THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2019-000501
Civil Action No. 2018-CP-31-00047

Kevin Cox, on behalf of himself and all others similarly situated.. Appellant,

v.

South Carolina Education Lottery Commission d/b/a South Carolina Education Lottery .... Respondent.

INITIAL BRIEF OF RESPONDENT SOUTH CAROLINA EDUCATION LOTTERY COMMISSION

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INTRODUCTION AND SUMMARY

In 2016, Kevin Cox purchased five lottery tickets, only to discover that night that the tickets the store clerk had printed and given him were not, in fact, the ones he had requested. Mr. Cox did not return to the store to complain or to seek a refund or replacement. He did not inform the South Carolina Education Lottery Commission ("SCEL" or "the Commission") nor did he ask the Commission to review, correct, refund, or pay his tickets. Rather, he waited nearly two years and filed a class action lawsuit against the Commission, seeking payment of or compensation for the tickets he allegedly should have received. The trial court dismissed his suit, correctly ruling that (i) Mr. Cox was statutorily required to exhaust his administrative remedies before filing suit, (ii) he had not done so, and (iii) his failure was not excused by any exception to the exhaustion requirement.

Mr. Cox's arguments on appeal present no basis to overturn the trial court's ruling. The controlling statutes, regulations, and agency procedures require an aggrieved ticket holder to pursue and exhaust his administrative remedies, including both intra-agency review and an appeal to the Administrative Law Court ("ALC"), before filing suit against the Commission. There is no dispute that Mr. Cox failed to complete these steps before filing suit, and his subsequent initiation and abandonment of the administrative process does not satisfy this requirement. Further, his arguments that exhaustion was not required—either because it would have been futile or was not required for a putative class action—are squarely foreclosed by binding South Carolina precedent.

Finally, apart from the exhaustion requirement, there is an additional and independent ground upon which to sustain the trial court's ruling. The Commission's conduct of which Mr. Cox complains (namely declining to pay the tickets he alleges he should have received) is expressly *required* by statute, and the relief he seeks is expressly *prohibited* by statute. Accordingly, his claims do not—and cannot—state a claim upon which relief can be granted, and thus the trial court did not err by dismissing them.

COUNTER-STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court correctly dismiss Mr. Cox's suit because he was required to exhaust his administrative remedies, failed to do so, and was not excused from his failure to do so?

2. May the trial court's ruling be sustained on the additional ground that the Commission is expressly barred by statute from providing the relief Mr. Cox seeks?

COUNTER-STATEMENT OF THE CASE AND FACTS[1]

Mr. Cox filed this suit against SCEL on February 20, 2018, alleging he had purchased five Mega Millions® lottery tickets on March 25, 2016, and upon reviewing the tickets after returning home that evening, had discovered four of them bore duplicate numbers. *See* Complaint (R. ___). The Complaint asserted four causes of action: (1) unjust enrichment, (2) breach of contract and/or breach of implied contract, (3) promissory estoppel, and (4) violations of the Unfair Trade Practices Act. *Id.* Notably, the Complaint did not allege Mr. Cox pursued, much less exhausted, his administrative remedies prior to filing suit, nor does it allege that, upon discovering the alleged ticket duplication, he alerted the retailer or the Commission prior to the Mega Millions® drawing. *See id.*

On March 23, 2018, the Commission moved to dismiss Mr. Cox's suit pursuant to Rules 12(b)(1), 12(b)(3), and 12(b)(6), SCRCP, on the grounds that his claims (and those of the putative class) were barred by the failure to exhaust administrative remedies, failure to assert claims upon which relief could be granted, filing suit in the wrong venue, and the doctrines of ripeness and sovereign immunity. *See* SCEL's Mot. to Dismiss (R. __); SCEL's Memo. in Supp. (R. __).

After the Motion to Dismiss was filed, Mr. Cox's counsel wrote the Commission seeking to initiate an administrative grievance or review on Mr. Cox's behalf seeking payment of the Mega

[1] A number of the issues before this Court, including the whether the trial court properly dismissed the suit for failure to exhaust administrative remedies, turn on the procedural events giving rise to the trial court's ruling. A full exposition of those events is provided herein.

Millions® tickets at issue. *See* Hearing Tr. at 5:6–8 and 13:19–14:1 (R. ___ and ___). The Commission responded in writing to acknowledge receipt of his request and to inform him what materials he should submit to allow the Executive Director to perform the first step of the administrative review. *See id.* at 19:12–20 (R. ___). Mr. Cox never submitted the requested information or materials. *Id.* Accordingly, the Executive Director issued a written determination that, as a result of Mr. Cox's failure to comply with the agency's review procedure by providing the requested information, his grievance was being dismissed. *Id.* at 5:8–15 and 13:24–14:1 (R. ___ and ___). The written determination further stated that if Mr. Cox wished to challenge the Executive Director's decision, he must file an appeal with the Commission's Board and, if dissatisfied with the Board's decision, must then appeal to the Administrative Law Court ("ALC"). *Id.* at 5:11–15 and 14:2–4 (R. ___ and ___); *see also id.* at 22:15–25 (R. ___). Neither Mr. Cox nor his counsel responded to the Executive Director or filed an appeal with the Board or the ALC. *Id.* at 14:4, 14:16–17 (R. ___).

Mr. Cox filed an Amended Complaint on June 7, 2018, asserting the same facts and the same claims against SCEL, but also adding a new defendant—Intralot, Inc. (the contractor providing equipment and operation of some of SCEL's lottery games)—and a new cause of action against Intralot for Negligence and/or Gross Negligence. *See* Amend. Compl. (R. ___). Introlot filed its own Motion to Dismiss and supporting memorandum on July 25, 2018. *See* Intralot's Motion and Memo (R. ___). Mr. Cox filed an opposition to SCEL's and Intralot's motion to dismiss, *see* Opposition (R. ___), and the trial court heard arguments on the motions to dismiss on July 30, 2018, *see* Hearing Tr. (R. ___). On February 25, 2019, the trial court filed orders granting SCEL's and Intralot's motions. *See* Order (R. ___) and Order (R. ___). This appeal followed.

STATEMENT OF THE CONTROLLING AUTHORITIES

Analysis of the issues and arguments before the Court requires an understanding of the statutory framework governing the Commission and lottery games and the format of the specific lottery game played by Mr. Cox. Each is discussed in turn below.

I. The Commission and lottery game play are governed by a statutory framework.

In 2001, the General Assembly enacted the South Carolina Education Lottery Act (the "Lottery Act") to establish and govern the operation of a state lottery. *See* S.C. Code Ann. §§ 59-150-10 to -410. The Lottery Act governs the operation and administration of lottery games in considerable detail and places significant operational authority and discretion in the hands of the Commission and the Board of Commissioners of the South Carolina Lottery Commission ("the Board"). The Commission and the Board are tasked with promulgating regulations and adopting policies and procedures to organize, operate, and regulate the conduct of lottery games. *Id.* §§ 59-150-50 and -60. The Commission is also given "all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter" including the power to "organize, initiate, supervise, and administer the operation of the lottery as provided by this chapter and regulations promulgated relating to . . . the conduct of the games." *Id.* § 59-150-60; *see also id.* § 59-150-90(A) (stating the Commission's executive director must "supervise and administer the operation of the lottery games" and must "direct and supervise all administrative and technical activities" provided for in the Lottery Act, its implementing regulations, and the Commission's policies and procedures).

The Board and the Commission are expressly required to promulgate regulations specifying the "method to be used in selling lottery game tickets or shares" and the "method and location of selecting or validating winning lottery game tickets or shares." *Id.* § 59-150-70(D). In addition, the Commission "shall promulgate regulations and adopt policies and procedures to establish a system of

verifying the validity of lottery games tickets or shares claimed to win prizes and to effect payment of prizes" and shall "supervise lottery game ticket or share validation and lottery drawings." *Id.* § 59-150-230(A)(3) and -240(C). Notably, however, the Lottery Act limits the Commission's prize-paying discretion in one key way, by forbidding the Commission from paying unissued tickets or erroneously issued tickets. *Id.* § 59-150-230(A)(3) ("A prize must not be paid if it [] arises from claimed lottery game tickets that are unissued, produced or issued in error."); *see also* S.C. Code of Regulations § 44-70(E) and (F) ("The Executive Director or Commission may deny awarding a prize to a claimant if the ticket is printed or produced in error. [] The Executive Director's decisions and judgments in respect to the determination of a winning ticket or any dispute arising from the payment or awarding of prizes are final, subject to an appeal to the Commission.").

The Lottery Act and the regulations and procedures of the Commission mandate in detail the process by which a person dissatisfied with the Commission's actions may challenge those acts.[2] *See* S.C. Code Ann. § 59-150-300; S.C. Code of Regulations § 44-70(E)–(F); SCEL Ticket Holder Complaint Procedure, Dec. 29, 2004, *available at* http://www.sceducationlottery.com/images/pdf/ComplaintProcedures.pdf (last visited May 28, 2019) (hereinafter "SCEL Complaint Procedure").

Specifically, a ticket holder aggrieved by a decision or action by the Commission or its agents and who was unable to resolve that dispute after discussions with Commission staff must promptly file a formal written complaint with the Commission's Executive Director. *See* SCEL Complaint Procedure ¶ A. The Executive Director or his designee must then review the complaint to assess its validity and to determine whether it contains sufficient information to make an appropriate determination. *Id.* ¶ E. When the Executive Director determines he has sufficient information to

[2] Mr. Cox has not challenged the trial court's correct conclusion that the administrative procedure described in the trial court's order and in the instant brief are mandatory rather than merely permissive. Accordingly, he has waived that argument and conceded the point.

make an appropriate determination and resolution of the complaint, he may either issue a final decision based on the written submissions or, in his discretion, may schedule a formal hearing before the Executive Director. *See id.* ¶ F. The hearing is conducted "in accordance with Rule 47 of the Rules of Procedure of the Administrative Law Judge Division to the extent and fashion deemed appropriate by the Executive Director" and must be recorded by a certified court reporter. *See id.* ¶ K. The player may be represented by counsel at the hearing and may present arguments, evidence, and testimony. *See id.* ¶¶ H, L.

The Executive Director's decision on a formal written complaint—regardless of whether the decision is made on the paper filings or after a hearing—will be delivered to the player in writing, must explain the basis for the decision, and must inform the player of his right to appeal the decision to the Board. *See id.* ¶ L; *see also* S.C. Code of Regulations § 44-70(F) ("The Executive Director's decisions and judgments in respect to the determination of a winning ticket or any dispute arising from the payment or awarding of prizes are final, subject to an appeal to the Commission.").

A player who wishes to appeal the Executive Director's decision to the Board must do so within 15 days after receiving the Executive Director's decision and may request either a hearing before the Board or that the Board decide the appeal based on the written materials. *See* SCEL Complaint Procedure ¶ L(4)–(5). If the player requests a hearing, the Board or a designated Board member must provide one within 60 days. *Id.* ¶¶ L–M.[3] In its review of the matter, the Board shall adopt the record of the proceedings before the Executive Director and, based on that record, supplemented by the arguments presented at a Board hearing (if one was requested), may affirm the Executive Director's decision, remand the matter to him for further proceedings, or reverse his ruling for certain limited reasons expressly enumerated in the Complaint Procedure. *See id.* ¶¶ N–

[3] The Board's duties include to "hear appeals of hearings required by this chapter." *Id.* § 59-150-50.

O. The Board's decision must be provided to the player in writing, must explain the reasons for the decision, and must inform him of his right to a further appeal to the Administrative Law Court ("ALC") as provided in Code section 59-150-300. *See id.* ¶ P.

If the player is unhappy with the Board's final resolution of the matter, he may appeal that decision to the Administrative Law Court ("ALC"), and, if unhappy with the ALC's decision, may then—and only then—appeal to the Circuit Courts:

> (A) Any . . . lottery game ticket holder aggrieved by an action of the board may appeal that decision to the Administrative Law Judge Division. The action is subject to review by an administrative law judge on the record of the board, upon petition of the aggrieved person within ten days from receipt of official notice from the board of the action of which review is sought. . . .
>
> (B) The Administrative Law Judge Division shall hear appeals from decisions of the board and, based upon the record of the proceedings before the board, may reverse the decision of the board only if the appellant proves the decision to be:
>
> (1) in violation of constitutional or statutory provisions;
>
> (2) in excess of the statutory authority of the board;
>
> (3) made upon unlawful procedure;
>
> (4) affected by other error of law;
>
> (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
>
> (C) The Administrative Law Judge Division may remand an appeal to the board to conduct further hearings.
>
> (D) For judicial review of a final decision of an administrative law judge in a case involving the commission, the petition by an aggrieved party must be filed with the circuit court and served on the opposing party not more than thirty days after the aggrieved party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

Id. § 59-150-300.

II. The Mega Millions® lottery game is further governed by game instructions and rules.

One of the lottery games offered by the Commission is Mega Millions®, a multi-state jackpot game in which drawings are held on Tuesday and Friday evenings at 11:00 p.m. A player wins by possessing a ticket whose numbers match the six numbers drawn. A player wishing to play can begin with a printed but not yet filled-in "play slip" upon which he can select the numbers he wishes to play. On the play slip, the player selects five numbers between 1 and 75 as well as a sixth "Megaball®" number between 1 and 25. (Alternatively, the player may elect to have the system randomly select the numbers.) This process constitutes a single "play," and a player may make up to five plays on each play slip. During the time frame at issue, each play cost $1. The player then presented the play slip to the lottery retailer, and the retailer would print and hand the player his Mega Millions® ticket. The instructions explaining how to fill out a play slip expressly advise the player to take care to verify he receives tickets matching what he requested on his play slip:

> Check your selections to make sure they are correct. Player is solely responsible for verifying all selections on the ticket. Printed Mega Millions® tickets cannot be cancelled.

See "How to Fill Out A Play Slip," *available at* http://www.sceducationlottery.com/games2/howtoplay_megamillions_BeforeOctober27.asp (last visited May 28, 2019). The rules adopted by the Commission to govern the Mega Millions® lottery game likewise place upon the player the responsibility to ensure the printed ticket matches the numbers he selected. *See* South Carolina Mega Millions Product Group Rules § 27.4, *available at* http://www.sceducationlottery.com/images/pdf/MegaMillionsRules_10-22-2013.pdf (applicable to draws on or before October 27, 2017) ("It shall be the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket.") (last visited May 28, 2019).

After receiving the printed ticket from the retailer and verifying its accuracy, a player signs his ticket(s) and makes sure to keep them safely in his possession so he can claim them if they prove to be winners. If his ticket matches any of the winning number combinations drawn, the player may redeem a winning ticket up to $500 at any lottery retailer, may redeem a winning ticket up to $100,000 by mailing the signed ticket and an SCEL claim form to the Commission, and may redeem a winning ticket over $100,000 in person at the Commission's Columbia Claims Center.

STANDARD OF REVIEW

The determination of whether a party must exhaust his administrative remedies or is excused from doing so is entrusted to the trial court's sound discretion and will be reversed only if the trial court abused that discretion. *See Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trustees*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2000) ("'Whether administrative remedies must be exhausted is a matter within the trial judge's sound discretion and his decision will not be disturbed on appeal absent an abuse thereof.'") (quoting *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 582–83 (1994)); *Ward v. State*, 343 S.C. 14, 17 n.5, 538 S.E.2d 245, 246 n.5 (2000) ("The doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law . . . .") (citation and quotation marks omitted).

Similarly, as to the question of whether exhaustion would be futile, the party seeking to avoid the exhaustion requirement (here, Mr. Cox) bears the burden of proving futility, and the trial court's ruling on this issue is reviewed under the deferential abuse of discretion standard. *See Stanton v. Town of Pawley's Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1993). A trial court's interpretation of statutes and regulations is reviewed de novo. *See Town of Summerville v. Cty. of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper

interpretation of a statute is a question of law, and this Court reviews questions of law de novo.") (citation omitted).

ARGUMENT

The trial court correctly dismissed Mr. Cox's claims against the Commission because his claims are subject to the requirement that he exhaust his administrative remedies before filing suit and his failure to do so was not excused. Mr. Cox's appellate arguments to the contrary are unavailing.

I. The trial court correctly ruled Mr. Cox was required to exhaust his administrative remedies.

The statutes, regulations, and agency procedures governing the lottery state that a person aggrieved by any action or decision of the Commission relating to the administration or operation of lottery games in this state may file suit only after completing a multi-step intra-agency review process followed by an appeal to the ALC. The complainant must first file a formal written complaint with the Commission's Executive Director. *See* S.C. Code of Regulations § 44-70;[4] SCEL Complaint Procedure ¶ A.[5] If the player is dissatisfied with the Executive Director's final, written decision, he must seek a hearing before the Board. *See* S.C. Code of Regulations § 44-70(F); SCEL Complaint Procedure ¶¶ L–M. If the player finds the Board's final, written decision unpalatable, his appeal must be taken to the ALC. *See* S.C. Code Ann. § 59-150-300(A). Only *after* the ALC rules may the matter be taken to the Circuit Court. *Id.* § 59-150-300(D).

The trial court analyzed the foregoing authorities and correctly concluded Mr. Cox was required to exhaust (*i.e.*, pursue each step of the administrative process to completion) these

[4] The Lottery Act authorizes the SCEL to promulgate regulations and to establish policies and procedures to regulate and administer game play including the sale of tickets and the decision whether to pay a ticket. *See* S.C. Code Ann. §§ 59-150-60, -90(A), -230(A)(3), and -240(C).

[5] *Available at* http://www.sceducationlottery.com/images/pdf/ComplaintProcedures.pdf.

remedies. *See* Order at 2–3 (R. ___) (analyzing the controlling statutes, regulations, policies, and interpretive case law and concluding that "Exhaustion is required here"). On appeal, Mr. Cox challenges the trial court's conclusion on two bases, each of which is discussed below.

A. The Lottery Act, regulations, and Commission procedures require exhaustion of grievances relating to lottery games.

Mr. Cox argues the exhaustion requirement applies only to certain types of claims—and not to the ones he asserted in his suit. *See* App.'s Brief at 3 ("[C]laims for breach of contract, unjust enrichment, promissory estoppel and negligence [are] not subject to the requirement of exhaustion of administrative remedies."). His argument, however, misapprehends the doctrine of exhaustion and its application here.

The statutory language provides that the administrative process (the exhaustion of which is mandatory) applies to "a lottery game ticket holder aggrieved by an action of the Board . . . ." S.C. Code Ann. § 59-150-300. The labels a ticket holder wishes to attach to his claims or the causes of action he wishes to plead do not impact or negate that requirement. Nor is there any *per se* rule exempting equitable claims or other specific types of claims from the requirement. *See Drummond v. State Dept. of Rev.*, 378 S.C. 362, 368–69, 662 S.E.2d 587, 590 (2008) (affirming dismissal of unjust enrichment claim because plaintiff failed to exhaust his administrative remedies).

Mr. Cox, however, mistakenly seems to believe a ticket holder is required to exhaust his administrative remedies *only* if he asserts his ticket was issued or produced in error. *See id.* at 5 (arguing that "because [he] never alleged his tickets were issued erroneously," "there was no purpose" for him to exhaust the administrative review process).[6] His argument, however, finds no

[6] Whether the tickets Mr. Cox claims he should have received were "unissued" or were "printed or issued in error" are asserted reasons behind the Commission's action by which Mr. Cox claims to be aggrieved. The validity of those reasons could and would be addressed in the administrative process. Mr. Cox's disagreement with those reasons is no basis to avoid the administrative process.

support in the statutes, regulations, or procedures that govern lottery games and disputes arising therefrom. The exhaustion requirements, which were already explained at length in this brief, do not apply only to one narrow variety of grievance; they apply to *any* grievance a ticket holder may have relating to or arising from the administration and operation of lottery games including the issuance and payment (or nonpayment) of tickets.

Mr. Cox's misunderstanding seems to arise from his conflation of two separate and independent arguments the Commission made to the trial court, namely (1) that Mr. Cox was required to exhaust his remedies prior to filing suit, and (2) alternatively, even if the trial court had jurisdiction to hear his claims (which it did not), several of his claims must nevertheless be dismissed because the Commission is prohibited by law from paying tickets that are unissued, produced, or issued in error. *Compare* SCEL's Mem. in Supp. of the Mot. to Dismiss at 8–9 (R. __) (arguing the former) *with id.* at 13–15 (R. __) (arguing the latter as an alternative and independent ground for dismissal). The exhaustion requirement does not apply *only* to erroneously issued tickets. The law does not state that; the Commission never argued that; and the trial court did not conclude that.

Mr. Cox's confusion of these concepts likewise infects his understanding of the trial court's ruling. Contrary to his assertions, the trial court did not "dismiss [his] Complaint based solely on its acceptance of Respondents' factual assertions that the ticket was printed in error." *See* App.'s Brief at 5. The trial court made no such finding, ruling, or conclusion. Indeed, the Order never even mentions the words "printed" or "error." Instead, the trial court concluded that Mr. Cox's claims arose from the administration and operation of a lottery game, and thus under the controlling statutes, regulations, and agency procedures, Mr. Cox was required to exhaust his administrative remedies before filing suit but had failed to do so. That ruling was correct and should be affirmed.

B. Mr. Cox's grievances are precisely the type of claims the administrative review process is meant to resolve.

In addition to his misapprehension of the relationship between the exhaustion requirement and the question of whether the tickets were issued or printed in error (arguments that, as explained already, are separate and independent from one another), Mr. Cox erroneously argues his claims are of a type exempt from the exhaustion requirement because they are of a type "that cannot be ruled upon by the administrative body" or they "involve a matter of statutory construction." *See* App.'s Brief at 3 and 8.[7] He is wrong on both counts.

Mr. Cox's dispute with the Commission is precisely the kind of claim the administrative review process can (and must) resolve. Regardless of the labels he attaches to his claims, at bottom his grievance is simple: he didn't get the tickets he requested, and he wants them paid. The administrative process is meant to resolve such disputes and is uniquely capable of doing so. The intra-agency process is entirely capable of determining whether the ticket numbers he requested would have been winners, whether to pay him the winnings (if any) of which he was deprived, whether to refund the ticket price, or whether no compensable conduct occurred. The administrative review process is, in fact, *better* suited for the resolution of Mr. Cox's disputes than litigation due to the specific experience and expertise of the decision-makers in the administrative process. *See Video Gaming Consultants, Inc. v. S.C. Dept. of Rev.*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) ("Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to

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[7] The remainder of Mr. Cox's argument on pages 3–4 of his brief—namely that under the *Thomas Sand* case, a plaintiff's suit against a non-governmental third party cannot be barred by the requirement—is inapplicable to the Commission, and the Commission need not respond to it.

correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.").

Mr. Cox's argument that his claims involve a matter of statutory construction and thus are exempt from exhaustion fares no better. He cites no South Carolina authority in support of his argument—because there is none. To the contrary, South Carolina case law indicates the opposite, namely that even when the merits of a claim or defense involves a disputed matter of statutory interpretation, the plaintiff must first exhaust his administrative remedies before filing suit. *See, e.g.*, *B&A Development, Inc. v. Georgetown Cnty.*, 372 S.C. 261, 641 S.E.2d 888 (2007) (affirming dismissal for failure to exhaust administrative remedies even though the merits of the claims in the suit depended on disputed statutory construction); *Allen v. S.C. Alcoholic Beverage Control Comm'n*, 321 S.C. 188, 467 S.E.2d 450 (Ct. App. 1996) (affirming dismissal of claim brought under the Whistleblower Act, the merits of which was disputed, because the plaintiff had not first exhausted each step of the administrative review process); *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 442 S.E.2d 582 (1994) (same). If Mr. Cox were correct and *any* case involving a question of statutory interpretation was exempt from the exhaustion requirement, the exception would swallow the rule, and the doctrine of exhaustion would be rendered a nullity.

In sum, Mr. Cox's claims are precisely the type that the administrative process is not only capable of resolving, but which it is especially suited to resolve, and which it is required to resolve prior to a plaintiff filing suit. The trial court's ruling that exhaustion was required was correct.

II. The trial court correctly ruled Mr. Cox failed to exhaust his administrative remedies.

The trial court ruled that because Mr. Cox had not pursued his administrative remedies and appeals to their completion, he had not exhausted those remedies. *See, e.g.*, Order at 4–5 (R. ___) (noting the "statutory requirement that aggrieved ticket holders must exhaust the *entire* administrative review process" and that Mr. Cox "has not exhausted his administrative remedies")

(emphasis added). On appeal, however, Mr. Cox argues that (i) the absence of a decision by the SCEL Board prevented him from exhausting his remedies, *see* App.'s Brief at 6, and (ii) that his tentative foray into and subsequent retreat from the administrative process was sufficient to count as "exhaustion" *id.* at 7–8. His arguments are incorrect.

A. The absence of a Board decision is a result of Mr. Cox's failure to exhaust his administrative remedies, not an obstacle preventing it.

Mr. Cox argues it was unnecessary or impossible for him to exhaust his remedies before filing suit because there had been no decision by the Commission's Board from which he could appeal to the ALC. *See* App.'s Brief at 4, 6. His argument fails. The argument incorrectly implies that Mr. Cox had no means to seek a decision by the Board, and that until the Board *sua sponte* made a decision of its own initiative, Mr. Cox's hands were tied and he *couldn't* seek any administrative redress. This is incorrect. The doctrine of exhaustion requires an aggrieved party to initiate the administrative process and then to pursue it to completion (*i.e.*, to "exhaust" the remedies), including both intra-agency review and appeals and appeal of the agency's decision to the ALC. *See Steele v. Benjamin*, 362 S.C. 66, 606 S.E.2d 499 (Ct. App. 2004) (affirming the trial court's dismissal of plaintiff's suit, holding that by failing to appeal the agency's decision to the ALC, the plaintiff failed to exhaust his administrative remedies); *Allen v. S.C. Alcoholic Beverage Control Comm'n*, 321 S.C. 188, 467 S.E.2d 450 (Ct. App. 1996) (affirming dismissal for failure to exhaust because plaintiff had initiated the administrative review process but had not appealed the initial decision and thus had not exhausted the intra-agency review process); *see also Booker v. S.C. Dept. of Corrections*, No. 2011-CP-10-08774, 2013 WL 10533559 (S.C. Ct. of Comm. Pleas, Hon. R. Markley Dennis, Jr., March 1, 2013) (noting that if an aggrieved party is unsatisfied with the outcome of an internal agency grievance process, "the final administrative remedy available to him is a review by the South Carolina Administrative Law Court," and he "has not

exhausted all administrative remedies unless and until he has completed Step 1, Step 2, and has received an administrative review and decision by the ALC.").[8]

In the context of an aggrieved ticket holder, the first step is for the ticket holder to file a formal written complaint with the Commission's Executive Director and then, if dissatisfied with the Executive Director's decision, to appeal that decision to the Board, and if dissatisfied with the Board's ruling to appeal that ruling to the ALC. *See* S.C. Code Ann. § 59-150-300; S.C. Code of Regulations § 44-70(F); SCEL Complaint Procedure ¶¶ A and L. A ticket holder may not simply sit on his hands and then later, having never sought a Board decision, complain that the Board never made one. Stated differently, Mr. Cox cannot argue the absence of a Board decision inhibited or prevented him from pursuing and exhausting the administrative process, when the absence of a Board decision *was the **result** of his failure to pursue and exhaust his administrative remedies.* Had Mr. Cox wished to exhaust his administrative remedies, he could have requested the Board review the Executive Director's decision. His failure to do so was not the result of ignorance or inadvertence. He was expressly advised of availability of an appeal to the Board and was given the opportunity to do so. *See* Hearing Tr. at 5:11–15, 14:2–4, and 22:15–25 (R. ___, ___, and ___). He elected not to do so, *see id.* at 14:4, 14:16–17 (R. ___), and cannot now complain that his choice not to exhaust his administrative remedies excuses or prevented him from exhausting those remedies.

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[8] Other jurisdictions agree. *See, e.g.*, *Metz v. Veterinary Examining Bd.*, 741 N.W.2d 244, 250–51 (Wis. Ct. App. 2007) ("The exhaustion doctrine is typically applied when a party seeks judicial intervention before completing *all* the steps in the administrative process. [] The general rule in this situation is that a party must complete *all* administrative proceedings before coming into court.") (citations omitted; emphasis added); *Muellenaux v. State, By and Through Oregon Dept. of Revenue*, 651 P.2d 724 (Ore. 1982) ("A party does not exhaust his administrative remedies simply by stepping through the motions of the administrative process without affording the agency an opportunity to rule on the substance of the dispute. Exhaustion of administrative remedies is not accomplished through the expedience of default.") (citations omitted); *Jackson v. Dept. of Rev.*, 695 P.2d 923 (Ore. 1985) ("[J]udicial review is unavailable where a party has 'foreclosed through his own inaction completion of the administrative process . . . .'") (citation omitted).

B. Mr. Cox's belated initiation and abandonment of the administrative process did not satisfy the exhaustion requirement.

Mr. Cox argues his tentative post-filing foray into, and subsequent retreat from, the administrative process was sufficient to count as "exhaustion." *See* App.'s Brief at 7–8 (arguing the exhaustion requirement is "moot" because, according to Mr. Cox, he began the process and the Commission "has issued its final decision"). But as already explained, exhaustion of administrative remedies requires more than just the initiation and subsequent abandonment of the process. It requires an aggrieved party to pursue his remedies—including both intra-agency review and the appeal of the agency's decision to the ALC—*to their completion*. A party's failure to complete that entire process constitutes a failure to exhaust his administrative remedies. *See Steele*, 362 S.C. 66, 606 S.E.2d 499; *Allen*, 321 S.C. 188, 467 S.E.2d 450; *Booker v. S.C. Dept. of Corrections*, No. 2011-CP-10-08774, 2013 WL 10533559.

In the instant proceeding, after Mr. Cox filed suit and after the Commission filed its Motion to Dismiss for failure to exhaust, Mr. Cox took the opening step in the administrative process by submitting a request for payment to the Commission's Executive Director. *See* Hearing Tr. at 5:6–8 and 13:19–24 (R. ___ and ___). However, he promptly abandoned that process by failing to submit the information and materials the Executive Director requested to enable the administrative review, *see id.* at 19:12–20 (R. ___); by electing not to appeal the Executive Director's decision to the Board (despite being expressly advised how and why to do so), *id.* at 5:11–15, 14:2–4, 14:16–17, and 22:15–25 (R. ___, ___, ___, and ___); and by making no attempt to appeal to the ALC.

Accordingly, he has not exhausted his administrative remedies, and the trial court properly dismissed his lawsuit. *See generally Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 176, 551 S.E.2d 263, 273 (2001) (dismissing suit due to plaintiff's failure to exhaust its administrative remedies); *see also Triano v. Division of State Lottery*, 703 A.2d 333 (N.J. App.

Div. 1997) (analyzing statutory scheme similar to South Carolina's Lottery Act and holding aggrieved players could not file an action in state trial court against the State Lottery without first exhausting their administrative remedies by seeking a ruling from the Lottery Commission itself and then seeking review of that ruling in the way mandated by law).

III. The trial court correctly ruled Mr. Cox was not excused from the requirement to exhaust his administrative remedies.

The trial court concluded Mr. Cox's failure to exhaust his administrative remedies was not excused by the "futility" exception to the exhaustion requirement or by the fact that his suit asserted putative class claims. *See* Order at 2–5. His arguments to the contrary are rebutted below.

A. Exhaustion of Mr. Cox's administrative remedies was not futile.

Mr. Cox argues he was excused from the requirement to exhaust his administrative remedies because doing so would have been futile, arguing that appealing to the Board would have been futile "as the Board's decision was certain to be unfavorable." *See* App.'s Brief at 6–7. His argument fails for at least two reasons.

First, Mr. Cox's assertion that an appeal to the Board would have been futile because the Board's ruling was a foregone conclusion is mere speculation. This is an insufficient basis upon which to conclude that exhaustion would be futile. *See, e.g., Smith v. S.C. Retirement Sys.*, 336 S.C. 505, 527, 520 S.E.2d 339, 351 (Ct. App. 1999) (rejecting plaintiff's futility argument and noting that the agency "has not had an opportunity to rule on" the dispute and thus "[i]t would be speculative for this Court to try to determine the outcome of an administrative hearing"); *Stanton v. Town of Pawley's Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992) (rejecting futility claim by a plaintiff asserted the town had already denied another owner's identical claim, holding "Stanton could not be sure what the Board would rule"); *Self Storage Ass'n v. City of Forest Acres*, No. 2007-CP-40-00316, 2010 WL 9499364, at *8 (S.C. Ct. Comm. Pl., Hon. J. Michelle Childs, April

13, 2010) ("The Court finds Plaintiffs cannot claim that an exhaustion of administrative remedies would have been in vain or futile because Plaintiffs have not met their burden of demonstrating that the procedures set forth in the challenged Ordinances would *definitely* result in an adverse ruling.") (emphasis added). Here, just as in *Smith*, allowing Mr. Cox "to avoid the administrative process on their unsupported allegation of futility would allow the futility exception to swallow the exhaustion rule." *Smith*, 336 S.C. at 527, 520 S.E.2d at 351.

The second flaw in Mr. Cox's argument is that he ignores the fact that the administrative review process does not end with the Board. The administrative process is a multi-step process including both intra-agency review *and* an appeal to the Administrative Law Court. *See generally* pp. 4–8, *supra*. Each of those levels of review or appeal provides a chance for a new decision-maker to reconsider and reverse the initial decision made below. Accordingly, a party's failure to complete *each* level of review, including an appeal to the ALC, constitutes a failure to exhaust his administrative remedies. *See* Argument II.B, *supra*, and cases cited therein.

The fact that *one level* of the administrative process did not award Plaintiff the relief he sought does not mean that the *entire* process is futile. The futility exception applies only when exhaustion of *the whole* of the administrative process and remedies would be futile. *See, e.g., S.C. Dept. of Health & Env. Control v. Armstrong*, 293 S.C. 209, 359 S.E.2d 302 (Ct. App. 1987) (reversing a trial judge who had "determined that he could pass upon the merits of Armstrong's entitlement to a permit without requiring Armstrong to *complete* the administrative process") (emphasis added); *see also Johnpoll v. Thornburgh*, 898 F.2d 849, 850 (2d Cir. 1990) (noting that "animosity by *one* case unit manager is not sufficient to show futility of the *entire* administrative process") (emphasis added); *cf.* S.C. Code Ann. § 1-23-380 ("A party who has exhausted *all* administrative remedies available within the agency and who is aggrieved by a *final* decision in a contested case is entitled to judicial

review . . .") (emphasis added). Indeed, the very term "exhaustion" requires a party seeking administrative redress to *exhaust* the process, *i.e.*, to see the process through to its completion.

In the instant proceeding, Plaintiff did not completed the multiple levels of review that comprise the administrative process, nor has he borne their burden to present *any* evidence that exhaustion of the *entire* process would be futile. Rather, the evidence is quite to the contrary. The letter sent to Mr. Cox invited him to submit additional evidence, factual information, law, authorities, and a statement outlining the reasons for his complaint to the SCEL's Executive Director for review. *See* Hearing Tr. at 19:12–20 (R. ___). This invitation stands in stark contrast to Mr. Cox's argument that the Commission has taken a "hard and fast" position regarding his claim. *See* App.'s Brief at 8. Where, as here, the evidence indicates that the administrative process includes additional and meaningful levels of review that are receptive to additional evidence, arguments, and authorities, the outcome of the administrative process is not yet a certainty, the agency's position is not yet final, and completion of the administrative process is not futile.

Furthermore, the Executive Director's written determination sent to Mr. Cox expressly notified him of the availability of an appeal to the ALC. *See* Hearing Tr. at 5:11–15, 14:2–4, and 22:15–25 (R. ___, ___, and ___). An appeal to the ALC provides an independent, objective, judicial review and correction (if needed) of the Commission's initial decision, and Mr. Cox has presented no evidence or arguments whatsoever to show that appeal to the ALC would be futile. In the absence of a showing that the entire administrative process would be futile, Mr. Cox is not excused from his failure to exhaust his administrative remedies.

B. Mr. Cox was not relieved of the exhaustion requirement merely because he asserted putative class action claims.

Mr. Cox argues he should be excused from exhausting his administrative remedies because there is supposedly no exhaustion requirement in class action cases. *See* App.'s Brief at 8–10. He

is wrong for at least three reasons. First, and most fatally, his argument is contrary to binding precedent from the South Carolina Supreme Court. In *Brackenbrook N. Charleston, LP v. Cnty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004), a group of taxpayers brought a putative class action seeking certain relief against the County. The trial court certified a class and held the members were not required to exhaust their administrative remedies. The Supreme Court reversed, holding the taxpayers—despite having asserted class claims—were nevertheless required to exhaust their administrative remedies. *See id.* at 401, 602 S.E.2d at 45 ("The circuit court orders are reversed . . . . County shall, within thirty days of this opinion, give written notice to all taxpayers within the class certified by the circuit court, other than those who have already initiated administrative refund requests, of their right to seek an administrative refund, and of the date by which the refund request must be initiated.").

Second, Mr. Cox's policy argument—that requiring potentially "hundreds of thousands of individual[s]" to exhaust their remedies would be unduly burdensome—is nothing but unsupported speculation. Even assuming there are, in fact, numerous other individuals who, like him, received duplicate tickets but failed to check them at the store (which is an assumption that strains credulity), there is no reason to think that their individual exhaustion of their remedies would overwhelm the process. And even if there were, that is an insufficient basis upon which to ignore or rewrite what the law requires. The statutes and regulations at issue are plain that exhaustion is required by those who dispute the Commission's decisions. The statute provides no exception to this rule merely because multiple people dispute a decision, and this Court should not infer a meaning different from that expressed by the legislature or to imply exceptions where the General Assembly provided none:

> The primary rule of statutory construction is to ascertain and give effect to the intent of legislature. [] The first inquiry is whether the statute's

> meaning is clear on its face. [] With any question regarding statutory construction and application, the court must always look to legislative intent as determined from the plain language of the statute.
>
> When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and ***this court has no right to impose another meaning***. . . .
>
> The legislature's intent should be derived primarily from the plain language of the statute. . . . "Once the legislature has made [a] choice, ***there is no room for the courts to impose a different judgment based upon their own notions of public policy***."

Peake v. S.C. Dept. of Motor Vehicles, 375 S.C. 589, 597–98, 654 S.E.2d 284, 289 (Ct. App. 2007) (emphasis added; citations omitted; final alteration in original).

The legislature's intent is plainly and unequivocally expressed. Only *after* an aggrieved ticket holder exhausts the entirety of the administrative process—up to and including an appeal to the ALC—may he or she file suit in this court. *See* S.C. Code Ann. § 59-150-300; *see also id.* at §§ 59-150-60, -70(D), -90(A), -230(A), and -240(C). Allowing a plaintiff to circumvent this mandatory process simply by asserting a class claim would ignore the legislature's judgment, flout the legislature's intent, and create an exception where the statute provides none.

Third, even the out-of-state cases on which Mr. Cox relies do not, in fact, support his argument. For example, he relies on *Rose v. City of Hayward*, 126 Cal. App. 3d 926 (Cal. App. 1981) for the proposition that plaintiffs in a class action need not exhaust their administrative remedies when those remedies do not provide for class relief. *See* App.'s Brief at 9. But not even California's courts apply *Rose* in actions that, like this one, seek damages. Rather, subsequent California appellate court decisions have limited *Rose* to its specific facts and held exhaustion ***was*** required before a class of plaintiffs could bring an action for damages. *See Lopez v. Civil Serv. Comm'n*, 232 Cal. App.3d 307, 312 (Cal. Ct. App.—1st Div. 1991) ("The mere bringing of a class action is not ipso facto an exception to the exhaustion requirement. . . . *Morton v. Superior Court*, 9

Cal. App. 3d 977 dispels any notion that class actions are *per se* exempt from the exhaustion requirement."); *Bautista v. Cnty. of Yolo*, No. C039340, 2003 WL 22969353, at *4 (Cal. Ct. App.—3d Dist. 2003) (affirming dismissal of suit and noting that "*Rose* is of no help to plaintiffs" because "*Rose* arose in the context of a writ challenge to a PERS ruling, not a complaint for damages").

Mr. Cox's reliance on *Thorn v. Jefferson County*, 375 So.2d 780 (Ala. 1979) fares no better.[9] The ruling in *Thorn* that the taxpayers could sue without first going through the process of requesting a tax refund was not based on the fact that the taxpayers filed a putative class action. Rather, the ruling in *Thorn* was based on the nature of the taxpayers claim, namely that the county's collection of ad valorem taxes "was void and illegal." *See Thorn*, 375 So.2d at 788 ("[T]axpayers contend they did not have to pursue that statutory remedy because they claimed that the assessment was void and illegal. We agree with the taxpayers. . . . [T]he statutory procedure for refund of taxes does not apply where the assessment complained of is void and illegal."). Accordingly, even if *Thorn* were controlling South Carolina (and it is not), it addresses an entirely different question than the one before this Court. Mr. Cox has not alleged that the sale of Mega Millions® tickets is "void and illegal," and thus the sole factor supporting the *Thorn* court's ruling is not present here.

South Carolina law rejects Mr. Cox's argument that he should be excused from the requirement that he exhaust his administrative remedies, and none of the out-of-jurisdiction cases he cites compel or permit a different result. The trial court correctly ruled his failure to exhaust was not excused and thus warranted dismissal.

[9] Mr. Cox inadvertently provides the wrong citation for the *Thorn* case. The citation supplied above is correct.

IV. The trial court's dismissal may be affirmed on the additional sustaining ground that the relief Mr. Cox seeks is forbidden by law.[10]

Even assuming *arguendo* that the trial court had original jurisdiction to entertain a suit brought by a lotter player against the Commission without first exhausting his administrative remedies, the trial court's dismissal of Mr. Cox's claims should nevertheless be affirmed for an additional reason: they fail to state viable causes of action because the Commission is prohibited by law from doing what Plaintiff asserts should have been done.[11]

Specifically, Mr. Cox's first and third causes of action claim he (and the putative class members) have been wronged by the Commission's failure to pay them the amounts they supposedly would have won but for the printing error. *See, e.g.*, Complaint ¶¶ 23 and 33 (R. ___ and ___). Even assuming the ticket numbers Mr. Cox wished to purchase were winners (which he has not pled), the Commission is statutorily forbidden from doing what he seeks, namely paying tickets that, like the ones he purchased, were unissued or were produced or issued in error. *See* S.C. Code Ann. § 59-150-230(C)(3) ("A prize must not be paid if it . . . arises from claimed lottery game tickets that are unissued, produced or issued in error."). Although South Carolina's courts have not previously interpreted or applied this statute, its plain language is clear. Further, although Mr. Cox argues that his claims are not premised on erroneously printed tickets, the Complaint belies

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[10] As the prevailing party below, the Commission may assert additional sustaining ground not relied on by the court below. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *I'on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("Under the present rules, a respondent—the "winner" in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court."); *see also* J. Toal, *et al.*, *Appellate Practice in South Carolina* 62 (2d ed. 2002) (same).

[11] As explained already, *see* Argument I.A, *supra*, this argument is separate from and independent of the Commission's argument regarding exhaustion of administrative remedies. Neither one is dependent on the other, and this argument provides an independent, additional, and alternative basis for dismissal of Mr. Cox's claims.

this assertion. The entire thrust of Mr. Cox's Complaint is that (1) he was not issued the tickets he should have received, *i.e.*, the tickets he claims to be entitled to were "unissued," and, (2) conversely, the lottery tickets he received were not what he sought to purchase and should have been handed, *i.e.*, the tickets he received were "produced or issued" to him in error. Accordingly, under the terms of the Lottery Act, the Commission *cannot* pay him anything arising from the tickets he received or should have received, and thus the Commission cannot be liable for failing to do so.

This statutory prohibition is similarly fatal to Mr. Cox's claim for Breach of Contract and/or Breach of Implied Contract, which alleges the Commission "breached its contract with Plaintiff . . . by refusing to provide individual chances to win per lottery ticket." *See* Complaint ¶ 28 (R. ___). Though South Carolina's courts have yet to analyze the application of § 59-150-230(C)(3) to such a claim, the courts of other jurisdictions considering similar statutes and scenarios have agreed that misprinted tickets cannot form the basis for a viable claim of breach of contract. *See, e.g.*, *Plourde v. Conn. Lottery Corp.*, 2000 WL 1918014 (Conn. Super. Ct. Dec. 18, 2000) (granting summary judgment in favor of state lottery agency on breach of contract claim because state law prohibited payment on tickets printed in error and the ticket at issue contained misprinted game symbols); *Ruggiero v. State Lottery Comm'n*, 489 N.E.2d 1022 (Mass. Ct. App. 1986) (reversing decision in favor of plaintiff who claimed to have a winning ticket because the evidence showed that the ticket had been misprinted and could not be validated as a winner as required by the applicable statutes and rules); *Ga. Lottery Corp. v. Sumner*, 529 S.E.2d 925 (Ga. Ct. App. 2000) (holding state lottery agency did not breach contract in determining that lottery ticket was not a winner because the mark on the ticket resulted from a printing error); *Consola v. New York*, 84 A.D.3d 1557 (N.Y. App. Div. 2011) (affirming summary judgment in favor of state

lottery agency that refused to pay a $5 million prize because the disputed ticket contained a play symbol resulting from a misprint); *Haynes v. Dept. of Lottery*, 630 So.2d 1177 (Fla. Ct. App. 1994) (affirming dismissal of complaint alleging state lottery agency had breached a contract with the player where player had received several tickets with duplicate numbers rather than the numbers he had selected); *Curcio v. State Dept. of Lottery*, 164 So.3d 750, 755 (Fla. Ct. App. 2015) (holding a lottery player could not assert a meritorious claim for breach of contract arising from a misprinted lottery ticket, and noting "this analysis is consistent with the decisions from other states rejecting breach of contract claims under nearly identical circumstances"); *Valente v. Rhode Island Lottery Comm'n*, 544 A.2d 586 (R.I. 1988) (reversing decision in favor of plaintiff who claimed to have won a $10,000 prize on a scratch-off lottery ticket because the winning number on the ticket was blurred and ambiguous and the ticket failed all of the lottery's validation tests).

In sum, because the Commission's alleged "wrongdoing" is compelled by South Carolina law, and because Mr. Cox's desired outcome is prohibited by South Carolina law, his claims do not—and cannot—state a claim upon which relief can be granted.[12] The trial court did not err by dismissing them.

CONCLUSION

For the foregoing reasons, Respondent South Carolina Education Lottery Commission respectfully requests this Court affirm the trial court's dismissal of Mr. Cox's claims against it.

[*SIGNATURE PAGE ATTACHED*]

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[12] The foregoing analysis explains how South Carolina law bars Mr. Cox's claims for Unjust Enrichment, Breach of Contract/Implied Contract, and Promissory Estoppel. Mr. Cox's fourth cause of action—breach of the Unfair Trade Practices Act—was dismissed by his consent, *see* Plaintiff's Mem. in Opposition at 9 (R. ___), and the dismissal of that claim is not challenged on appeal.

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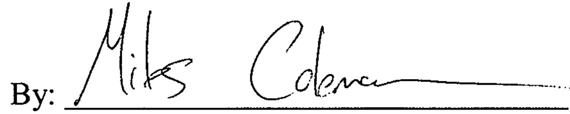
By: 

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June 3, 2019
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2019-000501
Civil Action No. 2018-CP-31-00047

RECEIVED
JUN 03 2019
SC Court of Appeals

Kevin Cox, on behalf of himself and all others similarly situated. ....Appellant,

v.

South Carolina Education Lottery Commission d/b/a South Carolina Education Lottery...............................Respondent.

PROOF OF SERVICE

I hereby certify that I have caused a copy of Respondent South Carolina Education Lottery Commission's Initial Response Brief and Designation of Matter to be served upon all counsel of record, by mailing copies of same, postage prepaid to the following addresses:

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RECEIVED
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SC Court of Appeals

RE: *Cox v. S.C. Ed. Lottery Comm'n*
Appellate Case No. 2019-000501
Our File No. 055431/01502

Dear Ms. Kitchings:

In connection with the above captioned matter, enclosed please find an original and one copy of the Initial Response Brief of Respondent the South Carolina Education Lottery Commission. Also enclosed is an original and one copy of the Commission's Designation of Matter. We ask that you file the originals and return clocked-in copies to us via our courier.

By copy of this letter and by the Proof of Service enclosed, I am serving a copy of the Commission's Initial Response Brief and Designation on the other parties' counsel of record.

Very truly yours,

Miles E. Coleman

Enclosures
CC: William E. Hopkins, Esquire
J. Clay Hopkins, Esquire
J. Preston Strom, Jr., Esquire
Mario A. Pacella, Esquire
Bakari T. Sellers, Esquire