately caused injury to Plaintiffs which resulted in damages.

53. Plaintiffs seek benefit-of-the-bargain damages from GTECH. In particular, Plaintiffs are entitled to the difference between the value of the Fun 5's tickets as represented by GTECH and the value actually received by Plaintiffs.

54. Exemplary Damages. Plaintiffs' injuries resulted from Defendant's actual fraud or malice, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

H. COUNT 3 -- AIDING AND ABETTING FRAUD

55. GTECH substantially assisted the TLC in committing a fraud on Plaintiffs and other similarly situated lottery players. GTECH helped to craft the misleading language on the tickets, agreed to use the misleading language on the tickets, printed the misleading language on the tickets, and distributed the misleading tickets to Plaintiffs and other similarly situated lottery players.


56. GTECH's assistance and participation, separate from the TLC's acts, breached GTECH's duty to Plaintiffs.

57. Defendant's assistance and participation was a substantial factor in causing the fraud.

58. Plaintiffs seek benefit-of-the-bargain damages from GTECH. In particular, Plaintiffs are entitled to the difference between the value of the Fun 5's tickets as represented by the TLC and GTECH and the value actually received by Plaintiffs.

I. COUNT 4 – TORTIOUS INTERFERENCE WITH EXISTING CONTRACT

59. Plaintiffs had valid contracts with the Texas Lottery. They exchanged \$5 of their hard-earned cash for each of their Fun 5's tickets in return for the promise that they would be

entitled to receive five times the amount in the Prize Box if their ticket revealed a Money Bag “” symbol in Game 5.


60. GTECH knew or had reason to know that a class of lottery players, of which Plaintiffs were members, had entered into such contracts with the Texas Lottery. Moreover, Defendant knew or had reason to know of the interest that a class of lottery players, of which Plaintiffs were members, had in said contracts.

61. Defendant willfully and intentionally interfered with Plaintiffs’ contracts with the Texas Lottery by using and continuing to use a non-conforming computer program that left the serial number of Plaintiffs’ tickets off from the list of “Winning Tickets”.

62. Defendant’s interference proximately caused injury to Plaintiffs, which resulted in damages totaling at least \$438,560,250.00 which represents five times the collective amount printed in the Prize Box in Game 5 of Plaintiffs’ Fun 5’s tickets.

63. Exemplary Damages. Plaintiffs’ injuries resulted from Defendant’s malice or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

J. COUNT 5 -- TORTIOUS INTERFERENCE WITH EXPECTANCY

64. Plaintiffs had an expectancy that they would receive five times the amount in the Prize Box in Game 5 of their Fun 5’s tickets because their Fun 5’s tickets revealed a Money Bag “” symbol.

65. There is a reasonable certainty that Plaintiffs would have received their prize money but for the interference of Defendant. Had Defendant programmed its computers in conformance with the language it used on the Fun 5’s tickets, Plaintiffs tickets would have been on the list of “winning” tickets and would have been entitled to receive prize money from the

Texas Lottery because their tickets otherwise met all the requirements of the instructions printed on the Fun 5's tickets and all the requirements of the official game procedures for Instant Game No. 1592.

66. Defendant knowingly and intentionally interfered with Plaintiffs' expectancy by using a non-conforming computer program to keep a significant percentage of tickets that revealed a Money Bag symbol off the list of "winning" tickets.

67. Defendant's actions were tortious in that Defendant fraudulently sought to hide from the public the fact that the language used by GTECH in the instructions would result in a total prize payout that would far exceed the amount originally represented to the Texas Lottery Commission by GTECH. Rather than admit that it had made a mistake in judgment that would cost the Texas Lottery many millions more than expected, GTECH sought to hide its actions by maliciously continuing to use a non-conforming computer validation program to eliminate a significant percentage of tickets with a Money Bag symbol from the list of "winning" tickets.

68. Defendant's interference proximately caused injury to Plaintiffs, which resulted in damages totaling more than \$438,560,250.00 which represents five times the collective amount printed in the Prize Box in Game 5 of Plaintiffs' Fun 5's tickets.

69. Exemplary Damages. Plaintiffs' injuries resulted from Defendant's malice or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

K. JURY DEMAND

70. Plaintiffs have demanded a jury trial and have tendered the appropriate fee.

L. PRAYER

71. For these reasons, Plaintiffs ask that they be awarded a judgment against Defendant for the following:

- a. Actual damages;
- b. Exemplary damages;
- c. Pre-judgment and post-judgment interest;
- d. All attorneys' fees and reimbursement of the costs incurred in connection with this suit; and
- e. All other relief to which Plaintiffs are entitled.

Respectfully submitted,

LAGARDE LAW FIRM, P.C.



Richard L. LaGarde
SBN: 11819550
Mary Ellis LaGarde
SBN: 24037645
3000 Wesleyan Street, Suite 380
Houston, Texas 77027
Telephone: (713) 993-0660
Facsimile: (713) 993-9007
Email: richard@lagardelaw.com
mary@lagardelaw.com

COUNSEL FOR PLAINTIFFS

MANFRED STERNBERG & ASSOCIATES, P.C.



Manfred Sternberg
SBN: 19175775
4550 Post Oak Place Dr. #119
Houston, TX 77027
Telephone: (713) 622-4300
Facsimile: (713)622-9899
Email: manfred@msternberg.com

CO-COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with Texas Rules of Civil Procedure on the 7th day of April, 2015.

Kenneth E. Broughton
Francisco Rivero
Arturo Munoz
REED SMITH, LLP
811 Main Street, Suite 1700
Houston, TX 77002
Telephone: (713) 469-3819
Facsimile: (713) 469-3899
Email: kbroughton@reedsmith.com
frivero@reedsmith.com
amunoz@reedsmith.com

**COUNSEL FOR DEFENDANT
GTECH CORPORATION**

Leroy B. Scott
SCOTT ESQ.
3131 McKinney Ave., Ste. 600
Dallas, TX 75204
Telephone: (214) 224-0802
Facsimile: (214) 224-0802
Email: lscott@scottesq.com

**COUNSEL FOR INTERVENOR,
KENYATTA JACOBS**

James D. Hurst
JAMES D. HURST, P.C.
1202 Sam Houston Ave.
Huntsville, TX 77340
Telephone: (936) 295-5091
Facsimile: (936) 295-5792
Email: jdthurst@sbcglobal.net

**COUNSEL FOR INTERVENORS,
JAFREH AND BECHTOLD**

Clinton E. Wells JR.
MCDOWELL WELLS, L.L.P.
603 Avondale
Houston, TX 77006
Telephone: (713) 655-9595
Facsimile: (713) 655-7868
Email: cew@houstontrialattorneys.com

**COUNSEL FOR INTERVENORS,
BOGHOSIAN, WILSON, AND
BAMBICO**

Andrew G. Khoury
KHOURY LAW FIRM
2002 Judson Road, Ste. 204
Longview, TX 75606-1151
Telephone: 903-757-3992
Facsimile: 903-704-4759
Email: andy@khourylawfirm.com

**COUNSEL FOR INTERVENORS,
THOMAS GREGORY, ET AL.**

Daniel H. Byrne
Lessie G. Fitzpatrick
FRITZ, BYNRE, HEAD & HARRISON, PLLC
98 San Jacinto Blvd., Ste. 2000
Austin, TX 78701
Telephone: (512) 476-2020
Facsimile: (512) 477-5267
Email: dbyrne@fbhh.com
lfitzpatrick@fbhh.com

**COUNSEL FOR INTERVENORS,
HIATT, ET AL.**

Leonard E. Cox
P.O. Box 1127
Seabrook, TX 77586
Telephone: (281) 532-0801
Facsimile: (281) 532-0806
Email: Lawyercox@lawyercox.com

**COUNSEL FOR INTERVENORS,
YARBROUGH AND CLARK**

A handwritten signature in black ink, appearing to read "R L Lagarde", written in a cursive style. The signature is positioned above a horizontal line.

RICHARD L. LAGARDE