

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

JAMES STEELE, et al., <i>Plaintiffs,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
vs.	§	TRAVIS COUNTY, TEXAS
	§	
GTECH CORPORATION, <i>Defendant.</i>	§	
	§	201 st JUDICIAL DISTRICT
	§	

**PLAINTIFFS' NOTICE OF DEPOSITION OF DESIGNATED REPRESENTATIVE OF
THE TEXAS LOTTERY COMMISSION**

TO: A Designated Representative of the Texas Lottery Commission, by and through his attorney of record: Ryan S. Mindell, Office of the Attorney General, 300 W. 15th Street, Austin, Texas 78701.

Please take notice that under the Texas Rules of Civil Procedure, Plaintiffs will take the deposition of a designated representative of the Texas Lottery Commission, at the Office of the Attorney General, 300 W. 15th Street, Austin, Texas 78701 on **July 30, 2015, at 9:30 a.m.** The deposition will be recorded stenographically. The stenographic recording will be conducted by U.S. Legal Support, 701 Brazos Street, Austin, Texas 78701, Tel. 512-292-4249.

The Texas Lottery Commission should designate one or more persons to testify about the following topics:

- (1) All efforts made by the Texas Lottery Commission to locate and produce items responsive to the Amended Subpoena and Deposition Upon Written Questions attached hereto as Exhibit "1";
- (2) Whether any additional items responsive to the Amended Subpoena and Deposition Upon Written Questions attached hereto as Exhibit "1" have been located but have not yet been produced;

- (3) Whether any additional items responsive to the requests for production in the Amended Subpoena and Deposition Upon Written Questions attached hereto as Exhibit "1" are no longer in existence and the reasons why they are no longer in existence;
- (4) The duties and responsibilities of the Texas Lottery Commission and GTECH Corporation as regards the development and operation of Texas Lottery Instant Game No. 1592;
- (5) The timing of and reasons for the early termination of Texas Lottery Instant Game No. 1592;
- (6) Communications between the Texas Lottery Commission and GTECH Corporation that reflected, referred to, or regarded lottery player complaints concerning Texas Lottery Instant Game No. 1592; and,
- (7) Communications between the Texas Lottery Commission and GTECH Corporation regarding the instruction language printed on the Texas Lottery Instant Game No. 1592 tickets.

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 28th day of May, 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

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**

**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

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 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: jdhurst@sbcglobal.net

**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,
JAFREH AND BECHTOLD**

**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**

Ryan S. Mindell
Assistant Attorney General
Financial Litigation, Tax and Charitable Trusts
Division
P.O. Box 12548
Austin, Texas 78711-2548
Tel. 512-475-4075
Fax 512-478-4013
Email:
ryan.mindell@texasattorneygeneral.gov

COUNSEL FOR TEXAS LOTTERY COMMISSION

Wes Dauphinot
DAUPHINOT LAW FIRM
900 Wes Abram
Arlington, TX 76013
Tel: 817-462-0676
Fax: 817-704-4788
Email: wes@dauphinotlawfirm.com

William Pratt
LAW OFFICE OF WILLIAM PRATT
3265 Lackland Road
Fort Worth, TX 76010
Tel: 817-738-4940
Fax: 817-738-4161
Email: lawofficeoffice@yahoo.com

**COUNSEL FOR INTERVENORS,
DIANE LACROIX AND DANIEL LACROIX, JR.**



RICHARD L. LAGARDE

FACSIMILE TRANSMISSION

TO: Richard L. LaGarde and Mary Ellis LaGarde
FROM: The Legal Connection, Inc.
DATE: April 6, 2015
Re: D-1-GN-14-005114; JAMES STEELE, ET AL. v. GTECH CORPORATION, Defendant;
ANDREA HUALI, KENDRA LOWERY, RONDA MATTHIAS, TERRY MATTHIAS, JAMES
NETTLES, MELISSA NETTLES AND JOVITO P. PERIERA, Intervenors

AMENDED WAIVER OF NOTICE AND REQUEST FOR COPIES OF RECORDS

Our client, Daniel H. Byrne of FRITZ, BYRNE, HEAD & HARRISON, PLLC, has commissioned THE LEGAL CONNECTION, INC. ("TLC") to obtain records on GTECH CORPORATION from the following custodian(s) for use in the above referenced case. You will find a copy of the Notice of Intention to Take Deposition Upon Written Questions and said Questions attached thereto. Please indicate below if you will waive any objections thereto.

I DO AGREE TO WAIVE THE NOTICE PERIOD. I DO NOT AGREE TO WAIVE THE NOTICE PERIOD.

TLC would like to offer you this opportunity to obtain a copy of the documents received from the Custodian(s) of Record listed below. If you choose to obtain copies (whether in paper or digital format), the cost will involve a \$60 base fee, \$20 delivery fee, and \$.35/page for exhibits/scans. If you would like the documents on CD in addition to a paper copy, an additional fee of \$25 will be charged for each CD provided. If supplemental records are received from the Custodian(s) of Record, you will not receive future notice of those supplemental records and your order below will stand.

Please indicate what type of copies (Paper or Digital or Both) you would like BY MARKING "Y" for "YES" OR "N" for "NO" beside each location below:

PAPER DIGITAL

TEXAS LOTTERY COMMISSION (BUSINESS)

Digital records will be provided in PDF format. If you checked "digital" above, please indicate how you want them provided to your office:

CD Emailed to this address : _____

Unless otherwise indicated, photographs, videotapes, audiotapes, medical imaging exhibits and CD duplications will be provided in the same format provided by the Custodian of Record and will incur additional charges.

THE LEGAL CONNECTION, INC. also offers direct billing to most insurance companies.

I agree that I and/or my firm will be responsible for payment of any copies of records ordered on this waiver. I acknowledge that invoices are due and payable within 30 days of receipt and that actions for collection of services are performable and payable in Travis County, Texas.

RETURN TO:
THE LEGAL CONNECTION, INC.

ATTN: Miranda Leal
 7103 Oak Meadow, Suite A
 Austin, TX 78736
 Phone: 512.892.5700
 Fax: 512.892.5703

AGREED BY:

 Richard L. LaGarde and Mary Ellis LaGarde
 LAGARDE LAW FIRM, P.C.
 3000 Wesleyan Street, Ste. 380
 Houston, TX 77027
 713.993.0660 Fax 713.993-9007

DATE: April 6, 2015

Attorneys for Plaintiff

NOTE: RETURN OF THIS FORM IS REQUIRED WITHIN TEN (10) DAYS TO PROCESS YOUR REQUEST. ANY CANCELLATION OF THE ABOVE MUST BE IN WRITING. IF THE RECORDS HAVE ALREADY BEEN COPIED AND FEES INCURRED, THEN BILLING WILL BE PRORATED ACCORDINGLY.

Order No. 7813

EXHIBIT 1

No. D-1-GN-14-005114

JAMES STEELE, ET AL.	:	IN THE 201ST JUDICIAL
VS.	:	
GTECH CORPORATION, Defendant,	:	
ANDREA HIATT, KENDRA LOWERY, RONDA	:	DISTRICT COURT OF
HATTHIAS, TERRY MATTHIAS, JAMES	:	
NETTLES, MELISSA NETTLES, AND	:	
JOVITO P. PERIERA, Intervenors	:	TRAVIS COUNTY, TEXAS

**AMENDED NOTICE OF INTENTION
TO TAKE DEPOSITION BY WRITTEN QUESTIONS**

To the parties by and through their attorneys of record: **Andrew G. Khoury (KHOURY LAW FIRM)**, **Clinton E. Wells, Jr. (MCDOWELL WELLS, L.L.P.)**, **Kenneth E. Broughton**, **Francisco Rivero and Arturo Munoz (REED SMITH, LLP)**, **Leroy Bernardo Scott (SCOTT ESQ)**, **Manfred Sternberg, Jr. (MANFRED STERNBERG & ASSOCIATES, P.C.)** and **Richard L. LaGarde and Mary Ellis LaGarde (LAGARDE LAW FIRM, P.C.)**, **James D. Hurst (JAMES D HURST, P.C.)**, and the non-party witness listed below.

You will please take notice that twenty (20) days from the service of a copy hereof with attached questions, a deposition by written questions will be taken of Custodian of Records for:

TEXAS LOTTERY COMMISSION (BUSINESS)
c/o Executive Director, Mr. Gary Grief
611 E. 6th Street
Austin, TX 78701

before a Notary Public for **THE LEGAL CONNECTION, INC.**
7103 Oak Meadow, Suite A
Austin, TX 78736
512.892.5700 Fax 512.892.5703

or its designated agent, which deposition with attached questions may be used in evidence upon the trial of the above-styled and numbered cause pending in the above named court. Notice is further given that request is hereby made as authorized under Rule 200 and 205, Texas Rules of Civil Procedure, to the officer taking this deposition to issue a subpoena duces tecum and cause it to be served on the witness to produce any and all records as described on the attached questions and/or Exhibit(s) and any other such record in the possession, custody or control of the said witness, and every such record to which the witness may have access, pertaining to:

GTECH CORPORATION

and to turn all such records over to the officer authorized to take this deposition so that photographic reproductions of the same may be made and attached to said deposition.

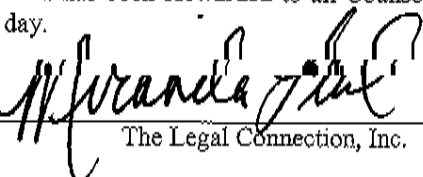
BY: 

Daniel H. Byrne
FRITZ, BYRNE, HEAD & HARRISON, PLLC
98 San Jacinto Boulevard, Suite 2000
Austin, TX 78701-4288
512 476 2020 Fax 512 477 5267
Attorney for Intervenor
SBN: 03565600

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all Counsel of Record by hand delivery, FAX, and/or certified mail, return receipt requested, on this day.

Dated: April 6, 2015

by 

The Legal Connection, Inc.

Order No. 7813

No. D-1-GN-14-005114

JAMES STEELE, ET AL.	:	IN THE 201ST JUDICIAL
VS.	:	
GTECH CORPORATION, Defendant,	:	
ANDREA HIATT, KENDRA LOWERY, RONDA	:	DISTRICT COURT OF
MATTHIAS, TERRY MATTHIAS, JAMES	:	
NETTLES, MELISSA NETTLES, AND	:	
JOVITO P. PERIERA, Intervenors	:	TRAVIS COUNTY, TEXAS

AMENDED DIRECT QUESTIONS TO BE PROPOUNDED TO THE WITNESS

Custodian of Records for: **TEXAS LOTTERY COMMISSION**
 Records Pertaining To: **GTECH CORPORATION**
 Type of Records: **PLEASE SEE ATTACHED EXHIBIT "A"**

1. Please state your full name, title of your position or job, by whom you are employed, and the business address.
 Answer: _____

2. Are you the custodian of records for **TEXAS LOTTERY COMMISSION**?
 Answer: _____

3. Did you receive a subpoena for the production of records and other documents pertaining to **GTECH CORPORATION**?
 Answer: _____

4. Has **TEXAS LOTTERY COMMISSION** made or caused to be made any memoranda, reports, records, photographs, or data compilations, as outlined in the subpoena duces tecum, pertaining to **GTECH CORPORATION**?
 Answer: _____

5. Were the entries made on these memorandum, reports, records, notes, photographs, or data compilations made at the time or shortly after the time of the transaction recorded by these entries?
 Answer: _____

6. Are these memorandum, reports, records, notes, photographs, or data compilations under your care, supervision, direction, custody and/or control?
 Answer: _____

7. Please state whether it was in the regular course of business of **TEXAS LOTTERY COMMISSION** for an employee, representative, or person with knowledge of the acts or events recorded to make the record or transmit information thereof to be included in such record?

Answer: _____

8. Please hand to the Officer taking this deposition exact duplicates of the **RECORDS** pertaining to **GTECH CORPORATION** or the originals thereof for attachment to this deposition. Have you now provided the records and documents requested, including those that may be on microfilm or in any electronic or other storage medium? If not, identify for the Notary Public the records and documents you did not produce and explain why you did not produce them.

Answer: _____

9. Are the copies which you have handed to the Officer taking this deposition true and correct copies of such memoranda, reports, records, notes, photographs, or data compilations kept by **TEXAS LOTTERY COMMISSION**?

Answer: _____

10. Were such memoranda, reports, records, notes, photographs, or data compilations kept in the regular course of business of **TEXAS LOTTERY COMMISSION**?

Answer: _____

11. Was it in the regular course of business of **TEXAS LOTTERY COMMISSION** for a person with knowledge of the acts, events, conditions, opinions, or diagnoses, recorded to make the memoranda, reports, records, notes, photographs, or data compilations, or to transmit information thereof to be included in such records?

Answer: _____

12. Was the method of preparation of these records trustworthy?

Answer: _____

13. Are the originals of such records a permanent part of the records of **TEXAS LOTTERY COMMISSION**? If not, why not?

Answer: _____

14. Are there any other locations where records or documents pertaining to **GTECH CORPORATION** would be kept by **TEXAS LOTTERY COMMISSION**? If yes, please identify the name and address of that location, if known.

Answer: _____

15. In the event no records can be found, or a portion of the records cannot be found, are there document archives (i.e., microfiche), document retention or destruction policies which explain their absence? If yes, please identify who has knowledge of those archives or policies for **TEXAS LOTTERY COMMISSION**.

Answer: _____

16. Are the records attached clear, legible and the best possible copies available? If any of the copies attached are of poor quality, please explain why.

Answer: _____

WITNESS (Custodian of Records)

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument in the capacity therein stated, who being first duly sworn, stated upon his/her oath that the answers to the foregoing questions are true and correct. I further certify that the records attached hereto are exact duplicates of the original records.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20_____.

NOTARY PUBLIC

My Commission Expires: _____

EXHIBIT "A"

DEFINITIONS

The following definitions shall have the following meanings, unless the context requires otherwise:

1. "You" or "your" means the Texas Lottery Commission as well as its present and former officers, agents, and employees.
2. "Communication" means any disclosure, transfer, or exchange of information or opinion, however made.
3. "Document" means all written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action. "Document" includes, but is not limited to, the following: letters, reports, charts, diagrams, correspondence, telegrams, memoranda, notes, records, minutes, contracts, agreements, records or notations of telephone or personal conversations or conferences, interoffice communications, e-mail, microfilm, bulletins, circulars, pamphlets, photographs, faxes, invoices, tape recordings, computer printouts, drafts, résumés, logs, and worksheets.
4. "Electronic or magnetic data" means electronic information that is stored in a medium from which it can be retrieved and examined. The term refers to the original (or identical duplicate when the original is not available) and any other copies of the data that may have attached comments, notes, marks, or highlighting of any kind. Electronic or magnetic data includes, but is not limited to, the following: computer programs; operating systems; computer activity logs; programming notes or instructions; e-mail receipts, messages, or transmissions; output resulting from the use of any software program, including word-processing documents, spreadsheets, database files, charts, graphs, and outlines; metadata; PIF and PDF files; batch files; deleted files; temporary files; Internet- or web-browser-generated information stored in textual, graphical, or audio format, including history files, caches, and cookies; {continue listing examples as necessary}; and any miscellaneous files or file fragments. Electronic or magnetic data includes any items stored on magnetic, optical, digital, or other electronic-storage media, such as hard drives, floppy disks, CD-ROMs, DVDs, tapes, smart cards, integrated-circuit cards (e.g., SIM cards), removable media (e.g., Zip drives, Jaz cartridges), microfiche, punched cards, etc. Electronic or magnetic data also includes the file, folder, tabs, containers, and labels attached to or associated with any physical storage device with each original or copy.

5. "Fun 5's" refers to the scratch-off game referred to by the Texas Lottery as Instant Game # 1592.
6. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.
7. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.
8. "Mobile device" means any cellular telephone, satellite telephone, pager, personal digital assistant, handheld computer, electronic rolodex, walkie-talkie, or any combination of these devices.
9. "Non-privileged" means documents not protected by the attorney-client privilege or the attorney work-product privilege as those privileges are currently defined by Texas law.
10. "Contract" means an oral or written agreement.

REQUESTED DOCUMENTS

1. Produce all Contracts in effect between September 1, 2013, and the present, which governed the Texas Lottery Commission's relationship with GTECH Corporation. This request includes all portions of said Contracts, not just the portions that are publicly available on your website.
2. Produce all non-privileged Documents that relate to, refer to, or reflect Communications between you and GTECH Corporation regarding Instant Game No. 1592.
3. Produce all non-privileged Documents that relate to, refer to, or reflect Communications between you and scratch-off ticket retailers regarding Instant Game No. 1592.
4. Produce all non-privileged Documents that relate to, refer to, or reflect Communications between you and persons or entities other than GTECH Corporation regarding Instant Game No. 1592.
5. Produce all non-privileged Documents that relate to, refer to, or reflect Communications internal to the Texas Lottery Commission regarding Instant Game No. 1592.
6. Produce all non-privileged Documents that relate to, refer to, or reflect the language appearing on the Fun 5's scratch-off ticket, including any drafts of said language.
7. Produce all non-privileged Documents that relate to, refer to, or reflect the instructions for Game 5 of the Fun 5's scratch-off game, including any drafts of said instructions.

8. Produce all non-privileged Documents that relate to, refer to, or reflect whether alternative language was considered for the language contained in the official game regulations for Instant Game No. 1592.
9. Produce all non-privileged Documents that relate to, refer to, or reflect whether alternative language was considered for the instructions for Game 5 printed on the Fun 5's tickets.
10. Produce all non-privileged Documents that relate to, refer to, or reflect whether any attempts were made to determine whether reasonable minds might differ as to the meaning of the instructions for Game 5 of the Fun 5's game.
11. Produce all non-privileged Documents that relate to, refer to, or reflect that there may be confusion regarding the meaning of the instructions for Game 5 of the Fun 5's game.
12. Produce all non-privileged Documents that relate to, refer to, or reflect complaints regarding Game 5 of the Fun 5's game.
13. Produce all non-privileged Documents that relate to, refer to, or reflect inquiries regarding Game 5 of the Fun 5's game.
14. Produce all non-privileged Documents that relate to, refer to, or reflect Communications between Texas legislators and the Texas Lottery Commission regarding the Fun 5's game.
15. Produce all non-privileged Documents that relate to, refer to, or reflect Communications regarding the closing of Instant Game No. 1592.
16. Produce a copy of the Texas Lottery Commission Lottery Operations Division Procedure LO-PD-018 effective March 29, 2012.
17. Produce a copy of all non-privileged Documents that relate to, refer to, or reflect drafts of the Working Papers for Game No. 1592.
18. Produce a copy of all non-privileged Documents that relate to, refer to, or reflect comments, questions, or changes made by the staff of the Texas Lottery Commission to drafts of the Working Papers for Game No. 1592.
19. Produce a copy of all non-privileged Documents that relate to, refer to, or reflect the Final Working Papers for Game No. 1592.
20. Produce a copy of all non-privileged Documents that relate to, refer to, or reflect the Executed Final Working Papers for Game No. 1592.
21. Produce any proposals for Game No. 1592 provided by GTECH Corporation to the Texas Lottery Commission.

22. Produce a copy of all non-privileged Documents that relate to, refer to, or reflect the development of Game No. 1592.
23. Produce a copy of all non-privileged Documents that relate to, refer to, or reflect the design of Game No. 1592.
24. Produce a copy of all non-privileged Documents that relate to, refer to, or reflect approval by the Texas Lottery Commission of Game No. 1592.