

STATE OF INDIANA )  
 )  
COUNTY OF MARION )

IN THE MARION SUPERIOR COURT  
CIVIL DIVISION 7  
CAUSE NO. 49C01-0701-CT-730

JEFF KOEHLINGER and JEFF FRAZIER, )  
Individually and as representatives )  
of a class of all similarly situated persons, )  
 )  
Plaintiffs, )

v. )

THE STATE LOTTERY COMMISSION )  
OF INDIANA )  
dba THE HOOSIER LOTTERY, )  
 )  
Defendant. )

**ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT**

Comes now the Defendant, the State Lottery Commission of Indiana, dba the Hoosier Lottery, ("Lottery"), by and through counsel, Steve Carter, Attorney General of Indiana, by Lyman C. Taylor, III, Deputy Attorney General, for its Answer to Plaintiffs' Class Action Complaint ("Complaint"), answers as follows:

**I. Introduction**

1. The Lottery denies this action is properly maintainable as a class action, denies it misrepresented the amount of prizes available in the Cash Blast game and admits the remaining allegations contained in paragraph 1 of Plaintiffs' Complaint

## II. Jurisdiction and Venue

2. The Lottery denies the allegations contained in paragraph 2 of Plaintiffs' Complaint. The Lottery specifically alleges that Plaintiffs failed to exhaust administrative remedies pursuant to the Indiana Administrative Orders and Procedures Act as found in Indiana Code sections 4-21.5-5-1 *et seq* and did not give proper notice of a deceptive sales act as required by Indiana Code section 24-5-0.5-5 (a).
3. The Lottery admits its office is located in Marion County, Indiana and denies the remaining allegations contained in paragraph 3 of Plaintiffs' complaint.

## III. Parties

4. The Lottery denies this action is properly maintainable as a class action and that Plaintiffs are adequate or appropriate class representatives. The Lottery is without sufficient information or knowledge to either admit or deny the other allegations contained in paragraph 4 of Plaintiffs' Complaint and therefore deny the same.
5. The Lottery admits it's principal office is located in Marion County, Indiana, and states that Indiana Code 4-30-3-1 speaks for itself and requires no response.
6. The Lottery admits the allegations contained in paragraph 6 of Plaintiffs' Complaint.
7. The Lottery admits Cash Blast tickets were sold for \$10 each and there were approximately five million tickets offered to the public throughout the entire course of the game.
8. The Lottery denies Plaintiffs' characterization of its promotional activities and admits that it promotes its games by advertising through a variety of media, in a variety of

markets, and pursuant to applicable statutes, regulations, and guidelines. The Lottery denies all other allegations contained in paragraph 8 of Plaintiffs' complaint.

9. The Lottery denies Plaintiffs' characterization of its promotional activities and admits that it promotes its games by advertising through a variety of media, in a variety of markets, and pursuant to applicable statutes, regulations, and guidelines. The Lottery denies all other allegations contained in paragraph 9 of Plaintiffs' complaint.
10. The Lottery admits it publishes the number and value of prizes available in its instant ticket games on the Lottery's website but is without information sufficient to form a belief as to whether such materiel is displayed at all Lottery retailers and therefore denies the same. The Lottery denies all other allegations contained in paragraph 10 of Plaintiffs' complaint.
11. The Lottery admits it unintentionally misrepresented the number of prizes available in the Cash Blast game beginning sometime in May, 2005, and continuing until July 7, 2006. The Lottery denies all other allegations contained in paragraph 11 of Plaintiffs' complaint.
12. The Lottery is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 12 of Plaintiffs' Complaint and therefore denies the same.
13. The Lottery is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 13 of Plaintiffs' Complaint and therefore deny the same.

14. The Lottery is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 14 of Plaintiffs' Complaint and therefore deny the same.
15. The Lottery specifically denies that this case is properly maintainable as a class action. The Lottery is without sufficient information or knowledge to either admit or deny the other allegations contained in paragraph 15 of Plaintiffs' Complaint and therefore deny the same.
16. The Lottery admits it changed the number and amount of prizes remaining for the Cash Blast game on July 6, 2007, but denies any other allegations contained in paragraph 16 and the corresponding footnote.
17. The Lottery denies that the allegations contained in paragraph 17 of Plaintiffs' complaint reflect any statement made by the Lottery and therefore denies such allegations.
18. The Lottery admits the allegations contained in paragraph 18 of Plaintiffs' complaint.
19. The Lottery admits that after it revealed it had been unintentionally overstating the number of available prizes in the Cash Blast game it received email correspondence from some players requesting refunds. The Lottery specifically denies any allegation that this case is properly maintainable as a class action and denies any other allegations contained in paragraph 19 of Plaintiffs' complaint.
20. The Lottery denies this case is properly maintainable as a class action and states that the remaining allegations in paragraph 20 mischaracterizes any written responses made by the Lottery and therefore denies the remaining allegations contained in paragraph 20 of Plaintiffs' complaint.

21. The Lottery admits it was the only source of information regarding the number and amount of prizes remaining in instant games. The Lottery specifically denies any allegation that this case is properly maintainable as a class action and denies the remaining allegations contained in paragraph 21 of Plaintiffs' complaint.
22. The Lottery admits it received an e-mail from a person purporting to be Jeff Koehlinger complaining about the Lottery's unintentional misrepresentation of the number of top prizes remaining for Cash Blast. The Lottery denies the allegation that it denied any relief to Plaintiffs and states it without sufficient information or knowledge to either admit or deny the remaining allegations contained in paragraph 22 of Plaintiffs' Complaint and therefore denies the same.
23. The Lottery admits it received an e-mail on July 10, 2007, from a person purporting to be Jeff Koehlinger complaining about the Lottery's unintentional misrepresentation of the number of top prizes remaining for Cash Blast. The Lottery denies the remaining allegations contained in paragraph 23 of Plaintiffs' complaint.
24. The Lottery admits it sent an email response to jeff2312@yahoo.com on July 13, 2007. The Lottery denies the remaining allegations contained in Paragraph 24 of Plaintiffs' Complaint.
25. The Lottery is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 25 of Plaintiffs' complaint and therefore denies the same.
26. The Lottery is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 26 of Plaintiffs' complaint and therefore denies the same.

27. The Lottery admits it received an e-mail on August 29, 2007, from a person purporting to be Jeff Koehlinger. The Lottery denies the remaining allegations contained in paragraph 27 of Plaintiffs' complaint.
28. The Lottery admits it sent an email response to jeff2312@yahoo.com on August 30, 2007. The Lottery specifically denies that it represented that no administrative remedies were available. The Lottery denies the remaining allegations contained in Paragraph 28 of Plaintiffs' Complaint.
29. The Lottery denies the allegations contained in paragraph 29 of Plaintiffs' complaint.
30. The Lottery denies the allegations contained in paragraph 30 of Plaintiffs' complaint.
31. The Lottery admits unintentional misrepresentations were made in some retailer materials and available on the Lottery's website. The Lottery specifically denies Plaintiffs' characterization of the representations as "deceptive" and denies all other allegations contained in paragraph 31 of Plaintiffs' complaint.
32. The Lottery admit Plaintiffs' served what purported to be a "Notice of Deceptive Act Claims" as alleged in paragraph 32 of Plaintiffs' complaint. The Lottery specifically denies the "Notice of Deceptive Act Claims" was proper or adequate under Ind. Code 24-5-0.5-2 and denies that this case is properly maintainable as a class action.
33. The Lottery admits that it did not make an "offer to cure" to Plaintiffs. The Lottery denies the remaining allegations contained in paragraph 33 of Plaintiffs' complaint and specifically denies this case is properly maintainable as a class action.
34. The Lottery states that Indiana Code § 4-30-1-2 speaks for itself and requires no response. The Lottery denies any allegations inconsistent with Indiana Code § 4-30-1-2 contained in paragraph 34 of Plaintiffs' complaint.

35. The Lottery states that the allegations contained in paragraph 35 are legal conclusions to which no admission or denial is required.
36. The Lottery denies the allegations contained in paragraph 36 of Plaintiffs' complaint and specifically denies that this case is properly maintainable as a class action.
37. The Lottery denies the allegations contained in paragraph 37 of Plaintiffs' complaint and specifically denies that this case is properly maintainable as a class action.
38. The Lottery denies the allegations contained in paragraph 38 of Plaintiffs' complaint.
39. The Lottery denies the allegations contained in paragraph 39 of Plaintiffs' complaint and specifically denies that this case is properly maintainable as a class action.

#### **V. Claims**

40. The Lottery denies the allegations contained in paragraph 36 of Plaintiffs' complaint.

#### **VI. Jury Trial Demand**

41. The Lottery responds that the Plaintiffs have requested a jury trial on their claims. The Lottery specifically denies that this case is properly maintainable as a class action.

#### **VII. Request for Relief**

42. The Lottery denies the Plaintiffs are entitled to the relief requested in paragraph 42 of Plaintiffs' complaint. The Lottery specifically denies that this case is properly maintainable as a class action.

**General Denial:** Any allegation contained in Plaintiffs' Complaint not expressly and specifically admitted by the Lottery is hereby denied.

## **AFFIRMATIVE DEFENSES**

Defendants, by counsel, for their affirmative defenses, state as follows:

### **First Affirmative Defense**

That Plaintiffs have failed to exhaust available administrative remedies as required by the Administrative Orders and Procedures Act ("AOPA"). Ind. Code §§ 4-21.5-5-1 *et seq.*

### **Second Affirmative Defense**

That the Lottery is immune from liability to Plaintiffs pursuant to Indiana Code § 34-13-3-3 (14).

### **Third Affirmative Defense**

That Plaintiffs have failed to state a cause of action upon which relief may be granted.

### **Fourth Affirmative Defense**

Plaintiffs failed to serve the Lottery with a proper or adequate Notice of Deceptive Act Claim as required by Indiana Code § 24-5-0.5-5 (a).

### **Fifth Affirmative Defense**

That Plaintiffs may have already been fully or partially compensated for the injury and/or damage of which they complain and are therefore not entitled to recover from the Lottery and/or the Lottery is entitled to a full or partial set-off.

### **Sixth Affirmative Defense**

Plaintiffs are not entitled to recover attorney's fees or interest from the Lottery.

### **Seventh Affirmative Defense**

The complaint fails to comply with TR 9.2.

**Eighth Affirmative Defense**

The Lottery was not the proximate cause of Plaintiffs' injuries and/or damages, if any be found to exist.

**Ninth Affirmative Defense**

The alleged injuries and/or damages of which Plaintiff complains were the proximate result of the risk voluntarily incurred and/or assumed by Plaintiff.

**Tenth Affirmative Defense**

Plaintiff has not alleged sufficient culpability to support claims for punitive damages.

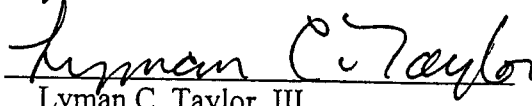
The Lottery hereby reserves any and all rights they may have to raise additional defenses as discovery in this cause continues.

WHEREFORE, Defendants pray for judgment in their favor, that Plaintiffs takes nothing by way of their Complaint, for attorneys' fees pursuant to Indiana Code § 34-13-3-21, and for all other relief as is just and proper in the premises.

Respectfully submitted,

STEVE CARTER  
Attorney General of Indiana  
Attorney No. 4150-64

By:


  
Lyman C. Taylor, III  
Deputy Attorney General  
Atty. No. 25128-55  
Counsel for Defendant,  
Indiana State Lottery Commission

**Certificate of Service**

I do hereby certify that on the 18<sup>th</sup> day of February, 2008, I caused the foregoing to be served by First-Class United States Mail, postage prepaid, on the following:

**Attorney for Plaintiffs**

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