

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DALE CULLER, on behalf of himself and)	
others similarly situated)	CASE NO. _____
Plaintiffs,)	
vs.)	CLASS ACTION PETITION AT
)	LAW AND JURY DEMAND
MULTI-STATE LOTTERY)	
ASSOCIATION)	
Defendant.)	

COMES NOW the Plaintiff, Dale Culler, and hereby files this Petition against Defendant Multi-State Lottery Association on behalf of himself and all other similarly situated persons who purchased lottery tickets for rigged lottery drawings utilizing MUSL’s random number generators from 2005 through approximately 2013. Plaintiff alleges the following upon personal knowledge as to himself and his own acts, and as to all other matters upon information and belief, based upon the investigation made by and through his attorneys:

PARTIES AND JURISDICTION

1. Plaintiff Dale Culler was at all material times hereto a resident of Des Moines County, Iowa.
2. Defendant Multi-State Lottery Association (“MUSL”) is an Iowa unincorporated non-profit association whose principal place of business is Polk County, Iowa.
3. The damages giving rise to this Petition are sufficient to meet the jurisdictional requirements for the amount in controversy.
4. The conduct giving rise to this action primarily occurred in Polk County, Iowa.

SUMMARY OF THIS ACTION

5. Plaintiff Culler brings this class action for damages sustained as a result rigged lottery drawings resulting from MUSL’s operations from at least 2005 until 2013.

6. MUSL is owned and operated by agreement of its 37-member state lottery departments (“Lottery Departments”).
7. From 2005 until approximately November 2013, the Lottery Departments utilized MUSL’s computerized Random Number Generators (“RNG”) to administer drawings for various interstate and intrastate lottery games on behalf of its members.
8. Throughout this time MUSL’s IT Security Director, Eddie Tipton, unlawfully and fraudulently rigged the RNGs so that they did not produce truly random numbers on certain days of the year.
9. Instead, numbers on those days were predetermined by an algorithm that Tipton could predict.
10. Based on information and belief, between 2005 and 2013, as a result of MUSL’s fraud, the various State Lottery Departments conducted multiple rigged lottery drawings, including but not limited to those games conducted on either November 23 or December 29 in those years.
11. The purpose and effect of MUSL’s conduct has been to allow its member Lottery Departments to sell lottery tickets for rigged games to paying members of the general public.
12. As a consequence, any person who purchased a ticket for rigged drawings during the years in question sustained damages.

STRUCTURE OF THE LOTTERY

13. A lottery generates revenue by selling lottery tickets to create a “pool” of money, awarding a portion of that “pool” to the winner, and remitting the remainder of the “pool” to the government.
14. In 2014 American lotteries generated \$70.1 billion in sales, resulting in a \$19.9 billion profit for the States.¹
15. To oversee their officially sanctioned lottery games, jurisdictions create autonomous, independently funded and managed Lottery Departments, such as the Iowa Lottery Authority.

¹ North American Association of State and Provincial Lotteries,
<http://www.naspl.org/index.cfm?fuseaction=content&menuid=17&pageid=1025>

16. Lottery games can be either intrastate or interstate in nature.
17. With respect to interstate games, many Lottery Departments, including the Iowa Lottery Authority, offer games such as Powerball, Mega Millions and Hot Lotto, which are offered across multiple jurisdictions, and are administered by the offering jurisdictions' Lottery Departments collectively.
18. The Lottery Departments participating in interstate lottery games have entered into various agreements to create associations such as Defendant MUSL and further enacted rules to facilitate the collective administration of various interstate lottery games.
19. MUSL provides a variety of services for its member Lottery Departments, including: game design, management of game finances, production and uplinking of drawings, the development of common minimum information technology and security standards and inspections of lottery vendor sites; the building of a quantum-based RNG, coordination of common promotions and advertisements, coordination of public relations, and emergency back-drawing sites for lottery games.
20. MUSL games operate under the same core game rules in each jurisdiction; however, each Lottery Department is free to vary rules pertaining to such things as purchase age, the claim period, and some validation processes.
21. Interstate lottery games administered by MUSL use the same accounting procedures and order of priority of payment: first, lottery winners are paid; second, the ongoing expenses of the interstate lottery games are paid; third, any residual funds are divided between the participating jurisdictions' Lottery Departments based on their pro-rata sales of the game.
22. With respect to intrastate games, MUSL sells, leases or otherwise supplies its member Lottery Departments with RNGs for using in intrastate game drawings.

RIGGED LOTTERY GAMES

23. From 2005 until approximately 2013, MUSL and the State Lottery Departments conducted the drawings for various interstate and intrastate lottery games using RNGs developed and supplied by MUSL.

24. Throughout the entirety of this time, MUSL, through Tipton, unlawfully and fraudulently manipulated the RNGs such that for certain games on certain dates, rather than producing random numbers it produced numbers predetermined by an algorithm Tipton installed into the RNG.

25. As a result, multiple lottery drawings conducted with RNGs MUSL owned, developed, supplied, leased or sold, were rigged.

26. Rigged drawings include, but are not limited to the following:

- a. November 23, 2005, Colorado Lotto drawing in which Mr. Tipton's brother won \$568,990;
- b. December 29, 2007, Wisconsin Megabucks Lotto drawing in which a \$783,257.12 payout was claimed by Delta S Holdings, LLC, owned by Mr. Tipton's close personal friend Robert Rhodes;
- c. November 22, 2008 Wisconsin Megabucks Lotto drawing;
- d. May 27, 2008 Wisconsin Megabucks Lotto drawing;
- e. December 29, 2010 Wisconsin Megabucks Lotto drawing;
- f. December 29, 2010, Kansas 2x2 lottery game in which Mr. Tipton purchased two winning tickets worth \$44,000;
- g. December 29, 2010, Hot Lotto game in which Mr. Tipton purchased the "winning" ticket worth approximately \$16 million.
- h. November 23, 2011, Oklahoma Hot Lotto game which involved a cash payment of \$907,715 apparently to a confidant of Mr. Tipton.
- i. Based on information and belief, any other games utilizing MUSL's RNGs in which the drawing took place on November 23 or December 29 of a given year, as well as additional rigged contests as yet to be determined.

27. On July 20, 2015, Mr. Tipton was convicted for tampering with lottery equipment related to the December 29, 2010, Hot Lotto drawing and faces criminal charges for the other above-referenced drawings.

DECEMBER 29, 2010, HOT LOTTO

28. Hot Lotto is a multi-state lottery game administered by MUSL pursuant to agreement of fifteen Lottery Departments.

29. The fifteen participating jurisdictions include: Delaware, District of Columbia, Idaho, Iowa, Kansas, Maine, Minnesota, Montana, New Hampshire, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee and West Virginia.

30. In addition, Vermont also participated in Hot Lotto at the time of the rigged drawing in 2010.

31. Hot Lotto was created to allow Lottery Departments located in jurisdictions with relatively small populations the opportunity to create the same types of jackpots that are commonplace in single-state games which serve relatively larger population bases.

32. Hot Lotto is operated in accordance with rules published by MUSL, the Iowa Lottery Authority and the other participating Lottery Departments.

33. Hot Lotto “drawings” take place on Wednesdays and Saturdays at MUSL’s headquarters in Iowa.

34. Consumers pay \$1 to pick five numbers from 1 through 47 (the “White Balls”), plus one additional number (the “Hot Ball”) from 1 through 19.

35. When purchasing a ticket, the player may manually select his/her desired numbers or allow the lottery terminal to select the numbers randomly on his/her behalf.

36. Pursuant to the Hot Lotto rules, a “drawing” takes place for each game during which the numbers are determined using MUSL’s in-house computerized RNG as opposed to a ball machine.

37. Iowa law defines “drawing” as “that process that is used to *randomly* select a winning combination for the game plays.” 531 Iowa Admin. Code § 20.2.

38. Pursuant to Iowa law, the “winning numbers” means “the selection of an appropriate number of the variables, *randomly* selected at each drawing, which shall be used to determine winning plays contained on a game ticket.” *Id.*

39. A player wins the Hot Lotto jackpot by successfully picking the “winning numbers” – the five White Ball numbers plus the Hot Ball number - generated by the RNG during the drawing.

40. Hot Lotto is a “progressive jackpot” game - pursuant to the Iowa Lottery Game Specific Rules for Hot Lotto, “if the jackpot is not won in a drawing, the prize money allocated for the jackpot prize shall roll over and be added to the jackpot prize pool for the following drawing.”

41. For every Hot Lotto ticket purchased, fifty-percent of the revenue from the sale goes into the Hot Lotto prize pool, while the other fifty-percent goes to paying expenses of the administration of the game and then to the general fund of the participating Lottery Departments’ respective states.

42. At the time of, and prior to, the December 29, 2010, Hot Lotto game, Tipton served as MUSL’s IT Security Director.

43. Sometime prior to the December 29, 2010, Hot Lotto game, MUSL, through Tipton, rigged the RNG such that rather than generating random numbers for the December 29, 2010, game, the machine produced predetermined numbers that Tipton could predict.

44. Accordingly, the December 29, 2010, Hot Lotto game was never a bona fide “drawing” because combination of numbers for the game plays was not randomly selected. 531 Iowa Admin. Code § 20.2

45. Instead, the December 29, 2010, Hot Lotto game was unlawfully and fraudulently rigged.

46. Plaintiff Dale Culler purchased \$45.00 worth of tickets for the rigged December 29, 2010, Hot Lotto game.

47. As more fully explained below, Culler's purchase of tickets for the rigged game caused him to sustain damages.

CLASS ACTION ALLEGATIONS

48. Culler brings this action pursuant to Iowa rule of Civil Procedure 1.261 on behalf himself and of the Class identified herein.

49. The Class consists of all persons who purchased tickets for rigged lottery games that occurred on from 2005 through the time MUSL and the State Lottery Departments removed the manipulated RNGs from further use.

50. If the facts and positions taken by MUSL warrant, appropriate subclasses may be created, or this Class may be narrowed or expanded.

51. The named Plaintiff is representative of an ascertainable class in that he purchased \$18.00 worth of tickets for the rigged December 29, 2007, Hot Lotto game and \$45.00 worth of tickets for the rigged December 29, 2010, Hot Lotto game.

52. ***Numerosity.*** The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown at this time, Plaintiff Culler estimates that hundreds of thousands of lottery players have incurred damages as a result of rigged games. Joinder is also impractical because potential class members reside in different counties within the State of Iowa and in different States.

53. ***Commonality and Predominance.*** This action involves questions of law and facts common to each member of the Class, which predominate over any questions affecting individual Class members. Such common questions include, but are not limited to:

- a. Whether MUSL's RNG technology was utilized in conducting rigged lottery games for which tickets were sold to the members of the Class.
- b. Whether the conducting of rigged lottery games utilizing MUSL's RNGs caused legally cognizable injury to Plaintiff and members of the Class; and
- c. Whether Plaintiff Culler and the members of the Class are entitled to monetary damages, and, if so, the appropriate measure of such damages.

54. **Typicality.** Plaintiff Culler's claims are typical of and fairly encompass the claims of absent Class members because they have been harmed by the same course of unlawful conduct alleged herein.

55. **Superiority.** A class action is superior to other methods for the fair and efficient adjudication of this controversy. The damages suffered by individual Class members are relatively small compared to the burden and expense that would be required by individual litigation of their claims against MUSL. For this reason, it would be virtually impossible for Plaintiff Culler and the Class members, on an individual basis, to obtain effective redress for the wrongs done to them. The cost to the court system of adjudication of such individualized litigation would be substantial. It would also create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for MUSL.

56. **Adequacy of Representation.** Plaintiff Culler will fairly and adequately protect the interests of all members of the Class. He is an adequate representative and has no interests adverse to the interests of the absent Class members. Plaintiff Culler has retained lawyers who have agreed to advance the costs of the out-of-pocket expenses of this litigation and have the ability to do so.

57. Plaintiff Culler is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT I
NEGLIGENCE

58. MUSL maintained exclusive control of the RNGs to operate and administer the interstate lottery games pursuant to agreements with its member Lottery Departments.

59. MUSL developed and provided rigged RNGs to the Lottery Departments for their use in conducting intrastate lottery games.

60. The entire premise of government authorized lotteries centers on legitimacy and fairness of the lottery games.

61. MUSL's member Lottery Departments advertise and sell lottery tickets based on the express and implied promise that the lottery games are legitimate and fair.

62. Accordingly, MUSL owes lottery consumers a duty of care to ensure it conducts legitimate lottery drawings consistent with the published rules of the game, and that the RNGs it supplies to its member Lottery Departments are free from manipulation.

63. Likewise, MUSL owes lottery consumers a duty to ensure reasonable and necessary security procedures are in place to prevent the known and identifiable risks of tampering with MUSL'S RNG equipment.

64. MUSL is responsible for the conduct of its employees, including that of Eddie Tipton and is, therefore, vicariously liable for Tipton's conduct in manipulating the RNGs.

65. MUSL breached its duty of care and was therefore, negligent, in several respects, including but not limited to the following:

- a. Failing to act as reasonably prudent administrators of lottery games game under the circumstances;
- b. Failing to exercise reasonable and prudent care to prevent the rigging of lottery games;
- c. Failing to administer the lottery games in accordance with their respective published rules and procedures;

- d. Failing to conduct legitimate drawings for the lottery games identified herein and for other rigged games which utilized MUSL's RNGs; and
- e. Committing other acts or omissions as may be determined in the discovery of this legal action.

66. MUSL's negligence is the proximate cause of damages to the Plaintiff Culler and members of the Class who purchased lottery tickets for the rigged games, including the purchase price of the tickets, plus interest.

67. The damages suffered by Plaintiff Culler and the Class members are the types of damages that would not have happened if MUSL had exercised reasonable and prudent care, and Plaintiff Culler and the Class members intend to rely on the doctrine of *res ipsa loquitur* in the alternative.

WHEREFORE, Plaintiff Culler individually and on behalf of the Class, respectfully requests that the Court enter an order certifying this action to proceed as a class action with Plaintiff Culler as a proper representative and for an order entering judgment against MUSL for damages in the amount of the purchase price of each ticket sold for a rigged game, together with interest thereon as provided by law, plus the costs of this action and any other relief as the Court may deem proper under these circumstances.

COUNT II
PRIVATE CAUSE OF ACTION FOR CONSUMER FRAUD (IOWA CODE 714H)

68. Plaintiff Culler and members of the Class were at all times purchasers of tickets for lottery games administered by MUSL.

69. Plaintiff Culler and members of the Class suffered an ascertainable loss of money in the amount of the purchase price for each ticket purchased for a rigged game administered by MUSL or utilizing manipulated RNGs supplied by MUSL.

70. MUSL, through its employees (including its director of security for information technology) engaged in a practice of conducting rigged lottery drawings which it knew or reasonably should

have known was unfair, involved deception, was fraudulent, was based on a false pretense or a false promise, or involved an omission of a material fact regarding the legitimacy of the games.

71. MUSL supplied Lottery Departments with rigged RNGs that were used to conduct various intrastate lottery games.

72. MUSL operates with the intent that consumers rely upon the integrity and legitimacy of drawings in deciding to purchase lottery tickets.

73. MUSL's practice of conducting rigged lottery games and/or supplying rigged RNGs was in connection with and directly related to the sale of tickets for those games.

74. Pursuant to Iowa Code section 715H.7, Plaintiff requested consent of the Iowa Attorney General to file this action as a class action.

75. The Attorney General provided such consent on May 11, 2016.

WHEREFORE, Plaintiff Culler individually and on behalf of the Class, respectfully requests that the Court enter an order certifying this action to proceed as a class action with Plaintiff Culler as a proper representative and for an order entering judgment against MUSL for damages in the amount of the purchase price of each ticket sold for a rigged game, together with punitive damages, attorney fees and interest thereon as provided by law, plus the costs of this action and any other relief as the Court may deem proper under these circumstances.

COUNT III
UNJUST ENRICHMENT

76. At all times material hereto MUSL operated and administered interstate and intrastate lottery games on behalf of its member Lottery Departments.

77. At all times material hereto MUSL supplied RNGs to Lottery Departments for their use in conducting intrastate lottery games.

78. During this time MUSL's member Lottery Departments sold lottery tickets under the premise that legitimate, random drawings would take place for such games, thereby providing each ticket holder with a fair and equal chance of winning a prize.

79. In addition, MUSL itself received a portion of the proceeds from the sale of the rigged lottery games in order to pay its expenses, compensate its employees, etc.

80. Based on information and belief, MUSL received compensation from its member Lottery Departments for MUSL's sale and/or lease of RNGs to these Lottery Departments.

81. If MUSL and its member Lottery Departments are permitted to keep proceeds from the sale of rigged lottery games it will have received a financial benefit for which it is not entitled, which violates the fundamental principles of justice, equity and good conscience.

82. Since MUSL and its member Lottery Departments retained and/or used money to which it is not entitled, the principles of equity and good conscience require that MUSL return the money to the people who purchased tickets for the rigged games.

WHEREFORE, Plaintiff Culler individually and on behalf of the Class, respectfully requests that the Court enter an order certifying this action to proceed as a class action with Plaintiff Culler as a proper representative and for an order entering judgment against MUSL for damages in the amount of the purchase price of each ticket sold for a rigged game, together with interest thereon as provided by law, plus the costs of this action and any other relief as the Court may deem proper under these circumstances.

COUNT IV
INTENTIONAL INTERFERENCE WITH CONTRACT

83. The lottery tickets purchased by the Plaintiff Culler and Class members represented a contract between them and the various Lottery Departments operating the lottery games.

84. Specifically, Plaintiff Culler and the Class members agreed to pay to participate in a random drawing for a chance to win cash prizes.

85. In return, the Lottery Departments provided Plaintiff Culler and Class members with lottery tickets, and further agreed to conduct random drawings and pay prizes to the holder of winning tickets in accordance with the published rules of the lottery games in question.

86. The Lottery Departments delegated the administration of the lottery game drawings to MUSL and/or they utilized MUSL's RNGs to conduct their own intrastate games.

87. MUSL knew its member Lottery Departments were selling tickets specifically for the games that utilized MUSL's RNGs.

88. MUSL, through its IT Security Director, intentionally and improperly interfered with the contracts by manipulating the RNGs to as to prevent the RNG from producing random results to determine winners as contemplated and required by the contracts.

89. MUSL's interference prevented the Lottery Departments from performing (e.g. from conducting random drawings and paying holders of winning tickets in accordance with a particular game's published rules).

90. MUSL's interference caused Plaintiff Culler and the Class members to sustain damages in the amount of the purchase price of their respective tickets.

WHEREFORE, Plaintiff Culler individually and on behalf of the Class, respectfully requests that the Court enter an order certifying this action to proceed as a class action with Plaintiff Culler as a proper representative and for an order entering judgment against MUSL for damages in the amount of the purchase price of each ticket sold for a rigged game, together with interest thereon as provided by law, plus the costs of this action and any other relief as the Court may deem proper under these circumstances.

COUNT V
INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS EXPECTATION

91. Plaintiff Culler and the members of the Class had a prospective business relationship with the Lottery Departments wherein the Culler and the Class members purchased lottery tickets in exchange for the opportunity to win cash prizes determined by the outcome of random drawings.

92. The Lottery Departments delegated the administration of the lottery game drawings to MUSL.

93. The Lottery Departments also utilized MUSL's RNGs to conduct their intrastate lottery games.

94. MUSL knew of the relationship between Plaintiff Culler, the Class members and the member Lottery Departments.

95. MUSL, through its IT Security Director, intentionally and improperly interfered with the relationship by manipulating the RNGs so as to prevent the RNGs from producing random results to determine winners.

96. MUSL's interference prevented Plaintiff Culler and the Class members from realizing the opportunity to win cash prizes in accordance with the respective lottery game's published rules.

97. MUSL's interference caused Plaintiff Culler and the Class members to sustain damages in the amount of the purchase price of their respective tickets.

WHEREFORE, Plaintiff Culler individually and on behalf of the Class members, respectfully requests that the Court enter an order certifying this action to proceed as a class action with Plaintiff Culler as a proper representative and for an order entering judgment against MUSL for damages in the amount of the purchase price of each ticket sold for a rigged game, together with interest thereon as provided by law, plus the costs of this action and any other relief as the Court may deem proper under these circumstances.

COUNT VI
FRAUD

98. With respect to each of the rigged drawings in question, MUSL made representations to Plaintiff Culler and the public that the various interstate and intrastate lottery games utilizing MUSL's RNGs were legitimate lottery drawings consistent with the published rules for the games.

99. MUSL's representation was false.

100. MUSL's representation was material.

101. MUSL knew the representation was false, as its own director intentionally rigged the RNGs such that they did not produce a random drawing for the games in question.

102. MUSL intended to deceive Plaintiff Culler and the public regarding the legitimacy of its drawings.

103. Plaintiff Culler and the Class members acted in reliance on the truth of the representation and were justified in relying on the representation.

104. The representation caused Plaintiff Culler and the Class members to sustain damages as a result of purchasing tickets for rigged lottery games.

WHEREFORE, Plaintiff Culler individually and on behalf of the Class, respectfully requests that the Court enter an order certifying this action to proceed as a class action with Plaintiff Culler as a proper representative and for an order entering judgment against MUSL for damages in the amount of the purchase price of each ticket sold for a rigged game, together with punitive damages, attorney fees and interest thereon as provided by law, plus the costs of this action and any other relief as the Court may deem proper under these circumstances.

COUNT VII
BREACH OF CONTRACT

105. MUSL had an express or implied contract with the various Lottery Authorities that it would administer the lottery games for which Plaintiff Culler and the Class members purchased tickets in

accordance with the law, including the Iowa Lottery Authority's and the participating Lottery Departments' rules concerning computerized games.

106. Plaintiff Culler and the Class members were intended to be third-party beneficiaries of the contract between MUSL and the various Lottery Authorities.

107. MUSL breached its contract with the various Lottery Authorities in one or more of the following particulars:

- a. Causing or permitting to be caused rigged lottery games;
- b. Failing to have a reliable system for randomly drawing game variables;
- c. Failing to exercise reasonable and prudent care to prevent rigged lottery games;
- d. Failing to identify, implement, follow, and enforce basis security precautions to prevent rigged lottery games; or
- e. Violating the Iowa Lottery Authority's administrative rules for method of play of computerized games.

108. As a direct and proximate cause of MUSL's breach, Plaintiff Culler and the Class members suffered concrete damages in the amount of the purchase price of their lottery tickets.

WHEREFORE, Plaintiff Culler individually and on behalf of the Class, respectfully requests that the Court enter an order certifying this action to proceed as a class action with Plaintiff Culler as a proper representative and for an order entering judgment against MUSL for damages in the amount of the purchase price of each ticket sold for a rigged game, together with interest thereon as provided by law, plus the costs of this action and any other relief as the Court may deem proper under these circumstances.

JURY DEMAND

Plaintiff Culler respectfully requests that a jury determine all factual issues arising out of this matter.

Respectfully Submitted by: CRAWFORD & MAURO LAW FIRM



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