

IN THE CIRCUIT COURT OF
THE 11th JUDICIAL CIRCUIT IN &
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

LARRY McGUINNESS, : CASE NO. 13-1358 CA-23
Individually & on behalf of :
a class of persons similarly :
situated, :
 :
 :
Plaintiff, :
 :
 :
vs. :
 :
 :
SAN ANTONIO SPURS, LLC, :
 :
 :
Defendant. : **COMPLAINT**
 : **CLASS REPRESENTATION**
_____ /

Plaintiff, individually and on behalf of a class of persons
similarly situated, sues Defendant, and alleges:

A. JURISDICTION AND THE PARTIES

1. This is an action with an aggregate of damages in
excess of \$15,000.00 but each individual claim is for less than
\$75,000.00 exclusive of attorney's fees, costs and interest and
jurisdiction properly lies with this Court.

2. Plaintiff was and is a resident of Miami-Dade County,
Florida and is otherwise sui juris.

3. Defendant was and is a limited liability corporation
which owns the San Antonio Spurs (hereinafter the "Spurs"), a
professional basketball team.

4. This action arises as a result of a course of conduct by
Defendant of intentionally and surreptitiously sending their best

players and/or starters (i.e., Tim Duncan, Tony Parker, Manu Ginobili and Danny Green) home before the Spurs played the Miami Heat on Thursday, November 29, 2012 (hereinafter the "Game") without advising the NBA, the Miami Heat or the 16,000 fans who payed a premium ticket price (unlike lower profile teams, the Spurs command a premium ticket price) to see the Spurs play the Heat.

5. In fact, after the Game, Gregg Popovich, the Spurs Coach who made the decision to secretly send the Spurs' best players home before the Game, admitted that he was aware of the premium ticket price paid by Plaintiff and the Class and the consequences of his actions:

"If I was taking my 6-year-old son or daughter to the game, I would want them to see everybody, and if they weren't there, I'd be disappointed."

6. After the Game, NBA Commissioner David Stern said that Defendant "did a disservice to the league and our fans" noting that NBA teams, like the Spurs, are required to notify the league if a player will not travel because of an injury or for other delineated reasons. In this case, the Spurs' Coach made the decision to send his best players home before the Game even before the NBA season started.

7. As a result of Defendant's actions as described above, Plaintiff and the Class members have suffered economic damages.

8. Defendant's course of conduct as provided above, was an

unfair and deceptive practice which constitutes a violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat., §501.201 et seq., which prohibits unconscionable, unfair, or deceptive acts or practices in the conduct of any trade or commerce.

9. All conditions precedent to the institution of this action have occurred or have been waived.

10. Plaintiff has retained the undersigned counsel and is obligated to pay said counsel a reasonable fee for services rendered herein. Said attorneys fees and costs are awardable pursuant to §501.2105, Fla. Stat., and the rules related to class actions.

B. GENERAL ALLEGATIONS

11. Plaintiff and the Class members purchased premium priced tickets to see the Game.

12. Defendant acted by and through its agents, apparent agents, representatives, and employees each acting in furtherance of Defendant and its interests.

13. Plaintiff and the Class members were unaware (until it was too late) that they had purchased premium priced tickets to see the Game and Defendant's star players but that Defendant had no intention of playing such star players. This all resulted in Plaintiff and the Class paying excessive amounts for the Game where the Game's ticket prices should never have been premium priced.

C. CLASS REPRESENTATION ALLEGATIONS

14. Pursuant to Florida Rule 1.220(a), (b)(1)(A), and (b)(3), Fla.R.Civ.P., Plaintiff brings this action on behalf of himself and all others similarly situated claiming legal remedies against Defendant.

Commonality

15. This cause of action is predicated on Defendant's actions as described above which resulted in 16,000 fans paying excessive amounts for the Game. Because Defendant failed to disclose to anyone that their star players were not going to play in the Game, consumers like Plaintiff and the 16,000 Class members have been harmed and/or damaged.

16. Plaintiff and the Class have suffered damages in a similar, if not identical, manner as a result of Defendant's actions.

17. Plaintiff's claims raises questions of both law and fact that are common to the claims raised by each member of the Class. These include, but are not limited to:

- a. Whether Defendant violated the Florida Deceptive and Unfair Trade Practices Act; and
- b. Whether Defendant's acts and omissions have been the legal cause of the economic damages sustained by Plaintiff and the 16,000 Class members.

The facts in this claim are common to Plaintiff and all of the 16,000 Class members who purchased the premium priced tickets.

Typicality

18. Plaintiff's claims are typical of the claims of the Class members he represents as they have been damaged in the same manner as the Class members. The legal theories asserted by Plaintiff are the same as the legal theories that would be advanced by the Class members he represents.

19. Plaintiff purchased his premium priced tickets for the Game expecting Defendant's star players to play in the Game.

20. Defendant intentionally lured consumers, like Plaintiff and the Class, to buy the premium priced tickets without telling Plaintiff and the Class about its plans to send its star players home before the Game.

21. The facts involving Defendant's legal defenses are similar and its legal defenses are the same.

Class Members

22. This cause of action involves a single Class of persons who suffered economic losses as a result of Defendant's actions.

23. The Class consists of:

All Florida consumers who purchased a premium priced ticket for the Game.

The exact number of the members of the Class is not known, but it is estimated that there are 16,000 members of the Class. The Class is so numerous that joinder of individual members of this action is impracticable.

Adequacy of Representation

24. Plaintiff is an adequate representative of the defined Class and will fairly and adequately protect the interests of all members of the Class. Plaintiff is a member of the Class as identified in ¶23 of this Complaint. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel, experienced in litigation of this type both in State and Federal Courts to handle matters of this nature. There is no hostility of interests between or among Plaintiff and the Class members he seeks to represent. Plaintiff anticipates no difficulty in the management of this litigation as a class action. Plaintiff has no claims that are antagonistic to the claims of the Class Members he seeks to represent.

25. To prosecute this case, Plaintiff has chosen the law firm of McGuinness & Gonzalez, P.A. McGuinness & Gonzalez, P.A. has handled and continue to handles numerous class action cases both in State and Federal Court. In addition to being involved in these types of cases, McGuinness and Gonzalez, P.A. handles other complex litigation matters as well as trials and the firm has the financial and legal resources to meet the substantial costs and legal issues associated with this litigation.

Requirements of Rule 1.220, Fla.R.Civ.P.

26. This action is maintainable under Rule 1.220, Fla.R.Civ.P. As a result of Defendant's wrongful conduct and uniformity of manner of damages and legal issues, a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Individual joinder of each of the members of the class is impractical, if not impossible. The prosecution of separate claims by individual members of the class would create a risk of inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for Defendant. Furthermore, the burden of this Court of handling several thousand individual cases arising from the same nucleus of operative facts would be excessive and burdensome. Individual litigation would also increase the expense of the litigation to all parties and to the Court system. A class action will concentrate all of the litigation in one forum with no unusual manageability problems, particularly whereas here, Defendant's liability and the nature of the class members' damages may be readily proven through common class-wide proofs. Additionally, Defendant has acted on grounds generally applicable to Plaintiff and all of the members of the Class.

27. Individual joinder of each member of the Class is impractical, if not impossible. The prosecution of separate claims by individual members of the Class would create a risk of

inconsistent or varying adjudications concerning individual members of the Class which would establish incompatible standards of conduct for Lexmark.

28. Furthermore, the burden of this Court of handling several thousand individual cases arising from the same nucleus of operative facts would be excessive and burdensome. Individual litigation would also increase the expense of the litigation to all parties and to the Court system. A class action will concentrate all of the litigation in one forum with no unusual manageability problems, particularly whereas here, Defendant's liability and the nature of the Class Members' damages may be readily proven through common class-wide proofs.

29. Defendant acted on grounds generally applicable to Plaintiff and all of the members of the Class, thereby making the relief as requested herein concerning the Class as a whole appropriate.

30. Defendant, its officers, directors, subsidiaries or any other person or other entity related to, affiliated with, or employed by Defendant, are excluded from the indicated class.

31. The damages caused to Plaintiff, as well as the damages of the Class members as defined in the Class definition, was directly and proximately caused by the acts of Defendant or those under the direction, control, and/or supervision of Defendant.

32. As a direct and proximate result of Defendant's acts and/or omissions, Plaintiff and the Class Members have been damaged.

COUNT I
VIOLATION OF THE FLORIDA DECEPTIVE
& UNFAIR TRADE PRACTICES ACT AGAINST DEFENDANT

33. Plaintiff and members of the Class reallege and incorporate by reference ¶¶ 1 through 32 of this Complaint as fully set forth herein, and further allege:

34. Plaintiff has standing to bring this action against Defendant since he is a private individual defined as a consumer by the Florida Deceptive and Unfair Trade Practices Act and as a Florida consumer he purchased a premium priced ticket for the Game.

35. Plaintiff and the Class members' claims are not for personal injuries and/or death.

36. Plaintiff's and the Class members' purchases of premium priced tickets for the Game were consumer transactions within the definition of the Florida Deceptive and Unfair Trade Practices Act.

37. Defendant by and through its employees and/or agents, unfairly earned income based on the NBA's revenue sharing requirements from Plaintiff's and the Class members' purchases of the premium priced tickets. Such purchases were consumer transactions within the definition of the Florida Deceptive and

Unfair Trade Practices Act and as a result Plaintiff and the Class members have suffered economic damages.

38. Defendant's practices, actions, and/or omissions with Plaintiff and the Class members as to the purchase of the premium priced tickets were misleading, deceptive, and/or unfair and contrary to and in violation of Chapter 501 Part II of the Florida Statutes.

39. Plaintiff and the Class members have suffered damages due to Defendant's violations of the Florida Deceptive & Unfair Trade Practices Act since they did not receive the benefit of the bargain.

40. Plaintiff and members of the Class have been required to obtain the legal services of the undersigned attorneys and as such request reasonable attorney's fees pursuant to §501.2105, Fla. Stat., and the rules relating to attorney's fees in class actions.

WHEREFORE, Plaintiff and the Class respectfully request a judgment certifying this matter as a class action, judgment for allowable damages, taxable costs, prejudgment interest, attorney's fees pursuant to §501.2105, Fla. Stat., and any other relief this Court deems just and proper against Lexmark.

DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of all Class members,
demands a trial by jury on all issues triable as of right by a
jury.

Respectfully submitted,

McGUINNESS & GONZALEZ, P.A.
Counsel for Plaintiff
1627 S.W. 37th Ave., Suite 100
Miami, Florida 33145
Ph. No. (305) 448-9557
Fax No. (305) 448-9559
ljmpalaw@comcast.net

BY: /s/ Lawrence J. McGuinness
LAWRENCE J. McGUINNESS
Fla. Bar No. 814611