STATE OF MICHIGAN

COURT OF CLAIMS

JENNIFER KEENAN and all those similarly situated,

Plaintiffs,

v

Case No. 25-000127-MZ

STATE OF MICHIGAN and MICHIGAN BUREAU OF STATE LOTTERY, also known as MICHIGAN LOTTERY,

Hon. Michael F. Gadola

Defendants.
_____ /

OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Plaintiff,[1] Jennifer Keenan, filed this putative class-action lawsuit against defendants—the State of Michigan and the Michigan Bureau of State Lottery—over an alleged defect in an online lottery game, raising contract and tort claims. Defendants moved for summary disposition at the outset of the case under MCR 2.116(C)(4), (7) (immunity), (8), and (10). Because the Court agrees with defendants that plaintiff was required to exhaust her administrative remedies before filing this lawsuit, the Court GRANTS defendants' motion for summary disposition.

[1] Although plaintiff represents a putative class, because the class has yet to be certified, the Court will refer to Keenan as the sole "plaintiff" to avoid any confusion.

I. BACKGROUND

This case relates to the Michigan Lottery's Big Crush Volcano game, an online instant-lottery game available to customers in Michigan on the Michigan Lottery's public webpage. The game requires participants to match a series of symbols that appear on the screen and awards prizes based on the size of the "cluster" formed by the symbols and by symbol type. The bets range from $0.50 to $30 per play, with an advertised top prize of $150,000. The game allows for multipliers at "x2, x3 x5, and x10."

The Michigan Lottery website page devoted to the Big Crush Volcano game contains a link to the Game Rules. The Game Rules describe the game instructions, available prizes, and other requirements. The Game Rules include the following disclaimer: "A lottery claim may not be premised on human or electronic error in the communication, display, or transmission of data regardless of how that data is recorded, displayed, or transmitted." The Game Rules further explain that "[l]iability for void wagers, if any, is limited to replacement with an unplayed ticket of equal value or a refund of the ticket's retail price."

In the case of a dispute, the Game Rules provide:

> In questions involving ticket validation, the Commissioner's determination is final. In cases of dispute for any reason, the Commissioner may, at his or her sole discretion, replace the disputed ticket with an unplayed ticket of equal value or refund the retail price. The Commissioner's decision to replace or refund a ticket is the purchaser's exclusive remedy.

Plaintiff alleges that she played the Big Crush Volcano game on multiple occasions throughout the summer of 2025. She asserts that the game's algorithm was defective or manipulated at that time, causing underpayments on certain winnings when betting with a multiplier. Defendants argue that, following an investigation, it was uncovered that a malfunction

occurred on rare occasions, but the malfunction was a "visual bug" on the "player-side," which did not affect the payouts.

Plaintiff alleges that she contacted a Lottery Commission customer service representative via telephone to report the incorrect payouts but was told during the conversation, " '[Y]ou were not cheated,' " and to have a nice day. Plaintiff also submitted a formal dispute via e-mail. On July 18, 2025, an individual named Morgan from the Michigan Lottery Support Center responded to plaintiff's e-mail. Morgan informed plaintiff that the Michigan Lottery could not accept the supporting documentation plaintiff provided via e-mail and instructed her to download documents onto her Michigan Lottery Account via a secure portal or to mail physical copies of the documentation to a specified address. Plaintiff does not allege that she followed these instructions or had any further contact with the Michigan Lottery.

Instead, on August 4, 2025, plaintiff filed this lawsuit. Plaintiff alleges that she represents a class containing other individuals who made wagers on the Big Crush Volcano game but did not receive payouts appropriately when the game included a multiplier. Defendants moved for summary disposition at the outset of the case, and plaintiff moved to amend her complaint. This Court's predecessor, Judge SWARTZLE, denied the motion for summary disposition as moot and allowed plaintiff to file a first-amended complaint. The first-amended complaint included claims for breach of contract (Count I), unjust enrichment (Count II), constructive trust (Count III), fraudulent misrepresentation (Count IV), and statutory conversion (Count V).

In lieu of answering the first-amended complaint, defendants moved for summary disposition. Defendants argue, in relevant part, that this Court lacks subject-matter jurisdiction

because plaintiff failed to exhaust her available administrative remedies by abandoning her internal dispute.

Plaintiff responded, in relevant part, that she was not required to exhaust any administrative remedies because there are no administrative remedies for online gaming disputes outlined in the Lottery Act, MCL 432.1 *et seq*., or the related administrative rules, and any informal resolution process developed by the Lottery Commissioner is not designed to be exclusive. She argues that the administrative rules mentioned in defendants' motion for summary disposition pertain to traditional lottery-ticket sales—not online gaming sales. Additionally, plaintiff notes that she tried to resolve the issue informally with the Lottery Commissioner's customer service system, which she contends fulfilled any exhaustion requirement. She maintains that any further attempts to resolve the matter with the Lottery Commissioner would have been futile given the statement of the Lottery Commissioner's representative that plaintiff was not cheated. Defendants filed a reply brief reemphasizing the arguments raised in their principal brief.[2]

Plaintiff moved for sanctions under MCR 1.109(E)(5), arguing that defendants' motion for summary disposition under MCR 2.116(C)(10) was frivolous because it was filed before discovery commenced. In response, defendants argued that a motion for summary disposition may be filed under MCR 2.116(C)(10) before discovery, and that the motion was supported by the law and the facts. Plaintiff also moved for a status conference and to reopen discovery, which had been stayed

[2] Plaintiff filed an objection to an affidavit of Victor Marmorstein attached to defendants' reply brief, which essentially functions as a motion to strike the affidavit. Defendants have responded. Because the Court finds that the exhaustion issue is dispositive, and Marmorstein's affidavit does not relate to that issue, the objection is moot.

pending a ruling on defendants' motion for summary disposition, and defendants responded. Because the briefing is adequate to address the issues, the Court dispenses with a hearing.

II. ANALYSIS

Whether a plaintiff has exhausted his or her administrative remedies is a jurisdictional issue reviewed under MCR 2.116(C)(4). *L & L Wine & Liquor Corp v Liquor Control Comm*, 274 Mich App 354, 356; 733 NW2d 107 (2007). A motion under MCR 2.116(C)(4) examines whether the trial court has jurisdiction over the subject matter of the case. *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, 347 Mich App 168, 176; 14 NW3d 456 (2023). The Court will examine "the affidavits, together with the pleadings, depositions, admissions, and documentary evidence" to determine whether they demonstrate a lack of subject-matter jurisdiction. *Id*.

"The doctrine of exhaustion of administrative remedies requires that where an administrative agency provides a remedy, a party must seek such relief before petitioning the court." *Id*. at 187 (quotation marks and citation omitted). In other words, when the Legislature expresses an intent to make the administrative agency's jurisdiction over a matter exclusive, the Court cannot also exercise jurisdiction over the same subject matter. *Id*.

To the extent the Court is required to interpret the Lottery Act, the Court applies the following statutory-interpretation principles:

> The goal of statutory interpretation is to give effect to the Legislature's intent as determined from the language of the statute. In order to accomplish this goal, this Court interprets every word, phrase, and clause in a statute to avoid rendering any portion of the statute nugatory or surplusage. [The Court will] give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art. [*Bukowski v Detroit*, 478 Mich 268, 273-274; 732 NW2d 75 (2007).]

In support of their position that plaintiff was required to exhaust her administrative remedies, defendants rely on Mich Admin Code, R 432.15, an administrative rule relating to the sale of lottery tickets. The Rule provides, in relevant part:

> In questions involving ticket validation, the commissioner's determination is final. In cases of dispute for any reason, the commissioner may at his or her sole discretion, replace the disputed ticket with an unplayed ticket of equal value or refund the retail sales price. The commissioner's decision to replace or refund the ticket is the purchaser's exclusive remedy. The rules governing a particular lottery game are set forth in bureau of state lottery directives. The directives govern the terms and conditions of play. [Rule 432.15(3).]

The Rule does not differentiate between the sale of physical tickets and the sale of online tickets. See *id*. Nor has the Lottery Commissioner issued a separate set of administrative rules for online ticket sales. The Court agrees with defendants that Rule 432.15(3) clarifies that a claimant's sole remedy is to have the ticket replaced or refunded, at the Commissioner's discretion. To the extent that there was any question about whether Rule 432.15(3) applies to online games, such as Big Crush Volcano, the Game Rules for Big Crush Volcano adopted the exact language of Rule 432.15(3).

Defendants argue that Rule 432.15 was promulgated in accordance with MCL 432.11, which provides that the Lottery Commissioner shall promulgate rules under the Administrative Procedures Act (APA), MCL 24.201 *et seq*., to implement the Lottery Act. MCL 432.11(1). The Legislature granted the Lottery Commissioner authority to promulgate rules over a broad variety of subjects, including "[t]he manner of selecting the winning tickets or shares," and "[t]he method to be used in selling tickets or shares." MCL 432.11(2)(d) and (h). The Lottery Commissioner also has broad jurisdiction over the supervision and administration of the operation of the state lottery in accordance with the Lottery Act and related administrative rules. MCL 432.17(a). Although the Lottery Act does not state expressly that the Lottery Commissioner has exclusive

jurisdiction over ticket disputes, the broad statutory language supports that the Legislature intended for the Lottery Commissioner to have exclusive jurisdiction over ticket disputes, such as the matter presented in this case. Rule 432.15(3) clarifies that the Commissioner has the sole discretion to replace or refund the ticket, and that the Commissioner's decision is final and exclusive. The Game Rules mirror the language of Rule 432.15(3) and indicate that a player is not entitled to any further relief.

Plaintiff argues that the Lottery Act does not mandate a formal administrative proceeding for these types of disputes. She relies on *Davis v BetMGM, LLC*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 166281), to support her argument that an administrative exhaustion requirement cannot be read into the Lottery Act. But *Davis* did not involve the Lottery Act or a state defendant. In *Davis*, the plaintiff sued the defendant, a private casino, after the defendant refused to pay out alleged winnings on an online gaming platform following a technical error, despite initially congratulating the plaintiff on her winnings and making arrangements for a payout. *Id*. at ___; slip op at 1-2, 6. The defendant maintained that the plaintiff's common-law claims (breach of contract, conversion, and fraud) were abrogated by the Lawful Internet Gaming Act (LIGA), MCL 432.301 *et seq*., giving the Michigan Gaming Control Board exclusive jurisdiction over the plaintiff's claims. *Id*. at ___; slip op at 2. On appeal, the Michigan Supreme Court disagreed, concluding that filing a claim with the Michigan Gaming Control Board was permissive rather than mandatory. *Id*. at ___; slip op at 5. However, *Davis* did not involve a state entity and did not address the issue presented here, which is whether a plaintiff must exhaust his or her administrative remedies under the Lottery Act and its related administrative rules when a defendant is the Bureau of State Lottery. *Davis*, therefore, does not control the outcome in this matter.

Plaintiff also contends that because the Big Crush Volcano game does not involve the sale of a traditional lottery ticket, Rule 432.15(3) does not apply. Plaintiff's view is that Rule 432.15(3) was intended to apply only to instant tickets and draw game tickets that can be validated physically. She argues that the language of the rule inherently requires a physical ticket because the remedy outlined in the rule is to replace the disputed ticket with an unplayed ticket. However, the Game Rules for Big Crush Volcano refer several times to the purchase of a "ticket." The online purchase terms and conditions likewise refer to the game plays as "tickets." Plaintiff cites no legal basis for differentiating between a physical ticket and an online ticket in this context. For example, the Commissioner could replace the online ticket by crediting the individual's online account or issuing a refund. Simply put, there is nothing in Rule 432.15(3) that is incompatible with online ticket sales.

Plaintiff also argues that exhaustion of her administrative remedies under Rule 432.15(3) would have been futile. She contends that she attempted to obtain relief through the Lottery Commissioner's customer service system, but relief was denied when a customer service representative told her that she was not "cheated" and advised her to have a nice day. Thus, even if she had to take a further step in the process, exhaustion would have been futile because the Lottery Commissioner's representative made it clear that an administrative appeal would not have been resolved in plaintiff's favor.

"There is a judicially created exception to the exhaustion requirement for cases where appeal to the administrative agency would be futile." *L & L*, 274 Mich App at 358. The evidence attached to the first-amended complaint contradicts plaintiff's argument. Plaintiff included with her first-amended complaint the representative's response to plaintiff's dispute, asking that plaintiff submit the evidence supporting her claim. Nothing in that response suggests that a

decision had been made. Rather, the response demonstrates that the Lottery Commissioner was receptive to considering plaintiff's claim. The response does not support plaintiff's characterization of an administrative appeal as futile. For these reasons, plaintiff was required to exhaust her administrative remedy, as outlined in Rule 432.15(3), before commencing this lawsuit. Because plaintiff abandoned her administrative claim, she did not exhaust her administrative remedies. Defendants are entitled to summary disposition under MCR 2.116(C)(4).

Because the Court concludes that defendants are entitled to summary disposition, plaintiff's motions for sanctions and for a status conference are DENIED AS MOOT.

III. CONCLUSION

For the reasons stated in this Opinion and Order,

IT IS ORDERED that defendants' motion for summary disposition is GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion for sanctions under MCR 1.109(E) is DENIED AS MOOT.

IT IS FURTHER ORDERED that plaintiff's objection to defendants' reply affidavit of Victor Marmorstein is DENIED AS MOOT.

IT IS FURTHER ORDERED that plaintiff's motion for a status conference is DENIED AS MOOT.

IT IS SO ORDERED. This is a final order that resolves the last pending claim and closes the case.

Date: October 15, 2026

Hon. Michael F. Gadola

Chief Judge, Court of Claims