

1 Most of the games require Chuck E. Cheese's tokens which can be purchased for \$.25 per token
2 and offer children a chance to win tickets after the game is finished. Children exchange the
3 tickets they collect during the visit for prizes. Unfortunately, many games found at Chuck E.
4 Cheese's restaurants are illegal gambling devices that require little or no skill and are
5 predominantly games of chance, much like a roulette wheel. With rare exception (none of which
6 exist here), gambling is illegal in California. Plaintiff brings this action on behalf of a class of
7 persons who have played these illegal devices at Chuck E. Cheese's restaurants in California.
8 She seeks restitution from CEC and an injunction prohibiting it from offering these devices to its
9 customers in the future.

Graph

10 **II.**
11 **JURISDICTION AND VENUE**

12 1. Jurisdiction is proper under 28 U.S.C. §1332(d) as the amount in controversy
13 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and at least one member
14 of the plaintiff class is a citizen of a different state than at least one defendant. The state law
15 claim raised herein is subject to this Court's supplemental jurisdiction pursuant to 28 U.S.C. §
16 1367.

17 2. Venue in this district is proper under 28 U.S.C. § 1391 as the CEC transactions at
18 issue emanated from San Diego County, California and CEC is subject to personal jurisdiction in
19 this district.

20 **III.**
21 **PARTIES**

22 3. Plaintiff Denise Keller is and was at all relevant times, a California citizen,
23 domiciled in San Diego, California. She is the mother to two girls, Kylie (3 years old) and
24 Mackenzie (5 years old).

25 4. Defendant CEC Entertainment, Inc. is and was at all relevant times, a Kansas
26 corporation with its principal place of business in Irving, Texas, operating and conducting
27 business throughout California including in San Diego county. It is a publicly-traded corporation
28 whose shares trade on the New York Stock Exchange under the ticker symbol "CEC." It is the
owner and operator of 507 Chuck E. Cheese's restaurants in forty-eight states.

1 description of a few of the illegal games at the Chuck E. Cheese's restaurant at Grossmont
2 Center in La Mesa, California:

3 a) *Thunderation* consists of a vertical spinning wheel with numerous prongs protruding
4 from it. The customer inserts a token at the top of the machine and lets the token drop
5 onto the spinning wheel. The token then randomly bounces off of the spinning prongs
6 until it is eventually dropped into one of the buckets at the bottom of the wheel.
7 Depending on which bucket the token lands in, the customer receives a set number of
8 tickets.

9 b) *Wheel of Fortune* is a coin-pusher machine. The customer deposits a token in a slot
10 near the top of the machine and the token slides down a chute where it rolls and bounces
11 to a resting position on a tray below. The machine has an automated pusher arm that
12 sweeps back and forth on the tray. The tray contains hundreds of other tokens that have
13 piled up near a ledge. Based on where the token lands, there is a possibility that the
14 newly-deposited token will cause the pusher arm to push one or more of the other tokens
15 over the ledge and into a collection tray. The number of tokens that fall into the collection
16 tray determine the amount of tickets the player receives. There is no ability to control or
17 predict whether tokens will fall into the collection tray.

18 c) *Big Bass Wheel* closely resembles the wheel featured on the *Price Is Right* television
19 game show. Customers deposit a token into the game and then turn a crank as fast as
20 they can. The crank spins a large wheel that has numbers printed on it. The customer
21 wins an amount of tickets equal to the number on which the wheel stops. There is no
22 ability to control or predict where the wheel will rest.

23 10. CEC owns, stores, possesses, leases, and permits the operation, placement,
24 maintenance, and keeping of "slot machines" as that term is defined in Penal Code § 330b(d) in
25 violation of Penal Code § 330b(a). While Section 330b(f) provides an exception for games that
26 are "predominantly games of skill," this exception does not apply to many games found at Chuck
27 E. Cheese's restaurants including the games identified above and many others. Unlike many
28 arcade games (e.g. Pac-Man, racing games, Skee-ball, etc.) which require hand-eye coordination,

1 concentration, and physical skill, the outcome of operation of many games at Chuck E. Cheese's
2 is based entirely or predominantly on chance or hazard. In other words, the players have no
3 ability to control the outcome.

4 11. Upon information and belief, the illegal games are highly profitable for CEC
5 because they last only a few seconds and the chance to win dozens of tickets entice children to
6 play repeatedly, much like a casino slot machine. Machine gambling is one of the most addictive
7 forms of gambling. These games are highly addictive, involve rapid-restaking, and encourage
8 the players to chase their losses. Young people are especially vulnerable to the attractions of
9 gambling.

10 12. Gambling addiction is a serious and devastating problem for many adults.
11 According to a recent study by the University of Buffalo's Research Institute on Addiction,
12 problem gambling is more common among adults than alcohol dependence. Children who start
13 gambling early in childhood are at increased risk for developing a gambling problem later in life.
14 Placing illegal gambling devices in arcades ostensibly created for amusement perpetuates
15 confusion between play and dangerous habit-forming activities. The fact that the stakes are
16 relatively low is of no consequence to a child, whose allowance or allotted tokens provided by
17 his parents are at stake on a visit to Chuck E. Cheese's; the games create the same highs and
18 lows experienced by adults who gamble their paychecks or mortgage payment.

19 13. Keller and her children have paid for tokens and played these illegal games on
20 numerous occasions at the Grossmont Center Chuck E. Cheese's. One of the reasons they
21 played these games was for an opportunity to win tickets in order to redeem the tickets for prizes.
22 Keller recently realized that some of the games her children were playing involved little or no
23 skill. Had Keller known that the machines were gambling devices, she would not have
24 exchanged her money for Chuck E. Cheese's token and allowed her children to participate in
25 gambling activities. The prizes that Plaintiff and her children ultimately acquired in exchange
26 for the tickets they received were worth far less than the value of the tokens they inserted into the
27 machines.

1 Defendant's conduct outweighs any utility of such conduct and such conduct offends public
2 policy, is immoral, unscrupulous, unethical, deceitful and offensive, and causes substantial injury
3 to consumers, including Plaintiff and class members. In addition, Defendant's conduct
4 specifically violates public policies tethered to laws that were designed to protect the public
5 welfare against the deleterious effects of gambling.

6 28. Defendant has engaged in "unlawful" business practices by violating California
7 Penal Code §§ 330a and 330b. Defendant's unlawful and unfair acts and practices are ongoing
8 and continue to the date of this filing. Defendant has failed to publicly acknowledge the
9 wrongful nature of its actions and has not corrected its unfair practice.

10 29. As a direct and proximate result of these acts, Plaintiff and the Plaintiff Class
11 have suffered injury in fact and have lost money and property in the form of money that was
12 used to purchase Chuck E. Cheese's tokens. Defendant received and continues to hold monies
13 belonging to Plaintiff and the Class.

14 30. Plaintiff and the Plaintiff Class, pursuant to Bus. & Prof. Code § 17203, seek an
15 order and/or judgment from the Court to enjoin Defendant from engaging in practices which
16 constitute unfair competition and which may be necessary to restore to the Class, all monies
17 wrongfully acquired by defendant by means of such practices, plus interest and attorneys' fees.

18 **SECOND CLAIM FOR RELIEF**
19 **Rescission of Contract**
20 **(Against CEC and DOES 1-10)**

21 31. Plaintiff incorporates by reference each of the preceding allegations as though
22 fully set forth herein.

23 32. Plaintiff and Defendant entered into a contract wherein Plaintiff paid Defendant
24 money for tokens and the opportunity to win tickets at Chuck E. Cheese's restaurants.

25 33. California Civil Code Section 1667 provides that a contract is unlawful if it is
26 contrary to an express provision of law. The contracts were illegal and unenforceable in that
27 they violate California Penal Code §§ 330a and 330b.

28 34. Plaintiff seeks to void the contract and to obtain restitution of all sums paid
thereon.

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THIRD CLAIM FOR RELIEF
Breach of Implied Contract
(Against CEC and DOES 1-10)

35. Plaintiff incorporates by reference each of the preceding allegations as though fully set forth herein.

36. Through the Parties' conduct, an implied contract existed.

37. Defendant charged and unjustifiably retained excessive sums of money from Plaintiff through wrongfully charging Plaintiff for the opportunity to play gambling devices and by promoting gambling to children in order to earn a profit.

38. Defendant was unjustly enriched at Plaintiff's and the Class's expense.

FOURTH CLAIM FOR RELIEF
Declaratory Relief
(Against CEC and DOES 1-10)

39. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

40. An actual, present, and substantial controversy exists between Plaintiff and the Class, on the one hand, and Defendant on the other. Defendant contends that the gaming devices described above are legal. Plaintiff contends that the gaming devices are slot machines and illegal.

41. A declaration as to the respective rights and duties of the parties, pursuant to 28 U.S.C. §§ 2201 and 2202 is necessary and appropriate.

PRAYER

Wherefore, Plaintiff requests judgment in favor of herself and the class and against Defendants, individually and jointly and severally, as follows:

A. A determination that this case may be properly maintained as a class action;

B. A determination that Plaintiff is a proper representative of the class and that Plaintiff's Counsel, Krause, Kalfayan, Benink & Slavens, LLP, are proper counsel on behalf of the class;

C. Equitable and injunctive relief enjoining Defendant from continuing to engage in the acts and practices alleged in this action;

1 D. Damages, restitution and/or disgorgement in an amount to be determined at trial
2 but not less than \$5 million;


3 E. A judicial declaration that the gaming machines are illegal;

4 F. The expenses and disbursements incurred by Plaintiff in connection with this
5 action, including reasonable attorneys' fees as permitted by law; and

6 G. Such other relief as the Court deems just and proper.
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9 Dated: March 29, 2011

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP

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Eric J. Benink, Esq.
Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff Denise Keller hereby demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: March 29, 2011

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP



Eric J. Benink, Esq.
Attorneys for Plaintiff