

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' FOURTH AMENDED PETITION

Plaintiffs, James Steele et al., file this Fourth 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. The names of Plaintiffs are listed on Exhibit "A" which is attached hereto and incorporated herein for all purposes.

4. Defendant, GTECH Corporation, has been served with service of process and has filed its Answer. A copy of this Third 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 – THE CONTRACTS

7. GTECH, which is also known by its assumed trade name of "IGT"¹, is the U.S. subsidiary of an Italian gaming company which operates lotteries, sports betting, and commercial bookmaking throughout the world.²

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 contract and has held the exclusive contract ever since.

9. On December 10, 2014, GTECH and the TLC executed a new "Contract for Lottery Operations and Services" ("Operations Contract"). The Operations Contract gives GTECH the exclusive right to operate the Texas Lottery through the year 2020. GTECH's fee is 2.21% of sales. Accordingly, GTECH derives a substantial financial benefit from increased lottery ticket sales. The Texas Lottery generates sales in excess of \$4.3 billion annually. GTECH receives approximately \$100 million per year from the TLC under its Operations Contract. The Operations Contract is a matter of public record and can be accessed on the TLC's website.³

¹ GTECH recently acquired International Gaming Technology, the largest maker of slot machines. GTECH now operates under the assumed name "IGT".

² www.igt.com;

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

11. 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.⁴

12. Under its Operations Contract, 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, along with instant ticket storage, ordering, printing, and distribution.

13. The contract between GTECH and the TLC sets a very high standard of care and conduct for GTECH. Section 3.17 of the Operations Contract provides that the TLC has grounds to terminate the Operations Contract, "for cause" if "GTECH engages in any conduct that results in a negative public impression including, but not limited to, creating even an appearance of impropriety with respect to the Texas Lottery, Texas Lottery games, GTECH, or the State of Texas."

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

⁴ Id.

14. Under its Operations Contract, GTECH has agreed to defend the TLC from and to assume the TLC's liability for claims of the type raised by Plaintiffs in this lawsuit. Specifically, Section 3.33.1 of the Operations Contract provides as follows:

3.33.1 GTECH shall indemnify, defend and hold the Texas Lottery, its commission members, the State of Texas, and its agents, attorneys, employees, representatives and assigns (the "Indemnified Parties") harmless from and against any and all claims, demands, causes of action, liabilities, lawsuits, losses, damages, costs, expenses or attorneys' fees (collectively, "Claim"), and including any liability of any nature or kind arising out of a Claim for or on account of the Works, or other goods, services or deliverables provided as the result of this Contract, which may be incurred suffered, or required in whole or in part by an actual or alleged act or omission of GTECH, or a subcontractor of GTECH, or any person directly or indirectly employed by GTECH or a subcontractor of GTECH, whether the Claim is based on negligence, strict liability, intellectual property infringement or any other culpable conduct, whether frivolous or not....

15. The term "Works" is defined in the "Request for Proposals for Lottery Operations and Services" ("Request for Proposals") which was issued by the Texas Lottery Commission on January 4, 2010, and which is a matter of public record and can be accessed at the Texas Lottery Commission's website.⁵ The Request for Proposals was incorporated into and made a part of the Operations Contract as Exhibit A to that agreement. At page VI of the Request for Proposals, the term "Works" was defined as follows:

Any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced or developed by a Successful Proposer...which includes but is not limited to lottery games, game names, game designs, ticket format and layout, manuals, instructions, [and] printed material....

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http://www.txlottery.org/export/sites/lottery/Documents/procurement/RFP2011/Lottery_Operations_RFP.pdf

16. The TLC also entered into contracts with three private companies to develop instant ticket games and to manufacture instant tickets.⁶ One of those companies was GTECH Printing Corporation which entered into a “Contract for Instant Ticket Manufacturing and Services” (“Instant Ticket Contract”) with the TLC in August of 2012. The Instant Ticket Contract is a matter of public record and can be accessed at the Texas Lottery Commission’s website.⁷ Subsequent to entering into the Instant Ticket Contract, GTECH Printing Corporation was merged into GTECH Corporation which is now the successor in interest to the rights and obligations of GTECH Printing Corporation under the Instant Ticket Contract.

17. The “Instant Ticket Contract” incorporates, by reference, the provisions of the “Request for Proposals for Instant Ticket Manufacturing and Services” (“Instant Ticket RFP”) issued by the Texas Lottery Commission on November 7, 2011, and which can be accessed on the Texas Lottery Commission’s website.⁸

18. Under the Instant Ticket Contract, GTECH agrees to defend the TLC and to assume its liability for claims such as those brought in this lawsuit. The Instant Ticket RFP provides, in relevant part, as follows:

3.32.1 The Successful Proposer shall indemnify, defend and hold the Texas Lottery, its commission members, the State of Texas, and its agents, attorneys, employees, representatives and assigns (the —Indemnified Parties) harmless from and against any and all claims, demands, causes of action, liabilities, lawsuits, losses, damages, costs, expenses or attorneys’ fees (collectively, —Claim), and including any liability of any nature or kind arising out of a Claim for or on account of the Works, or other goods, services or deliverables provided as the result of any Contract resulting from this RFP, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission

⁶ GTECH Printing Corporation, Scientific Games International, Inc., and Pollard Banknote Ltd.

⁷http://www.txlottery.org/export/sites/lottery/Documents/procurement/instant_contract/GPC_Executed_Contract.pdf.

⁸ http://www.txlottery.org/export/sites/lottery/Documents/procurement/Book_1_ITM_RFP_FINAL_110711.pdf

of the Successful Proposer, or a Subcontractor of the Successful Proposer, or any person directly or indirectly employed by the Successful Proposer or a Subcontractor of the Successful Proposer, whether the Claim is based on negligence, strict liability, intellectual property infringement or any other culpable conduct, whether frivolous or not....

19. The term “Works” is defined at Page V of the Instant Ticket RFP as follows:

Any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced or developed by a Successful Proposer (or such third parties as the Successful Proposer may be permitted to engage) at any time following the effective date of the Contract, for or on behalf of TLC under the Contract, including but not limited to...lottery games, game names, game designs, ticket format and layout, manuals, instructions, [and] printed material....

20. At page 2 of the Instant Ticket Contract, GTECH and the TLC agreed that GTECH would provide its services under the contract “as an independent contractor and not as an employee or agent of the TLC....”

21. GTECH warranted that all goods and services it provides under the Instant Ticket Contract “shall be performed in a high quality professional and competent manner”.

22. GTECH is obligated, under Section 7.3 of the Instant Ticket RFP, to provide draft working papers for each GTECH instant game. The TLC then provides “requested changes”. Following receipt of the requested changes from the TLC, GTECH is obligated, under Section 7.8, to provide final working papers to be executed by the Executive director of the TLC before the tickets are printed. Under Section 7.8, the final working papers provided to the TLC by GTECH “must be complete and free of any errors.”

23. GTECH is also required, under Sections 3.36 & 3.37 of the Instant Ticket RFP, to carry general liability insurance and errors & omissions insurance with limits of no less than \$2 million per occurrence.

24. Section 7.2 of the Instant Ticket RFP requires GTECH to provide, at a minimum, “Game Development Services to include but not be limited to graphic design, game design, artwork, prize structures and play style.

25. Section 4.2 of the Instant Ticket RFP requires GTECH to provide experienced personnel for instant game design, including a “Quality Control individual or team whose responsibilities include accuracy of all content in the working papers....”

G. FACTS – FUN 5’S INSTANT SCRATCH-OFF TICKETS

26. In March of 2013, GTECH made a presentation to the TLC and provided examples of scratch-off games developed by GTECH and available for sale to the TLC. One of those games was known as the “Fun 5’s” game. GTECH had previously operated its Fun 5’s game in Nebraska, Indiana, Kansas, and Western Australia with much financial success and without consumer complaints.

27. The TLC selected GTECH’s Fun 5’s game as one of the scratch-off games it intended to purchase from GTECH for use in Texas during fiscal year 2014.

28. It was GTECH’s responsibility to prepare the first draft of the working papers for the Fun 5’s game. GTECH’s customer service representative, Penny Whyte, prepared the initial draft of the working papers for the Fun 5’s game which included the proposed wording for the instructions to be printed on each Fun 5’s ticket. The TLC had no involvement in putting together the initial working papers or the wording of the instructions proposed in those working papers. The initial draft working papers were sent to the TLC only after GTECH had

exercised its independent discretion to prepare the first draft and after GTECH had performed an internal review of the proposed artwork, instructions, and parameters for the game.


29. On April 16, 2014, GTECH sent draft “working papers” for approval by the TLC. The draft working papers closely mirrored the game parameters, artwork, and instructions used by GTECH for the Fun 5’s game in Nebraska. GTECH’s draft working papers proposed a Fun 5’s game ticket consisting of five games. For Game 5, GTECH proposed a tic-tac-toe style of game with the following printed instructions:






30. On April 30, 2014, the TLC requested that GTECH change the “Dollar Bill” symbol to a “5” symbol and change the “5” symbol to a Money Bag “\$” symbol.

31. On May 12, 2014, the TLC requested that GTECH change the parameters of Game 5 to provide that the winning Money Bag “\$” symbol in the 5X Box would be printed on both winning tickets and non-winning tickets. The stated reason for the requested change was

a fear that the 5X Box would be an easy target for “micro-scratching” since only the 5X box would need to be scratched to tell if a ticket was a “winning” ticket.

32. Under the parameters for the game originally proposed by GTECH to the TLC, one hundred percent of the tickets that revealed a Money Bag “” symbol would be programmed into GTECH’s computers as “winning” tickets. This was the same parameter used by GTECH for the Fun 5’s game in Nebraska, Indiana, Kansas, and Western Australia. One hundred percent of the consumers in those four jurisdictions who revealed a winning symbol in the 5X Box won five times the amount in the PRIZE Box.

33. At the request of the TLC, GTECH changed the game’s parameters and programmed its computers so that a significant percentage of the tickets designated as non-winning tickets would nonetheless reveal a Money Bag “” symbol in the 5X Box.

34. Because the Money Bag “” symbol would be appearing on both winning and non-winning tickets, it was incumbent upon GTECH’s client service representative and GTECH’s software department to change the wording of the instructions to make it clear to consumers that they would win 5 times the amount in the PRIZE Box only if the ticket revealed **both** a Money Bag “” symbol in the 5X Box **and also** revealed three five symbols in any one row, column, or diagonal in the tic-tac-toe game.

35. The TLC expected GTECH to exercise reasonable care to make sure that the instructions on the Fun 5’s game were clear and unambiguous. The TLC did not expect GTECH to deliver games that were misleading.

36. According to the testimony of Gary Grief, Executive Director of the TLC, the TLC relies on GTECH for the language that goes on the tickets because GTECH has the experience in

the industry and they run games in states other than Texas. Mr. Grief expected GTECH to exercise reasonable care to propose language for the Fun 5's tickets that was not misleading.

37. According to the testimony of GTECH's client services representative, Laura Thurston, if the TLC requests that a change be made to the working papers, GTECH's client service representative will look at the requested change and decide from there whether to make the requested change. This is an act of independent discretion on the part of GTECH's client service representatives.

38. It was the responsibility of employees of GTECH's printing division to exercise their independent discretion by checking the parameters of the game in the working papers and by comparing the language on the tickets to ensure that the language was not misleading or deceptive.

39. It was also GTECH's contractual responsibility to make sure the final executed working papers were "free of errors". It was GTECH's expectation that when it sent proposed working papers to the lottery, the instructions for the scratch-off game would be clear and not misleading.

40. According to the testimony of the TLC's Products and Drawings Manager, Robert Tirloni, it should be the goal of the folks at GTECH to review the working papers and to make sure the instructions are clear.


41. According to the testimony of the TLC's Instant Product Coordinator, Dale Bowersock, the initial wording for the game's instructions comes from GTECH. It is important for instructions on scratch-off games to be clear and not misleading. It is part of GTECH's job to point out concerns about the game to the TLC. The TLC expects GTECH to have the

responsibility to make sure the instructions in their games are not misleading. The TLC expects GTECH to propose wording that is clear and does not misrepresent the chances to win a game.

42. In the exercise of reasonable care and independent discretion, GTECH's personnel should have notified the TLC if a requested change in the parameters of the game would cause problems with the game. It was the responsibility of GTECH's client services representative and its software department to conduct a comprehensive review of the game's instructions to make sure that the change in parameters requested by the TLC did not require a change in the language of the game's instructions. GTECH's customer service representative and its software department had the knowledge and expertise necessary to ensure that the language was clear, unambiguous, and not misleading.

43. GTECH's client services representatives Laura Thurston and Penelope Whyte both reviewed the language of the instructions after the change in parameters was requested by the TLC. Both Ms. Thurston and Ms. Whyte made the decision that GTECH would not change the wording of the instructions. Instead, GTECH's client services representatives decided that the wording would remain as originally proposed by GTECH. GTECH's decision to refrain from changing the proposed wording was not dictated by the TLC. Rather, it was an independent decision made by GTECH's client service representatives and its software department.

44. In other words, even though GTECH was aware, after the requested change in the game's parameters, that not all of the tickets with a Money Bag symbol would be winning tickets, GTECH decided to continue using language on its Fun 5's tickets that misrepresented that all tickets with a Money Bag symbol would "win". The language chosen by GTECH for the final working papers represented 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.

45. GTECH’s decision to retain the original wording was not dictated by the TLC. It was not unusual for the TLC to ask GTECH to make a change in a game’s parameters. However, if a change in the parameters was requested, it was GTECH’s duty to exercise its independent discretion to review the instructions to ensure there was no need for a change in the instructions in order to make them clear and unambiguous. Plaintiffs do not complain of the change in parameters requested by the TLC. Rather, Plaintiffs complain of the misleading and deceptive wording chosen for the Fun 5’s tickets by GTECH in its exercise of independent discretion.

46. Although the TLC was required to execute GTECH’s final working papers before the tickets were printed, the TLC was relying on GTECH to suggest the wording of the instructions due to its expertise in having worked on scratch-off games for many years. Moreover, GTECH’s client services representative, Laura Thurston, admits that it would have been reasonable for the TLC to rely upon GTECH to notify the TLC if a change in the wording of the instructions was needed.

47. GTECH had a contractual duty to exercise its independent discretion to ensure that the final executed working papers it submitted to the TLC were “complete” and “free of any errors”.

48. The wording selected by GTECH was misleading and deceptive given the change in the games parameters.

49. On May 16, 2014, Mr. Gary Grief, Executive Director of the TLC, executed the final working papers and approved printing of the Fun 5's tickets by GTECH.

50. GTECH printed approximately 16.5 million Fun 5's tickets and delivered them to a warehouse in Austin.

51. GTECH charged the Texas Lottery Commission approximately \$390,000 for the use of GTECH's Fun 5's scratch-off game and for the Fun 5's tickets it printed.

52. An example of the Fun 5's tickets that GTECH printed and distributed to retailers is shown 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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53. Sales of the Fun 5's tickets began on September 2, 2014.

54. In the first days that ticket sales began, GTECH began to receive complaint calls from retailers on GTECH's toll free hotline. One retailer said that he thought his customer who revealed a Money Bag symbol was a winner based on the retailer's reading of the instructions. Another retailer said he thought his customer had won five times the amount in the PRIZE Box because he had a Money Bag symbol in the 5X Box. The retailer said "Oh, congratulations!" to his customer but when he ran the ticket through the computer terminal, it said "not a winner". The retailer told GTECH "I'm a little confused. Are we having an issue with the ticket here?" Yet another retailer complained to GTECH "I mean the way it's worded, you know, you got the Money Bag in that box, you instantly win five times that amount."

55. The TLC also began to receive complaints on the first day of Fun 5's ticket sales. On September 2, 2014, TLC employee Angelica Tagle reported to TLC employees and officials "[w]e have been getting a few calls for Game 1592, Fun 5's. It seems that players think that they automatically win 5X the prize amount on Game 5 when they reveal the 'money bag'." TLC employee Angela Briones responded "[a]re they going to change this (the poor wording)?"

56. On September 3, 2014, TLC employee Wesley Barnes, reported to Dale Bowersock, the TLC's Instant Ticket Coordinator as follows:

We've had an issue with the new game Fun 5's...The way the instructions read in the second sentence gives the impression that matching the "5" symbols is not necessary to win the bonus portion, that you only have to get the Money Bag Symbol...I think we are going to see more problems like this from this game.

57. On September 3, 2014, Gary Grief, the Executive Director of the TLC, received a phone call from a lottery player named Josey Jones who was concerned “that the instructions are misleading the way they are currently written.”

58. On September 4, 2014, TLC employee Angelica Tagle reported that as of the prior day, the TLC had received about 83 calls from players in reference to Game 5 on the Fun 5’s who felt “that the wording is misleading.”

59. On the same day, the official calendar for the TLC’s Executive Director, Gary Grief, shows that he met with Joe Lapinski, GTECH’s head of Texas operations, and Jay Gendron, Senior Vice President for GTECH in Providence, Rhode Island. Although no details of that meeting have been made public, it is inconceivable that Mr. Grief and the officials from GTECH did not discuss the fact that both consumers and retailers were complaining that the Fun 5’s tickets sold to the TLC by GTECH and printed by GTECH contained “misleading” instructions.

60. On September 5, 2014, Angelica Tagle reported that the TLC had received 134 calls regarding the Fun 5’s game. On the same day she reported that the TLC phone operators “were getting push back from the players.” The comments received from the players included “[t]his is misleading, disappointed, not clear enough, [t]he other games have two ways to win and why would game 5 be any different.” Ms. Tagle concluded with the comment that “FYI – the calls are still coming in today.” Ms. Tagle’s e-mail was forwarded to the TLC’s Executive Director Gary Grief, its Communications Director, Kelly Cripe, and its attorney, Bob Baird.

61. In addition to a large number of angry calls, the TLC received numerous letters and e-mails from angry consumers who expressed concern that they had been cheated and misled by the TLC.

62. On September 5th, TLC employee Carol Vela reported that the TLC had received 83 calls from players regarding Fun 5's on September 3rd and 144 calls on September 4th.

63. Also on September 5th, the TLC's Instant Product Coordinator, Dale Bowersock, instructed his assistant, Jessica Burrola, to prepare the necessary paperwork to "Call" the Fun 5's game effective September 5th in anticipation that the Executive Director, Gary Grief might decide to "Call" the game for "business reasons". If Mr. Grief had decided to "Call" the game, a message would have been transmitted to each of GTECH's retail computer terminals in the state of Texas instructing the retailers to immediately stop selling the Fun 5's tickets, to remove the tickets from the retailers' displays, and to hold the tickets for collection by GTECH's Lottery Service Representatives.

64. GTECH was fully aware that the wording chosen by GTECH and printed by GTECH on the Fun 5's tickets was misleading and deceptive. Upon information and belief, GTECH learned that its wording was misleading and deceptive from one or more of the following sources: (1) two of GTECH's client services representatives and its software department reviewed the wording of the instructions before the tickets were printed and were fully aware that contrary to what the wording chosen by GTECH represented, not every ticket that revealed a Money Bag symbol would "win"; (2) GTECH received calls to its hotline from retailers; (3) GTECH's Lottery Service Representatives learned of complaints from retailers; (4) GTECH's head of Texas operations, Joe Lapinski, spoke by phone with Gary Grief on an almost daily basis and met with him in person on a weekly basis; (5) GTECH's Executive Vice President, Jay Gendron, met with Joe Lapinski and Gary Grief in Grief's office on September 4th; (6) GTECH's Chief Executive Officer, Jaymin Patel, held a phone conference with Gary Grief on October 7th; (7) Gary Grief attended a breakfast with GTECH officials on October 1, 2014, and had dinner with

GTECH officials that same evening; and, (8) officials of GTECH met weekly in Austin with the Instant Product Manager of the TLC to discuss issues related to scratch-off tickets.

65. The TLC asked GTECH whether lottery retailers were complaining about the Fun 5's game. GTECH failed to disclose to the TLC that lottery retailers were, in fact, complaining to GTECH that the wording on the Fun 5's tickets was misleading lottery players. GTECH also failed to disclose that its own officials believed the wording on the Fun 5's tickets was not clear.

66. GTECH had full knowledge that the wording it printed on the Fun 5's tickets was misleading players into believing that they had won five times the amount in the PRIZE Box when they had not. GTECH nonetheless continued to take orders from retailers for replacement packs of Fun 5's tickets, continued to deliver Fun 5's tickets to retailers, continued to activate packs of Fun 5's tickets so they could be sold to consumers, and continued to validate tickets with a Money Bag symbol as "non-winning" tickets even though the wording on the tickets misled consumers and retailers into believing that the tickets should be "winning" tickets.

67. During the forty-six days between September 5th when Gary Grief decided he would not "call" the game and October 21st when he finally agreed to do so, sales of the misleading and deceptive Fun 5's tickets generated approximately \$21 million in revenues, a percentage of which was paid to GTECH as its fee for operating the game.

68. On September 8, 2015, the South Regional Summary for the TLC's Claim Centers in Beaumont, Corpus Christi, Houston, McAllen, San Antonio, and Victoria reported that all of those Claims Centers were receiving calls and personal visits from players who "are interpreting the 'Money Bag' in the Bonus Box in Game 5 to mean they won 5 times the amount shown in the Prize Box".

69. On September 26th, the North Region Customer Service Summary reported that all TLC Claims Centers in the northern part of Texas “continue to report that the problems with game #1592 Fun 5’s continue”.


70. On October 7, 2014, Gary Grief requested that his staff provide him with “weekly sales data since the game began along with the most recent call volume of player complaints....” In response, TLC Manager Michael Anger reported to Grief that “the call volume has remained between 75 and 100 calls a day through the week last week. This is consistent with the volume for the last several weeks.” Kathy Pyka reported to Grief that the Fun 5’s tickets had generated weekly sales between approximately \$2,000,000 and \$4,500,000 per week for a total of \$15,919,185 as of the week ending October 4, 2014. After being informed that slightly over 16.5 million Fun 5’s tickets had been printed, Grief responded “[w]hat percentage sold through are we?” In response, Dale Bowersock reported to Grief that the Fun 5’s game was “19.27% sold.”

71. On October 7, 2014, the same day he requested and received this information, Grief had a conference call with Jaymin Patel, Chief Executive Officer of GTECH in Providence, Rhode Island.

72. The TLC continued to sell Fun 5’s tickets for approximately two more weeks until October 21, 2014 when Grief finally authorized his staff to “call” the game and to discontinue sales of the misleading and deceptive tickets. 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”.

73. 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...”

74. 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’s computer program 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 under 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.



75. The Texas Lottery Commission began selling Fun 5’s tickets to the public on or about September 2, 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.

76. 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 "👑" symbol in the 5X BOX, win 5 times ~~that~~ [the] PRIZE [**won**].

77. GTECH learned, in the early days of September 2014, of complaints from lottery players who had purchased tickets with a Money Bag "👑" symbol but whose tickets were not being validated by GTECH's computers as "winners". Despite notice of these complaints, GTECH knowingly and intentionally decided to continue using its non-conforming computer validation program to eliminate a significant percentage of the tickets with a Money Bag "👑" symbol from the list of "winning" tickets. GTECH also knowingly and intentionally continued to distribute Fun 5's tickets on which GTECH had printed the misleading and inaccurate language. Had GTECH corrected its error and changed its computer validation program to conform to the language printed on the Fun 5's tickets, it would have exposed the Texas Lottery to a total payout for the Fun 5's game far in excess of the payout GTECH originally calculated for the Texas Lottery. Had GTECH discontinued distribution of the misleading Fun 5's tickets, it would have suffered a loss of revenues from its percentage of gross ticket sales. Rather than admit that it had made a costly mistake in judgment or suffer a decrease in revenues, GTECH decided to cover up its mistake by continuing to distribute the misleading tickets and by continuing to use its non-conforming validation program which failed to validate a significant percentage of the tickets with a Money Bag "👑" symbol as "winning" tickets.

78. The language developed by 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.


79. Plaintiffs purchased Fun 5's tickets that revealed a Money Bag  symbol in Game 5. Plaintiffs reasonably relied upon the representation GTECH printed on the Fun 5's tickets that Plaintiffs would receive five times the amount printed in the PRIZE box on their tickets if their tickets revealed a Money Bag  symbol. However, when Plaintiffs attempted to cash their apparently winning tickets, they learned that GTECH's computer validation program did not validate their tickets as winning tickets. That meant their 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 prize payouts.

80. Plaintiffs do not contend that their tickets are "winning tickets". It is undisputed that their tickets are "non-winning" tickets. Instead, they contend that they were misled by GTECH into believing that if their tickets revealed a Money Bag symbol in Game 5, they would win five times the amount in the PRIZE Box.

H. COUNT 1- COMMON LAW FRAUD

81. GTECH chose the wording of the representation it printed on the Fun 5's tickets. The wording was not dictated or required by the TLC. Instead, the wording was chosen by GTECH's customer service representatives in the exercise of their independent discretion.

82. GTECH printed and distributed the misleading and deceptive 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.

83. Each of the Fun 5's tickets contained a written representation that if the ticket revealed a Money Bag  symbol in Game 5, the player would "win".

84. This representation was material.

85. The representation made on the Fun 5's tickets was false. In fact, a significant percentage of tickets with a Money Bag "👛" symbol were not "winning" tickets.

86. 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.

87. 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.

88. Alternatively, GTECH made the representation recklessly. It represented as a positive assertion that a player would "win" if he or she revealed a Money Bag "👛" symbol on a Fun 5's ticket. However, GTECH made the representation on every one of the tickets without knowing which of the tickets with a Money Bag "👛" symbol would be "winning" tickets and which ones would be "non-winning" tickets.

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

90. GTECH benefited from the sale of the misleading and deceptive tickets in that it received a percentage of the revenues from the ticket sales.

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

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

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

94. GTECH expected lottery players to rely on the instructions it printed on the Fun 5's tickets.

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

96. The false representation caused Plaintiffs injury.

97. 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.

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

I. COUNT 2 – FRAUD BY NONDISCLOSURE

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

100. 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.

101. 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.

102. 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.

103. GTECH had a duty to inform purchasers of Fun 5's tickets that they would not automatically "win" if they revealed a Money Bag "👛" symbol. Instead, GTECH deliberately remained silent and did not disclose the truth to Plaintiffs.

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

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

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

107. 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.

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

J. COUNT 3 – AIDING AND ABETTING FRAUD

109. GTECH substantially assisted the TLC in committing a fraud on Plaintiffs and other similarly situated lottery players.

110. GTECH knew that the TLC was selling lottery tickets that were misleading or deceptive and that the TLC ought not to be doing so.

111. GTECH intended to assist the TLC in selling the deceptive and misleading tickets to lottery players.

112. GTECH assisted the TLC by printing the misleading and deceptive language on the Fun 5's tickets, by distributing the deceptive and misleading tickets to retailers, by activating packs of the Fun 5's tickets to make them eligible for sale, and by continuing to operate the computer system which validated Plaintiffs' tickets as "non-winners" even though the instructions represented that the players would "win" if they revealed a Money Bag "👛" symbol.

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

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

115. 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.

K. COUNT 4 – TORTIOUS INTERFERENCE WITH EXISTING CONTRACT

116. 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.

117. 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.

118. 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".

119. Defendant's interference proximately caused injury to Plaintiffs, which resulted in damages in excess of \$500,000,000.00 which represents five times the collective amount printed in the Prize Box in Game 5 of Plaintiffs' Fun 5's tickets.

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

L. COUNT 4 – CONSPIRACY

121. Defendant GTECH, in combination with the TLC, agreed to print misleading and deceptive instructions on Fun 5's tickets, to distribute the misleading and deceptive tickets for sale to lottery players in Texas, and to use GTECH's computer system to validate tickets as non-winners when the clear language of the tickets represented that they should have been validated as winning tickets.

122. Officials of both GTECH and the TLC admitted in their deposition testimony that they were aware that lottery players would rely upon the instructions printed by GTECH on the tickets. They also admitted that the TLC ought not to defraud lottery players by selling misleading and deceptive tickets to players and that GTECH ought not to assist the TLC in doing so.

123. GTECH and the TLC had a meeting of the minds that they would sell the misleading and deceptive tickets to lottery players and that they would continue selling the tickets despite complaints from both consumers and retailers.

124. To accomplish their object or course of action, GTECH printed the misleading and deceptive language on the tickets, GTECH distributed the tickets to retailers in Texas, GTECH activated the packs of tickets so they would be eligible for sale, the TLC sold the tickets to Texas lottery players, and GTECH validated the tickets as non-winning tickets even though some of Plaintiffs' tickets contained a Money Bag symbol which should have entitled them to receive five times the Prize in the Prize Box based on the representations printed on the tickets.

125. Plaintiffs were injured as a proximate result of the actions of GTECH and the TLC.

126. 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 they purchased, as represented by the TLC and GTECH, and the value actually received by Plaintiffs. In other words, Plaintiffs should have received a prize payout of five times the amount appearing in the Prize Box on each of their Fun 5's tickets that revealed a Money Bag symbol. Instead, their Fun 5's tickets were validated by GTECH as "not a winner" and were worthless.

127. GTECH is jointly and severally liable for the injuries caused to Plaintiffs as a result of the conspiracy.

J. JURY DEMAND

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

PRAYER

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.

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2016, a true and correct copy of the foregoing was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

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