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LOS ANGELES

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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION

20 TOM GEORGE, on behalf of himself)
21 and all others similarly situated,)
22)
23 Plaintiff,)

24 v.)

25 NATIONAL COLLEGIATE)
26 ATHLETIC ASSOCIATION, an Indiana)
27 unincorporated association;)
28 TICKETMASTER, INC., a Delaware)
Corporation,)
Defendants.)

Case No. **CV08-03401** (AGRx) **CAF**

CLASS ACTION

**CLASS ACTION COMPLAINT
FOR (1) CIVIL RICO (STATE
AND FEDERAL);
(2) DECLARATORY RELIEF;
(3) UNJUST ENRICHMENT;
(4) CIVIL CONSPIRACY;
(5) CAL B&P CODE § 17200;
(6) MONEY HAD AND
RECEIVED; and
(7) IND. CODE § 24-5**

DEMAND FOR JURY TRIAL

CONFIRMATION COPY

COMPLAINT

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1 Plaintiff, by and through his counsel, upon personal knowledge as to his
2 own acts and beliefs, and upon information and belief as to all matters based upon
3 investigation of counsel, alleges as follows:
4

5 **I. JURISDICTION AND VENUE**

6 1. This Court has subject-matter jurisdiction over this class action
7 pursuant to the Class Action Fairness Act of 2005, which, *inter alia*, amends 28
8 U.S.C. § 1332 to add a new subsection (d) conferring federal jurisdiction over
9 class actions where, as here, “any member of a class of plaintiffs is a citizen of a
10 State different from any Defendant” and the aggregated amount in controversy
11 exceeds five million dollars (\$5,000,000). *See* 28 U.S.C. §§ 1332(d)(2) & (6).
12

13 2. This Court has personal jurisdiction over the parties because Plaintiff
14 submits to the jurisdiction of the Court, and Defendants systematically and
15 continually conduct business throughout California, including marketing,
16 advertising, and sales directed to California residents. Furthermore, Defendant
17 Ticketmaster’s principal place of business is located in Los Angeles, California,
18 and Defendant NCAA conducts substantial business within the state and in the
19 Central District. Upon information and belief, a substantial portion of the
20 decisions giving rise to this complaint took place in Los Angeles, California.
21

22 3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(c)
23 because Defendants, as corporations and unincorporated associations, are deemed
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1 to reside in any judicial district in which [they are] subject to personal
2 jurisdiction. This Court has personal jurisdiction over Ticketmaster because its
3 principal place of business is located in the Central District of California, and
4 jurisdiction over the NCAA because it conducts substantial business within the
5 district and a substantial portion of the NCAA's conduct that gives rise to this
6 complaint took place in the district.
7
8

9 II. INTRODUCTION

10 4. This is a proposed national class action alleging that the National
11 Collegiate Athletic Association ("NCAA") and Ticketmaster operate illegal
12 lotteries to sell and distribute tickets to certain NCAA Division I championship
13 tournaments.
14

15 5. Defendants' scheme requires Plaintiff and putative class members
16 (collectively "Class Members") to purchase one or more entries for the chance to
17 win the right to purchase tickets to a particular tournament game(s). This scheme
18 satisfies all three elements of a lottery: (1) a prize, (2) an element of chance, and
19 (3) consideration for the chance to win the prize. The consideration is the entry
20 fee and the free use of applicants' capital, and the prize is the right to purchase
21 game tickets at face value. An element of chance exists because the winning
22 entries are chosen by an (allegedly) random drawing, and not all entries can win.
23
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1 6. Lotteries, however, are illegal, and are considered gambling under
2 Indiana and California law unless run by the state or licensed charities. Ind. Code
3 § 35-45-5, *et seq.*, Article IV § 19 of the California Constitution, and CAL. PEN.
4 CODE §§ 319-322. Defendants, located in California (Ticketmaster) and Indiana
5 (NCAA), are not state agencies and do not have the requisite licenses to conduct
6 lotteries. Defendants violate Indiana and California gambling laws by operating
7 unlicensed lotteries.
8

9
10 7. The NCAA and Ticketmaster operated, and continue to operate, a
11 gambling enterprise by jointly designing and implementing lotteries. The federal
12 Racketeer Influenced and Corrupt Organization Act, commonly referred to as
13 RICO, makes it a federal racketeering offense to operate a gambling enterprise
14 that violates state or federal law. *See* 18 U.S.C. §§ 1961, 1962(a)-(c). As such,
15 Defendants' operation of an illegal gambling enterprise violates state and federal
16 law.
17
18

19
20 8. Plaintiff represents a proposed class of consumers who have sought
21 to purchase tournament tickets by participating in the lotteries set up by the
22 NCAA and operated by Ticketmaster.
23

24 9. Defendant NCAA has been the leader in creating the illegal lottery
25 scheme, while Ticketmaster has assisted in creating, furthering, and implementing
26 the scheme under the NCAA's direction.
27
28

1 regularly conducts business in this state, including administering the lotteries
2 described below.

3 4 **IV. STATEMENT OF FACTS**

5 14. This case involves illegal lotteries designed and implemented by the
6 NCAA and Ticketmaster to increase revenues at the expense of Class Members.
7 The lotteries are related to, at the very least, the Division I NCAA collegiate
8 men's and women's basketball and hockey championship tournaments, and may
9 extend to other sporting events under the NCAA's control.
10

11 15. The tournaments, administered by the NCAA, are operated in a
12 similar manner, but vary as to the selection process, number of games, teams,
13 dates, and other matters. The differences in the tournaments, however, are
14 irrelevant for purposes of this complaint because the process to obtain tickets –
15 the actionable conduct – is substantively the same for each tournament.
16
17

18 16. Upon information and belief, the process to obtain tickets has been in
19 use since at least 1994.
20

21 17. Defendant Ticketmaster, upon information and belief, is a co-
22 conspirator in creating, implementing, and/or furthering the lottery scheme under
23 the NCAA's direction and control. Indeed, the NCAA has allowed Ticketmaster
24 to operate the lotteries using NCAA branded websites and uses Ticketmaster's
25
26
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1 proprietary software and hardware to implement the lottery and distribute
2 winning applications.

3
4 18. For purposes of illustration, the NCAA Men's Division I Basketball
5 Championship Tournament will be used to explain how the lottery operates.

6 **A. THE MEN'S DIVISION I BASKETBALL CHAMPIONSHIP**
7 **TOURNAMENT**

8
9 19. The NCAA men's basketball championship tournament begins when
10 the NCAA selection committee invites 65 teams to participate in the single
11 elimination tournament.

12
13 20. After the selection process is complete, the teams are seeded and
14 divided into four regions. The teams in each region play each other using a single
15 elimination format. The winner of each region advances to a championship round
16 known as the "Final Four."

17
18 **Preliminary Round Tickets**

19
20 21. People who wish to purchase face-value tickets to games in the
21 preliminary rounds are required to participate in the Defendants' lottery. The
22 lottery first requires Class Members to submit an "application, which can request
23 up to eight tickets." Class members are limited to one application per
24 individual/household.
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1 22. An application gives the applicant one entry into a random drawing
2 to win tickets. For preliminary rounds, the entry fee (referred to by Defendants as
3 a “service fee”) to participate in the drawing is \$10. Electronic payments must be
4 made via the Internet with a checking account or credit card and are processed
5 and posted on the next business day after the submission of application. In the
6 preliminary rounds, a drawing is held if the number of applications exceeds the
7 number of tickets. If the number of tickets is sufficient to fulfill all applications,
8 the tickets are assigned based on when the application was received. Upon
9 information and belief, the number of applicants greatly exceeds the number of
10 tickets on virtually every occasion.

11 23. In addition to the entry fee, the applicant must also submit the full
12 ticket price with the application. For example, if the applicant wanted two tickets
13 for a preliminary round game, each costing \$100.00, an application would require
14 a \$210.00 payment (the cost of two tickets, plus the \$10.00 fee to enter the
15 lottery).

16 24. If the applicant “wins” the lottery by having his entry drawn, the
17 tickets are delivered by overnight mail. If the applicant does not win, the price of
18 the tickets is returned, but the NCAA keeps the entry fee. For example, the losing
19 applicant in the preceding paragraph is sent \$200.00, while the lottery winner
20

1 receives two tickets. Neither the losers nor the winners get their entry fees
2 refunded.

3
4 25. The NCAA does not commit on when losing ticket applicants will
5 have their money returned. Upon information and belief, the money is not
6 returned for several months, well after the preliminary-round lotteries are
7 concluded.
8

9 26. Preliminary round ticket distribution is handled in the same manner
10 for all major Division I championship tournaments, and the \$10 entry fee is the
11 same for all preliminary rounds.
12

13 **The Final Four**

14 27. Tickets for the final round – the Final Four – are also awarded by a
15 drawing of “entries,” but the costs are significantly higher.
16

17 28. The Final Four consists of three games – two semifinal games and
18 the championship game. In 2008, the men’s championship game was nationally
19 televised and watched by almost 20 million viewers.
20

21 29. The tournament is very lucrative for the NCAA. The television
22 contract between CBS and the NCAA alone guarantees the NCAA six billion
23 dollars in revenues for the right to televise collegiate basketball games, including
24 the men’s basketball tournament, over an eleven-year period.
25
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28

1 35. Applicants, however, can only win the lottery once. Thus, would-be
2 ticket purchasers can pay up to \$3,460.00 for the right to enter the lottery and
3 win, at most, two tickets to the Final Four. The NCAA permits applicants to
4 increase their odds of being drawn by submitting multiple entries solely to
5 increase revenues, not to facilitate the distribution of its tickets.
6

7
8 36. If an applicant wins the lottery, the NCAA sends the tickets by
9 overnight mail and deducts the ticket costs and entry fees (for all entries) from the
10 money submitted, and the remainder is returned. In the example in paragraph 34,
11 the NCAA deducts the tickets' cost (\$300.00 or \$340.00) and the entry fee for all
12 entries (\$60.00), and returns the remainder.
13

14 37. If an applicant loses the lottery, the NCAA reimburses the applicant
15 for the amount paid for each ticket, but keeps the entry fee(s). So, an applicant
16 that paid for the maximum chance, but lost on all ten entries would, at some
17 point, receive his ticket monies back, but not the \$60.00 in entry fees.
18

19
20 38. The entry fee has no relationship to the costs of running the lottery
21 and grossly exceeds any costs associated with the lottery.
22

23 39. These entry fees are on the rise. Upon information and belief, the
24 NCAA has charged at least a \$5.00 entry fee since 1994 for men's and women's
25 basketball and for Frozen Four (hockey) tickets. The entry fee in hockey
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1 increased to no less than \$6.00 in 2008, and in 2009, the entry fee increased to
2 \$7.00.

3
4 40. In addition to the entry fees, the NCAA holds the money it receives
5 from applicants for up to seven months and reaps huge profits. In 2007, for
6 example, the NCAA stopped accepting applications for the lottery on May 31,
7 2006, but reimbursements were not issued until October 2006. By its own
8 admission, the NCAA held applicants' money for about five months, and possibly
9 much longer (applications were first accepted in March).

10
11
12 41. Upon information and belief, the NCAA collected approximately
13 100 million dollars in payments in 2008 – total ticket prices, plus entry fees – but
14 did not return money to ticket holders for at least five months. The NCAA reaps
15 a huge financial windfall from, at the very least, the use of the lottery applicants'
16 money.

17
18 42. The NCAA does not give this money to the applicants or, upon
19 information and belief, use the money to offset the costs associated with running
20 the lottery. In addition, the chances of being selected in the lottery are extremely
21 low (approximately three percent), but the costs associated with entering the
22 lotteries are extremely high. Applicants can easily pay over \$100 just to enter the
23 lottery and, at best, win the right to purchase tickets at face-value. The NCAA,
24 however, does not return or offset ticket prices with any of the monies collected
25
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1 in the lotteries or assume any risk. To the extent there are not enough applicants
2 to hold a lottery, the NCAA sells the tickets at face value to applicants and the
3 general public. Thus, the lotteries are a windfall to the NCAA at the expense of
4 class members. The very few applicants who “win” the lottery merely earn the
5 right to purchase tickets at face value, while all applicants collectively pay huge
6 sums of money to the NCAA for the chance to win that right.
7
8

9 **B. TICKET SCARCITY**

10 43. Tickets to the tournaments are highly prized. The NCAA no longer
11 discloses how many people enter the lotteries, but according to the LOS ANGELES
12 TIMES, more than 267,000 people sought tickets to the 1994 Final Four alone.
13

14 44. The venues, however, are much too small to meet ticket demand.
15 For example, the 2009 Final Four will be held at Ford Field in Detroit, and the
16 NCAA estimates seating for up to 70,000 fans, making it one of the larger venues.
17 But the number of tickets distributed through the lottery is only a fraction of total
18 tickets available. For example, though the NCAA has not disclosed how many
19 tickets will be distributed in the 2009 lottery, approximately 4,600 tickets were
20 distributed in 2008 via the lottery. Thus, the ticket’s market value on the resale
21 market is high due to the scarcity of the resource.
22
23

24 45. In addition, Defendants make certain representations to help bolster
25 interest and sales for the tournaments. Men’s basketball, for example, has two
26
27

1 levels of seating, and Defendants represent that tickets are distributed from each
2 level and that certain seats in particular levels are available in the lottery. For
3 instance, Defendants suggest in their advertising that seats are available at half
4 court in the first row in the arena's upper level. Upon information and belief, this
5 is not true. Upon further information and belief, seats depicted as available are
6 not available in the drawing. Likewise, the NCAA represents that the ticket
7 drawing is random, when, upon information and belief, it is manipulated to
8 accommodate Defendants' business needs.
9
10

11 **C. PLAINTIFF**

12 46. Plaintiff Tom George has entered lotteries for NCAA tournament
13 tickets for the last several years. George primarily submits applications to the
14 men's basketball lotteries.
15
16

17 47. George is familiar with large venue ticket practices, having run the
18 ticket office for Dillard's Inc., an operator of over 300 retail department stores
19 located primarily in the southeastern, southwestern, and midwestern areas of the
20 United States.
21

22 48. In 2008, George submitted an application for the 2009 Final Four on
23 April 15, 2008, using the lottery described above.
24

25 49. The website George used to apply for tickets was owned by the
26 NCAA, but was operated and serviced by Ticketmaster. George's application
27
28

1 consisted of one entry seeking two tickets at the \$170.00 price level, and he
2 submitted a total payment of \$346.00 with his application.

3
4 50. Last year, George paid six dollars to Defendants as an entry fee for
5 his application to the lottery, and provided Defendants with the full ticket price of
6 the tickets he sought. George did not receive interest or otherwise receive
7 compensation for the time-value of money he provided to Defendants even
8 though Defendants held his money for several months. During the class period,
9 George has paid (in cash or the use of money without interest) at least \$100.00 to
10 the NCAA for the right to enter ticket lotteries.
11
12

13 V. CLASS ALLEGATIONS

14 51. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules
15 of Civil Procedure, on behalf of himself and the Class comprised of:
16

17 All persons who, from the date ten years prior to the filing of
18 the complaint to the date of judgment in this case, submitted
19 an application for tickets to an NCAA championship
20 tournament and paid a fee to enter a drawing for the right to
purchase one or more tickets.

21 52. Excluded from the Class are Defendants, any entity in which the
22 Defendants have a controlling interest, any employees, officers or directors of the
23 Defendants, the legal representatives, heirs, successors, and assigns of
24 Defendants, any judge or employee of the Court assigned to work on this lawsuit,
25 and Plaintiff's attorneys and staff.
26
27

1 53. This action may properly be maintained as a class action because it
2 satisfies the numerosity, typicality, adequacy, predominance and superiority
3 requirements of Rule 23 of the Federal Rules of Civil Procedure.
4

5 **A. NUMEROSITY**

6
7 54. Although the exact size of the Class is unknown, Plaintiff believes
8 the Class numbers in the hundreds of thousands. Assuming ticket applications
9 have remained constant since 1994, based on reported figures that referenced only
10 men's Final Four tickets, the Class numbers in the millions. Given the Class size,
11 numerosity is clearly satisfied.
12

13 **B. COMMONALITY**

14
15 55. There are numerous questions of law and fact common to the Class,
16 including, but not limited to:
17

- 18 a. Whether NCAA or Ticketmaster created and operated a lottery;
19 b. Whether NCAA or Ticketmaster's lotteries are illegal under state
20 and/or federal law;
21 c. Whether the subject matter of the contract between NCAA and
22 Class Members precludes contract formation and renders the contract void;
23 d. Whether the NCAA and Ticketmaster were unjustly enriched
24 because of their illegal contract;
25
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1 e. Whether the NCAA and Ticketmaster violated 18 U.S.C.
2 § 1962(c) (RICO Act) by creating, implementing and operating an illegal lottery;
3
4 or the Indiana state counterpart statute (Indiana Code § 35-45-6-2);

5 f. Whether the NCAA and Ticketmaster committed the predicate
6 acts of illegal gambling; and

7
8 g. Whether the NCAA and Ticketmaster formed an enterprise to
9 carry out the illegal lottery.

10 **C. TYPICALITY**

11
12 56. Plaintiff's claims are typical of the claims of the Class as a whole.
13 Plaintiff has the same interests in this matter as all other Class Members, and his
14 claims are typical of all Class Members. Plaintiff and all Class Members have
15 sustained damages arising out of the NCAA's and Ticketmaster's common course
16 of conduct as outlined above, and the damages of each class member were caused
17 by the same misconduct.
18
19

20 **D. ADEQUACY**

21
22 57. Plaintiff will fairly and adequately protect the interests of the Class.
23 The interests of Plaintiff are coincident with, and not antagonistic to, those of the
24 remainder of the Class. Plaintiff is committed to pursuing the action and has
25
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1 obtained counsel experienced and qualified to prosecute this action and class
2 actions generally.

3
4 **E. COMMON QUESTIONS PREDOMINATE, AND THE CLASS
5 ACTION DEVICE IS SUPERIOR**

6 58. Prosecution as a class action will eliminate the possibility of
7 repetitious litigation, while also providing redress of claims too small to support
8 the expense of individual claims.

9
10 59. Class treatment is also appropriate because the NCAA and
11 Ticketmaster have acted uniformly with respect to all Class Members.

12
13 60. The questions of law and fact common to the members of the Class
14 predominate over any questions affecting any individual member, and a class
15 action is superior to other available methods for the fair and efficient adjudication
16 of the controversy. Further, even if this were not the case, numerous claims or
17 issues are appropriate for class treatment.

18
19 61. Joinder of all Class Members who are geographically dispersed and
20 number, upon information and belief, in the hundreds of thousands is
21 impracticable. Furthermore, the expense and burden of individual litigation
22 makes it impractical to adjudicate their claims on an individual-by-individual
23 basis. Upon information and belief, Class Members are not already engaged in
24 litigation concerning this controversy. This is a desirable forum, as it is home to a
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