

BRYAN CAVE LEIGHTON PAISNER
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2388

BRYAN CAVE LEIGHTON PAISNER LLP

Simren K. Gill (California Bar No. 318288)

simren.gill@bclplaw.com

120 Broadway, Suite 300

Santa Monica, California 90401-2386

Telephone: (310) 576-2100

Facsimile: (310) 576-2200

Darci Madden (*Pro Hac Vice Application to Be Submitted*)

dfmadden@bryancave.com

Emma Cormier (*Pro Hac Vice Application to Be Submitted*)

emma.cormier@bryancave.com

BRYAN CAVE LEIGHTON PAISNER LLP

One Metropolitan Square

211 North Broadway, Suite 3600

St. Louis, MO 63102

Telephone: (314) 259-2000

Facsimile: (314) 259-2020

Attorneys for Defendants CROW VOTE LLC,
DARRIN AUSTIN, and EDWARD MATNEY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

BRIDGET WARD and LISA WARD,
on behalf of themselves and all persons
similarly situated,

Plaintiff,

v.

CROW VOTE LLC, DARRIN
AUSTIN, EDWARD MATNEY, and
DOES 1 through 100 inclusive,

Defendants.

Case No.

(OCSC Case No. 30-2021-01196152-
CU-BT-CXC)

**DEFENDANTS NOTICE OF
REMOVAL PURSUANT TO 28
U.S.C. §§ 1331, 1332(d), 1367(a) AND
1441(a)**

1 **TO THE HONORABLE JUDGES OF THE UNITED STATES**
2 **DISTRICT COURT, FOR THE CENTRAL DISTRICT OF CALIFORNIA,**
3 **AND TO PLAINTIFFS BRIDGET WARD AND LISA WARD, AND THEIR**
4 **ATTORNEYS OF RECORD:**

5 **PLEASE TAKE NOTICE** that Defendants Crow Vote LLC (“Crow Vote”), Darrin Austin,
6 and Edward Matney (collectively “Defendants”) appear before this court in a special and limited
7 capacity to file this Notice of Removal from the Orange County Superior Court, State of California,
8 to the United States District Court for the Central District of California, Southern Division, pursuant
9 to 28 U.S.C. §§ 1331, 1332(d), 1367(a) and 1441(a). By appearing and filing this Notice of
10 Removal, Defendants do not waive: (i) objections to the personal jurisdiction of this Court over this
11 dispute; (ii) to this District being the appropriate venue for this action; or (iii) any substantive
12 arguments on the merits of the allegations asserted by Plaintiffs. Recitation of Plaintiffs’ allegations
13 in this Notice are not intended to be, and shall not be deemed to be, and admission thereto.

14 **I. BACKGROUND**

15 1. On April 16, 2021, Plaintiffs Bridget Ward and Lisa Ward (collectively
16 “Plaintiffs”) filed a Complaint (the “Complaint”) in the Orange County Superior Court of
17 California, titled *Ward v. Crow Vote LLC*, No. 30-2021-01196152-CU-BT-CXC (Super. Ct.
18 Orange County, April 16, 2021). *See* Compl. (**Exhibit A**).

19 2. The Complaint alleges a violation of California’s laws against unfair competition
20 and violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 USC §§
21 1961 *et seq.* Compl. ¶¶ 15-16, 66.

22 3. Plaintiffs allege that on or around February of 2021, Defendants conducted,
23 financed, managed, supervised, directed and/or owned an online contest for “Favorite Chef,” with
24 the winner receiving cash and non-cash prizes. Compl. ¶¶ 17, 26.

25 4. Plaintiffs allege that voters could cast one free vote per day with a Facebook
26 account, and then pay for additional votes (“Hero Votes”) in order to help their favorite chef win
27 the contest. Compl. ¶¶ 17, 27-30.

28 5. Plaintiffs allege that they paid for multiple “Hero Votes” to cast additional votes for

1 a third party, Curtis Ward, in the hope that he would win the contest. Compl. ¶¶ 38-51.

2 6. Plaintiffs allege that Defendants' involvement in the "Favorite Chef" contest
3 constituted an "illegal gambling business" in violation of the federal Racketeer Influenced and
4 Corrupt Organizations Act, 18 U.S.C. § 1961, *et. seq.* ("RICO"). Compl. ¶¶ 67-69. Plaintiffs also
5 allege that the "Favorite Chef" contest amounted to an illegal lottery under California law. Compl.
6 ¶¶ 54-57.

7 7. Based on the allegations set forth above, Plaintiffs bring claims for violation of
8 federal RICO and California law. Compl. ¶¶ 14-83.

9 8. Plaintiffs purport to bring these claims on their own behalf as well as on behalf of a
10 nationwide class of "[a]ll persons residing in the United States who, on or after February 16, 2021,
11 paid for 'Hero Votes' for contestants participating in the Favorite Chef contest." Compl. ¶¶ 7, 14-
12 83.

13 9. Plaintiffs also purport to bring these claims on their own behalf as well as on behalf
14 of a California statewide class of "[a]ll persons residing in California who, on or after February 16,
15 2021, paid for 'Hero Votes' for contestants participating in the Favorite Chef contest." Compl. ¶¶
16 8, 14-83.

17 **II. NOTICE OF REMOVAL IS TIMELY**

18 11. Counsel for Defendants Crow Vote and Darrin Austin accepted service of a
19 summons and a copy of the Complaint on June 2, 2021. *See* Declaration of Darci Madden
20 (**Exhibit B**). Counsel for Defendant Edward Matney accepted service on June 18, 2021. (*Id.*)
21 Accordingly, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

22 **III. REMOVAL IS PROPER PURSUANT TO 28 U.S.C. §§ 1331 AND 1367(a)**

23 12. Removal of Plaintiffs' Second Cause of Action for Violations of RICO 18 U.S.C. §
24 1961(c), Operation of an Enterprise Through Racketeering Activity or Through Collection of
25 Unlawful Debt ("RICO Claim") is proper under 28 U.S.C. §1441(a) because this Court has
26 original jurisdiction over this matter that alleges a federal question pursuant to 28 U.S.C. §1331.

27 13. "The district courts shall have original jurisdiction of all civil actions arising under
28 the Constitution, laws, or treaties of the United States." 28 U.S.C. §1331.

14. Plaintiffs' RICO Claim is brought under the laws of the United States because Plaintiffs seek redress for an alleged violation of the federal RICO statute. *See* 18 USC §§ 1961 *et seq.*

15. While the Supreme Court, in *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990), found that States have concurrent jurisdiction over civil RICO cases, this concurrent jurisdiction does not prohibit removal of RICO cases based on federal question jurisdiction. *See Weisman v. Fribush*, 911 F.2d 726 (4th Cir. 1990); *Lichtebberger v. Prudential-Bache Securities, Inc.*, 737 F.Supp. 43, (S.D. Tex. 1990).

15. Removal of Plaintiffs' First Cause of Action for the Violation of the Unfair Competition Law ("Unfair Competition Claim") is proper under 28 U.S.C. §1441(a) because this Court has supplemental jurisdiction over the matter pursuant to 28 U.S.C. §1367(a).

16. "[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. §1367(a).

17. The Supreme Court has clarified that when a state and federal claim arise from the "same nucleus of operative fact" then the district court will have supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. 1367(a). *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 728 (1966).

18. Plaintiffs' federal RICO Claim and California Unfair Competition Claim both arise from the same nucleus of operative fact, that being Plaintiffs' payment of monies to cast votes in the "Favorite Chef" contest. *See* Compl. (**Exhibit A**).

IV. REMOVAL IS ALSO PROPER PURSUANT TO CLASS ACTION FAIRNESS ACT OF 2005

19. This Court also has original jurisdiction over this action under 28 U.S.C. § 1332(d). Under the Class Action Fairness Act ("CAFA"), federal district courts have original jurisdiction when: (1) the putative class consists of at least 100 members; (2) the citizenship of at least one proposed member of the class is different from that of any defendant; and (3) the aggregated

1 amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d).

2 **A. There Are More Than 100 Putative Class Members**

3 20. Plaintiffs purport to represent a nationwide class of “[a]ll persons residing in the
4 United States who, on or after February 16, 2021, paid for ‘Hero Votes’ for contestants
5 participating in the Favorite Chef contest,” and a statewide class of “[a]ll persons residing in
6 California who, on or after February 16, 2021, paid for ‘Hero Votes’ for contestants participating
7 in the Favorite Chef contest.” Compl. ¶¶ 7-8.

8 21. Plaintiffs allege that the classes it represents are composed of “at least 1,000
9 persons.” Compl. ¶ 9.

10 22. Based solely on Plaintiff’s allegations, there are more than 100 putative class
11 members.

12 **B. Minimal Diversity Exists Among the Parties**

13 23. The Complaint states that at the time this lawsuit was filed, Plaintiff Bridget Ward
14 was a citizen of California, and Plaintiff Lisa Ward was a citizen of Illinois. *See* Compl. ¶ 1.

15 24. At the time this lawsuit was filed and at all times since, Defendant Crow Vote was
16 and has been a limited liability company (“LLC”) organized under the laws of Arizona and
17 operating its principal place of business in the state of Arizona. Compl. ¶ 2. A LLC is considered
18 an “unincorporated association” for purposes of determining citizenship in CAFA cases. *See*
19 *Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 699–700 (4th Cir. 2010); *Ramirez v.*
20 *Carefusion Res., LLC*, No. 18-CV-2852-BEN-MSB, 2019 WL 2897902, at *2 (S.D. Cal. July 5,
21 2019). Under CAFA, an “unincorporated association” is a citizen of “the State where it has its
22 principal place of business and the State under whose laws it is organized.” 28 U.S.C. §
23 1332(d)(10). Therefore, at the time this action was filed and at all times since, Defendant Crow
24 Vote has been a citizen of Arizona.

25 25. At the time this lawsuit was filed and at all times since, Defendant Darrin Austin
26 was and has been a citizen of Arizona. Compl. ¶ 3.

27 26. At the time this lawsuit was filed and at all times since, Defendant Edward Matney
28 was and has been a citizen of Arizona. Compl. ¶ 4.

27. CAFA jurisdiction requires only *minimal* diversity, meaning “any member of a class of plaintiffs is a citizen of a State different from *any* defendant.” 28 U.S.C. § 1332(d)(2)(A) (emphasis added). Because Plaintiffs are citizens of California and Illinois, and Defendants are all citizens of Arizona, minimal diversity exists among the parties.

C. The Amount in Controversy Exceeds \$5 Million in the Aggregate

28. Under 28 U.S.C. § 1332(d)(2), an action is removable under CAFA when “the matter in controversy exceeds the sum or value of \$5,000,000.” To determine whether the matter in controversy exceeds the sum or value of \$5,000,000, “the claims of the individual class members shall be aggregated.” 28 U.S.C. § 1332(d)(6).

29. Under CAFA, the amount in controversy is determined by the amount at stake in the underlying litigation. *Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir. 2020). “‘Amount at stake’ does not mean likely or probable liability; rather, it refers to possible liability.” *Id.*

30. Plaintiffs seek compensatory damages “not to be less than the amount paid by Plaintiffs and each Class Member.” Compl. Prayer for Relief, ¶ 7. Plaintiffs request that their compensatory damages be trebled pursuant to 18 U.S.C. § 1964 (c). Compl. Prayer for Relief, ¶ 8.

31. In addition to compensatory damages, Plaintiffs request punitive damages and attorney’s fees. *See* Compl. Prayer for Relief, ¶¶ 9-10.

32. Because the putative class members consist of any voter who paid to cast a “Hero Vote,” and because Plaintiffs allege damages based on the amount paid by voters, the measure of damages for purposes of the CAFA amount in controversy determination is based on the “Hero Vote” revenue collected by Crow Vote in connection with the “Favorite Chef” contest. The “Hero Vote” revenue exceeded \$1,670,000. If this amount were trebled, as Plaintiffs demand, the alleged damages would exceed \$5,000,000.¹ Coupled with Plaintiffs’ request for punitive damages and attorney’s fees, possible damages sought by Plaintiffs exceed the \$5,000,000 minimum

¹ Defendants dispute that Plaintiffs are entitled to any relief, but because \$1,670,000 multiplied by three is \$5,010,000, more than \$5 million is at issue.

1 threshold.

2 33. Therefore, the amount-in-controversy requirement is satisfied because more than
3 \$5,000,000 is possibly at issue.

4 **V. COMPLIANCE WITH REMOVAL PROCEDURES**

5 34. Subject to Defendants' right to compel Plaintiffs to arbitrate this dispute as
6 provided in the underlying terms and conditions to which the Plaintiffs agreed, which right is
7 hereby expressly reserved, venue is technically proper in this Court under 28 U.S.C. § 1441(a)
8 because the removed action was filed in the Orange County, California, Superior Court, a court
9 encompassed by the United States District Court for the Central District of California, Southern
10 Division.

11 35. Pursuant to 28 U.S.C. § 1446(a) copies of all process, pleadings, orders, and other
12 documents on file in the state court are attached as **Exhibit C**.

13 36. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of the Notice of
14 Removal will be promptly served on the attorneys for Plaintiffs, and a copy will be promptly filed
15 with the Clerk of the Orange County, California, Superior Court.

16 37. Defendants reserve the right to amend or supplement this Notice of Removal, and
17 reserve all rights and defenses, including those available under Federal Rule of Civil Procedure 12.
18 Defendants reserve all objections, including Defendants' objection to venue and personal
19 jurisdiction.

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1 WHEREFORE, Defendants respectfully remove this action from the Orange County,
2 California, Superior Court, to the United States District Court for the Central District of
3 California, Southern Division.

4
5 Dated: June 24, 2021

Simren K. Gill
Darci F. Madden
Emma R. Cormier
BRYAN CAVE LEIGHTON PAISNER LLP

6
7
8 By: /s/ Simren K. Gill
9 Simren K. Gill
10 Attorneys for Defendants
11 CROW VOTE LLC, DARRIN AUSTIN, and
12 EDWARD MATNEY
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BRYAN CAVE LEIGHTON PAISNER
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2388

EXHIBIT A

LAKESHORE LAW CENTER
Jeffrey Wilens, Esq. (State Bar No. 120371)
Macy Wilens, Esq. (State Bar No. 328204)
18340 Yorba Linda Blvd., Suite 107-610
Yorba Linda, CA 92886
714-854-7205
714-854-7206 (fax)
jeff@lakeshorelaw.org
macywilens@lakeshorelaw.org

THE SPENCER LAW FIRM
Jeffrey P. Spencer, Esq. (State Bar No. 182440)
2 Venture, Suite 220
Irvine, CA 92618
949-240-8595
949-377-3272 (fax)
ips@spencerlaw.net

Attorneys for Plaintiffs

ORANGE COUNTY SUPERIOR COURT, STATE OF CALIFORNIA
(Unlimited Civil), Civil Complex Center
751 West Santa Ana, Blvd., Santa Ana, California 92701

BRIDGET WARD and LISA WARD,) Case No. **30-2021-01196152-CU-BT-CXC**
on behalf of themselves and all)
persons similarly situated,)

) Assigned for all Purposes

Plaintiffs,) CLASS ACTION Judge Randall J. Sherman

v.) CX-105

CROW VOTE LLC, DARRIN AUSTIN,) **COMPLAINT FOR**
EDWARD MATNEY, and Does 1) **1. Violation of Unfair Competition Law**
through 100 inclusive) **(Business & Professions Code § 17200**
Defendants.) **et. seq.)**
) **1. Violation of Rocketeer Influenced**
) **and Corrupt Organization Act of 1970**
) **(“RICO”), 18 U.S.C. § 1961**

Plaintiffs allege as follows:

PARTIES

- 1
2 1. Plaintiffs BRIDGET WARD and LISA WARD, individuals, bring this action on behalf
3 of themselves, and on behalf of a class of similarly situated persons pursuant to Code
4 of Civil Procedure § 382. Plaintiff BRIDGET WARD is a citizen of the state of
5 California and a competent adult. Plaintiff LISA WARD is a citizen of the state of
6 Illinois and a competent adult.
- 7 2. Plaintiffs are informed and believe, and thereupon allege, that Defendant Crow Vote,
8 LLC is now, and at all times mentioned in this Complaint, a limited liability company
9 that is a citizen of the State of Arizona.
- 10 3. Plaintiffs are informed and believe, and thereupon allege, that Defendant Darrin
11 Austin is now, and at all times mentioned in this Complaint, an individual that is a
12 citizen of the State of Arizona.
- 13 4. Plaintiffs are informed and believe, and thereupon allege, that Defendant Edward
14 Matney is now, and at all times mentioned in this Complaint, an individual that is a
15 citizen of the state of Arizona.
- 16 5. Plaintiffs do not know the true names or capacities of the Defendants sued herein as
17 DOES 1 through 100 inclusive, and therefore sue these Defendants by such fictitious
18 names. Plaintiffs will amend this complaint to allege their true names and capacities
19 when ascertained. Plaintiffs are informed and believe, and thereon allege, that each
20 of these fictitiously named Defendants is responsible in some manner for the
21 occurrences herein alleged, and that Plaintiffs' damages as herein alleged were
22 proximately caused by those Defendants. Each reference in this complaint to
23 "Defendant" or "Defendants" or to a specifically named Defendant refers also to all
24 Defendants sued under fictitious names.
- 25 6. Plaintiffs are informed and believe, and thereon allege, that at all times herein
26 mentioned each of the Defendants, including all Defendants sued under fictitious
27 names, and each of the persons who are not parties to this action but are identified by
28

1 name or otherwise throughout this complaint, was the alter ego of each of the
2 remaining Defendants, was the successor in interest or predecessor in interest, and
3 was the agent and employee of each of the remaining Defendants and in doing the
4 things herein alleged was acting within the course and scope of this agency and
5 employment.

6 **CLASS ALLEGATIONS**

- 7
8 7. Plaintiffs are members of a class of persons, the members of which are similarly
9 situated to each other member of that class. The class is defined as follows:

10 All persons residing in the United States who, on or after
11 February 16, 2021, paid for “Hero Votes” for contestants
12 participating in the Favorite Chef contest.

- 13 8. Plaintiff Bridget Ward is a member of a subclass of persons, the members of which are
14 similarly situated to each other member of that class. The subclass is defined as
15 follows:

16 All persons residing in California who, on or after February
17 16, 2021, paid for “Hero Votes” for contestants participating
18 in the Favorite Chef contest.

- 19 9. Plaintiffs are informed and believe, and thereupon allege, that the classes Plaintiffs
20 represent includes at least 1,000 persons who paid for votes to help contestants
21 participating in the “Favorite Chef” contest win the “Grand Prize” during the
22 aforementioned time frame.

- 23 10. The identity of the members of the classes is ascertainable from Defendants own
24 business records or those of its agents.

- 25 11. The Plaintiffs’ and class members’ claims against Defendants involve questions of law
26 or fact common to the class that are substantially similar and predominate over
27 questions affecting individual class members in that all class paid for votes for to help
28 contestants win Defendants’ “Favorite Chef” contest. The questionable legality of

1 paying for votes to win a prize and the deceptive nature of disclosures or omission
2 associated with the purchase of these votes can be adjudicated on a class-wide basis.

3 12. The claims of Plaintiffs are typical of the claims of the members of the classes.

4 13. Plaintiffs can fairly and adequately represent the interests of the classes.

5 **FIRST CAUSE OF ACTION FOR VIOLATION OF THE UNFAIR**
6 **COMPETITION LAW AGAINST ALL DEFENDANTS (BROUGHT AS**
7 **INDIVIDUAL ACTION AND CLASS ACTION)**
8

9 14. Plaintiffs incorporate in this cause of action the allegations contained in paragraphs 1
10 through 13, inclusive.

11 15. The Unfair Competition Law prohibits any person from engaging in unfair
12 competition as that term is defined in Business and Professions Code § 17200, which
13 includes any “unlawful, unfair or fraudulent business act or practice,” “unfair,
14 deceptive, untrue or misleading advertising,” and any act prohibited by Chapter 1
15 (commencing with section 17500) of Part 3 of Division 7 of the Business and
16 Professions Code.

17 16. During the relevant time frame, Defendants engaged in unlawful and deceptive
18 business conduct as set forth below with respect to the Plaintiffs and the Class
19 Members.

20 17. During the Class Period, Defendants conducted, financed, managed, supervised,
21 directed, and owned all or some of a business they called the Favorite Chef contest.
22 Labeling this as an “online competition,” Defendants stated on the contest’s website
23 home page “Chefs from around the globe are invited to compete in an exclusive online
24 competition...”

25 18. Defendant Crow Vote LLC identified its business type as “online social crowd voting”
26 to the Arizona Corporation Commission.

27 19. Plaintiffs are informed and believe and thereupon allege that Defendant Darrin Austin
28

1 owns and created Defendant Crow Vote LLC.

2 20. Plaintiffs are informed and believe and thereupon allege that Defendant Darrin
3 Austin, created Defendant Crow Vote LLC solely to run this contest and other similar
4 online contests.

5 21. Plaintiffs are informed and believe and thereupon allege that Defendant Darrin Austin
6 completely controlled the operations of Defendant Crow Vote LLC, established all
7 policies and practices, and created and implemented the scheme described in the
8 lawsuit, although he was assisted by a number of other persons in the management
9 and operation of the Favorite Chef contest.

10 22. Plaintiffs are informed and believe and thereupon allege that Defendant Edward
11 Matney promoted the contest. On the home page of the contest site and on other press
12 releases about the competition, it was claimed that “Legendary chef and TV
13 personality Edward Matney will be hosting the competition and guiding chefs through
14 each round of voting while offering insight and cooking inspiration along the way.”

15 23. Plaintiffs are informed and believe that Defendant Edward Matney was paid a
16 percentage of the revenue generated by the contest for “hosting” and promoting it.

17 24. Although the promotional advertising spoke of the winner being declared the “World’s
18 Favorite Chef,” this was not an objective or even subjective test of cooking skills as can
19 be seen on various television programs. There were no persons observing cooking
20 skills, tasting the food, or assessing the skill and efficiency by which the food was
21 prepared.

22 25. Instead, this was a cleverly designed lottery, where the winner was the person who had
23 the most money spent on his behalf.

24 26. To participate in this contest, anyone simply needed to create a profile on the Favorite
25 Chef sponsored website. They could also advertise themselves on Instagram, Twitter,
26 Tik Tok, etc. and ask other persons to go to the Favorite Chef profile page to vote for
27 them. On the profile page, anyone could “vote” for the individual. Whomever obtained
28

the most votes at the end of each round of voting would proceed to the next round, ultimately resulting in the competitor with the most votes winning the “competition” and receiving the title of “the World’s Favorite Chef,” \$50,000 in cash, and a two-page advertisement spread in Bon Appétit magazine announcing their victory.

27. Members of the public could cast one vote for free once a day, although they were required to have a Facebook account to do that.

FREE VOTE

In order to verify you are a real person, please login to Facebook to vote for Korby Benoit.

LOGIN TO FACEBOOK ([HTTPS://FAVCHEF.COM/CONNECT/FACEBOOK/KORBY-BENOIT](https://favchef.com/connect/facebook/korby-benoit))

28. Where Favorite Chef deviated from a routine “popularity contest,” was by encouraging, if not requiring, contestants to pay real money for a realistic chance of winning.

29. Specifically, members of the public were permitted to spend money to purchase “extra votes” for the contestant of their choice and that includes members of the contestant’s own family or friends, even though the contestant could not directly purchase votes. Defendants referred to this option as casting “Hero Votes,” although doing so was plainly more mercenary than heroic.

30. Under this scheme, the contestant’s allies could select a certain option on the website and designate how much money they wanted to spend to buy votes. The required minimum was \$10 and in exchange the allies would be given either one or two votes per dollar spent (the conversion ratio changed during the contest).

31. In order to soften the mercenary image, Defendants’ website used this language right below the button to purchase the Hero Votes: “Purchase votes benefiting Feeding America.” Feeding America is a fairly well-known charity.

32. When the allies clicked on the website to purchase Hero Votes, they were directed to another web page where they could enter an amount to spend. The minimum required was \$10. Near the box used to specify the payment amount, the text suggested “Help (the name of the participant) become the Favorite Chef and a portion of the proceeds will be donated to Feeding America...”

33. After the allies entered the amount that they wanted to spend and clicked continue, the individuals were taken to another page where they could designate the payment method. On the left-hand bottom corner of the payment page, and in small letters, the following disclosure was made using an exemplar name and amount:

You are purchasing 10.00 votes for Josh Axelband and your card will be charged \$10.00.00 USD. You will have an opportunity on the receipt page to type a message to the competitor.

Your purchase helps us provide the prize, run the competition, and donate a minimum of 25% of the proceeds to Feeding America®. Please review our terms (/terms) for additional information.

34. Although the text claimed a “minimum of 25%” of the payment would go to Feeding America, in the fine print of the “terms and conditions,” disclosed on a different web page, Defendants acknowledged that: “At the end of the Competition, the Sponsor in its separate and sole capacity will be donating 25% of its proceeds earned from votes purchased to “Feeding America”, a not-for-profit 501(c)(3) organization [sic] working to connect people with food and end hunger. THIS DOES NOT AMOUNT TO A DONATION BY VOTERS IN ANY WAY, SHAPE OR FORM.”

35. Plaintiffs are informed and believe and thereupon allege that Defendants’ “proceeds” earned were considerably less than the amount of money paid by persons to cast Hero Votes. In other words, the charity did not actually receive 25% of all money paid to Defendants to buy votes.

36. Defendants may assert that there are various “terms and conditions,” “rules,” and privacy policy” that governed the Favorite Chef contest. However, during the voting and payment process, the allies were not required to read any of that material, nor was

1 it directly visible on the pages accessed by the allies. Plaintiffs are informed and believe
2 and thereupon allege that the terms, rules and policy constituted at least 20 pages of
3 dense single-spaced text.

4 37. Although Defendants own terms and conditions prohibited anyone not of “Eligible
5 Age” from either casting a “Free Vote” or “Hero Vote,” there was no specification what
6 that age was, nor did Defendants require the persons purchasing votes to disclose their
7 age. Plaintiffs are informed and believe and thereupon allege that numerous members
8 of the public under the age of 18 paid for votes.

9 38. Curtis Ward, a home chef, was enticed by the cash prize and the valuable magazine
10 spread. He wanted to win the competition, so he could purchase a food truck, start his
11 own business, and spend more time cooking and baking with his children.

12 39. Curtis Ward requested his friends and family to cast free votes and pay for “Hero
13 Votes” to have any chance at winning.

14 40. Plaintiff Lisa Ward is the sister of Curtis Ward.

15 41. Plaintiff Bridget Ward is Curtis Ward’s wife.

16 42. On February 21, 2021, Plaintiff Lisa Ward paid \$10.00 to purchase 10 votes for Curtis
17 Ward.

18 43. On February 22, 2021, Plaintiff Lisa Ward paid \$10.00 to purchase 10 votes for Curtis
19 Ward.

20 44. On February 24, 2021, Plaintiff Lisa Ward paid \$20.00 to purchase 20 votes for Curtis
21 Ward.

22 45. On March 3, 2021, Plaintiff Lisa Ward paid \$40.00 to purchase 40 votes for Curtis
23 Ward.

24 46. On March 10, 2021, Plaintiff Lisa Ward paid \$20.00 to purchase 20 votes for Curtis
25 Ward.

26 47. On March 11, 2021, Plaintiff Lisa Ward paid \$50.00 to purchase 50 votes for Curtis
27
28

1 Ward.

2 48. On March 18, 2021, Plaintiff Lisa Ward paid \$100.00 to purchase 200 votes for Curtis
3 Ward.

4 49. On March 18, 2021, Plaintiff Lisa Ward paid \$100.00 to purchase 200 votes for Curtis
5 Ward.

6 50. On March 21, 2021, Plaintiff Lisa Ward paid \$40.00 to purchase 40 votes for Curtis
7 Ward.

8 51. In February and March of 2021, Plaintiff Bridget Ward paid \$120.00 to purchase 120
9 votes for Curtis Ward.

10 52. Similarly, during the class period, hundreds or thousands of persons also paid at least
11 \$10 each, and some paid considerably more, to purchase votes for allied participants.

12 53. A private plaintiff may bring an action under §§ 17200 and 17204 to redress any
13 unlawful business practice, including an unlawful practice that does not otherwise
14 permit a private right of action, such as a criminal statute.

15 54. Based on the language of “online competition”, Defendants classified Favorite Chef as
16 a contest. A contest is defined in Cal. Bus. & Prof. Code § 17539.3 (e) as “any game,
17 contest, puzzle, scheme, or plan that holds out or offers to prospective participants the
18 opportunity to receive or compete for gifts, prizes, or gratuities as determined by skill
19 or any combination of chance and skill and that is, or in whole or in part may be,
20 conditioned upon the payment of consideration.”

21 55. However, Defendants were actually operating an unlawful lottery/sweepstake in
22 violation of California Penal Code Section § 319 as well as in violation of the law of
23 other states. A “lottery” is defined by Penal Code section 319 as “any scheme for the
24 disposal or distribution of property by chance, among persons who have paid or
25 promised to pay any valuable consideration for the chance of obtaining such property
26 or a portion of it, or for any share or any interest in such property, upon any
27

28

1 agreement, understanding, or expectation that it is to be distributed or disposed of by
 2 lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name
 3 the same may be known.” The operation of a lottery is a misdemeanor. (Penal Code
 4 § 320.)

5 56. Three elements must be present to constitute a lottery: (1) a prize, (2) distribution by
 6 chance, and (3) consideration. The Favorite Chef contest was a lottery because it was
 7 a scheme to award (distribute) a valuable prize among persons who have paid to have
 8 a chance of winning the prize, even though the contestants had third parties pay
 9 money to improve their chances of winning the prize. For the reasons stated above, it
 10 is pure chance, as opposed to skill regarding who will win the “Grand Prize”. The more
 11 money someone spent, the more votes they could cast on behalf of the contestant of
 12 their choice and therefore the more likely the contestant was to win the prizes.
 13 Theoretically, it was possible for someone with no cooking skill at all to win simply by
 14 having others spend the most money to obtain the most votes. While the rules
 15 prohibited participants from voting for themselves, participants were permitted, if not
 16 encouraged, to solicit friends and family to pay for votes. Although the free vote
 17 required a Facebook account, the paid votes just required a name and payment
 18 information. Under California law, what constitutes valuable consideration is to be
 19 determined from the standpoint of the persons who might win the prize, not from the
 20 standpoint of those who are conducting the event. From the voters’ perspective, all
 21 the money they paid was to help the participants win the “Grand Prize”.

22 57. Even if Defendants were operating a legal contest or sweepstakes; Defendants violated
 23 provisions of Cal. Bus. & Prof. Code § 17539.1 (a) including but not limited to:

- 24 • Subdivision (1) by failing to disclose the total number of contestants anticipated
 25 based on prior experience. Defendants have operated at least five other “online
 26 competitions” that had the same rules and policies, but just had different
 27 themes. Based on that experience, Defendants would have been able to
 28

1 estimate the total number of contestants anticipated.

- 2 • Subdivision (4) by misrepresenting in any manner, the rules, terms, or
- 3 conditions of participation in a contest. Defendants misrepresented the
- 4 amount of money that would be donated to “Feed America” based on the “Hero
- 5 Votes”. Defendants misrepresented how the money collected from the “Hero
- 6 Votes” would be distributed as a whole. The terms and conditions did not
- 7 disclose the name and address of the Sponsor of the promotion.
- 8 • Subdivision (6) by failing to clearly and conspicuously disclose the exact nature
- 9 and approximate value of the prizes when offered. Defendants advertise the
- 10 “Grand Prize” as \$50,000.00 and a two-page advertisement spread in Bon
- 11 Appetit magazine. In Defendants’ Rules it stated the “Grand Prize” is
- 12 \$65,000.00, which was divided as \$50,000.00 in cash and that the two-page
- 13 advertisement spread was worth \$15,000.00. However, this information was
- 14 not clearly and conspicuously disclosed.

15 58. Although attorneys or other experts are able to determine that this cleverly designed
 16 scheme was an illegal lottery, Plaintiffs did not know that at the times they spent the
 17 money nor did members of the public, and specifically the class members, likely did
 18 not know that as well.

19 59. As a proximate result of the violations of the UCL as set forth above, Plaintiffs suffered
 20 injury in fact and sustained monetary loss in terms of the amount of money paid for
 21 “Hero Votes.”

22 60. Pursuant to Business and Professions Code § 17203 and § 17204, Plaintiffs are
 23 empowered to compel Defendants to restore to Plaintiffs and the class members the
 24 money or property that Defendants acquired as a result of the aforementioned acts
 25 which constituted unfair competition.

26 61. The conduct of Defendants will continue to harm the general public unless it is
 27 enjoined. Defendants continue to deceptively induce the public to pay for votes for
 28

1 “online competitions” that are essentially a lottery.

2 **SECOND CAUSE OF ACTION FOR VIOLATIONS OF RICO, 18 U.S.C. § 1961**

3 **(c), OPERATION OF AN ENTERPRISE THROUGH RACKETEERING**
4 **ACTIVITY OR THROUGH COLLECTION OF UNLAWFUL DEBT AGAINST**
5 **ALL DEFENDANTS (BROUGHT AS AN INDIVIDUAL ACTION AND**
6 **CLASS ACTION) BY PLAINTIFFS**

7
8 62. Plaintiffs incorporate in this cause of action the allegations contained in paragraphs 1
9 through 61 inclusive.

10 63. During the class period each of the Defendants was a “RICO PERSON” and was
11 organized and associated with each other in an “association in fact” that constituted a
12 RICO enterprise as that term is defined in 18 U.S.C. § 1961 (4). Defendants were
13 associated together for the common purpose of inducing the public to pay for votes for
14 an “online competition” for their mutual profit.

15 64. This association had a distinct division of labor and was and is organized and
16 maintained by and through a consensual hierarchy of partners, managers, directors,
17 officers, supervisors, and/or representatives from all RICO PERSONS that formulated
18 and implemented policies relative to the advertising and marketing of services to the
19 general public. It continued as a unit, with a core membership, over a substantial
20 period of time and was an ongoing organization established for an economic motive.
21 The association in fact remains viable and active at the time of filing of this Complaint.

22 65. The aforementioned enterprise engaged in or affected interstate commerce by using
23 the interstate telephone networks and Internet, interstate telecommunication lines
24 and the United States Mail to advertise and market the competition and collect
25 payments from persons paying for votes.

26 66. Defendants acting through the aforementioned enterprise, and during the class period
27 and continuing engaged in “racketeering activity” as the term is defined in 18 U.S.
28 Code § 1961 (1)(B) by engaging in the acts set forth herein, aiding and abetting the

1 commission of the foregoing acts, and conspiring to commit the foregoing acts and
 2 directly or indirectly conducting the RICO enterprise's affairs which constituted
 3 violations of 18 U.S.C. § 1952 (relating to racketeering) and 18 U.S.C. § 1955 (relating
 4 to the prohibition of illegal gambling businesses).

5 67. Consequently, the Favorite Chef contest constituted an "illegal gambling business"
 6 within the meaning of 18 U.S.C. § 1955, which provides "Whoever conducts, finances,
 7 manages, supervises, directs, or owns all or part of an **illegal gambling business**
 8 shall be fined under this title or imprisoned not more than five years, or both."

9 68. Subdivision (b) (1) defines "illegal gambling business" as "a gambling business which:
 10 1) operates in violation of the law of the State in which it is conducted; 2) involves five
 11 or more persons who conduct, finance, manage, supervise, direct, or own all or part of
 12 such business; and 3) has been or remains in substantially continuous operation for a
 13 period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

14 69. As previously alleged, the Favorite Chef contest was a "gambling business" within the
 15 meaning of Subdivision (b) (4) of 18 U.S.C. § 1955, which defines "gambling" to include
 16 "conducting lotteries."

17 70. As previously alleged, Defendants' Favorite Chef contest constituted an illegal lottery
 18 in violation of California law. It also constituted an illegal lottery under the law of
 19 Arizona, Illinois and the other states, which have a substantially similar definition of
 20 what constitutes an illegal lottery.

21 71. In Arizona the following are lawful forms of gambling: "1. Amusement gambling, 2.
 22 Social gambling, 3. Regulated gambling if the gambling is conducted in accordance
 23 with the statutes, rules or orders governing gambling, and 4. Gambling that is
 24 conducted at state, county, or district fairs, and that complied with § 13-3301,
 25 paragraph 1, subdivision (d)." (Ariz. Rev. Stat. Ann. § 13-3302). The other provisions
 26 in this section allow for raffles to be conducted, mainly by charities, and other state,
 27 local, or county groups. Gambling is defined as "one act of risking or giving something
 28 of value for the opportunity to obtain a benefit from a game or contest of chance or

1 skill or a future contingent event...” (Ariz. Rev. Stat. Ann. § 13-3301 (4)). Except for
 2 amusement, regulated, or social gambling, “a person commits promotion of gambling
 3 if he knowingly does either of the following for a benefit: 1. Conducts, organizes,
 4 manages, directs, supervises or finances gambling. 2. Furnishes advice or assistance
 5 for the conduct, organization, management, direction, supervision or financing of
 6 gambling.” (Ariz. Rev. Stat. Ann. § 13-3303 (A)). Promotion of gambling is a class 5
 7 felony. (Ariz. Rev. Stat. Ann. § 13-3303 (B)).

8 72. In Illinois, “a person commits gambling when he or she: (1) knowingly plays a game
 9 of chance or skill for money or other things of value, unless excepted in subsection (b)
 10 of this section....(7) knowingly sets up or promotes any lottery...” (720 Ill. Comp. Stat.
 11 Ann. 5/28-1) A lottery is “any scheme or procedure whereby one or more prizes are
 12 distributed by chance among person who have paid or promised consideration for a
 13 chance to win such prizes, whether such scheme or procedure is called a lottery, raffle,
 14 gift, sale, or some other name...” (720 Ill. Comp. Stat. Ann. 5/28-2 (b)). Gambling is a
 15 Class A misdemeanor. (720 Ill. Comp. Stat. Ann. 5/28-1 (c)).

16 73. Under Florida law, it is unlawful for any person in the state to: (a) Set up, promote, or
 17 conduct any lottery for money or for anything of value; (b) Dispose of any money or
 18 other property of any kind whatsoever by means of any lottery; (c) Conduct any lottery
 19 drawing for the distribution of a prize or prizes by lot or chance, or advertise any such
 20 lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio,
 21 telegraph, telephone, or otherwise; (d) Aid or assist in the setting up, promoting, or
 22 conducting of any lottery or lottery drawing, whether by writing, printing, or in any
 23 other manner whatsoever, or be interested in or connected in any way with any lottery
 24 or lottery drawing; (e) Attempt to operate, conduct, or advertise any lottery scheme or
 25 device...” (Fla. Stat. Ann. § 849.09). Lotteries are defined as “any gambling scheme
 26 which contains elements of (1) prize, (2) chance, (3) consideration.” (Fla. Stat. Ann. §
 27 849.09 (2)). “Any person convicted of violating any of the provisions of paragraph (a),
 28 paragraph (b), paragraph (c), or paragraph (d) of subsection (1) is guilty of a felony of

1 the third degree.” “Any person who is convicted of violating any of the provisions of
 2 paragraph (e)...” is guilty of a misdemeanor of the first degree. (Fla. Stat. Ann. §
 3 849.09 (3)).

4 74. Plaintiffs are informed and believe, and thereupon allege that Defendants worked
 5 together with each other and with more than five other persons in conducting,
 6 financing, managing, supervising, directing and owning the Favorite Chef contest.

7 75. Plaintiffs are informed and believe and thereupon allege that Defendants operated the
 8 Favorite Chef contest for more than 30 days and that on each day the contest
 9 generated more than \$2,000 in gross revenue.

10 76. As a result, Defendants violated 18 U.S.C. § 1955 in connection with their operation of
 11 the Favorite Chef contest.

12 77. In addition, Defendants violated 18 U.S.C. § 1952 (a), which provides: “Whoever
 13 travels in interstate or foreign commerce or uses the mail or any facility in interstate
 14 or foreign commerce, with intent to— (1) distribute the proceeds of any **unlawful**
 15 **activity...**or (3) otherwise promote, manage, establish, carry on, or facilitate the
 16 promotion, management, establishment, or carrying on, of any unlawful activity, and
 17 thereafter performs or attempts to perform—an act described in paragraph (1) or (3)
 18 shall be fined under this title, imprisoned not more than 5 years, or both.”

19 78. Plaintiffs are informed and believe and thereupon allege that Defendants travelled
 20 across state lines to promote the Favorite Chef contest.

21 79. Moreover, Plaintiffs are informed and believe and thereupon allege that Defendants
 22 used the United States mail or interstate telecommunications systems to carry on the
 23 Favorite Chef contest, including by using the ACH system and credit card processing
 24 networks for VISA, Mastercard and American Express to receive the payments from
 25 class members and to distribute the proceeds among Defendants.

26 80. Defendants’ operation of the Favorite Chef promotion constituted an “unlawful
 27 activity” within the meaning of subdivision (b) of 18 U.S.C. § 1952 because the business
 28 enterprise involved “gambling” in violation of the laws of the states of the United

1 States as well as the law of the United States.

2 81. The aforementioned activities and/or conduct engaged in by Defendants constituted
3 a “pattern of racketeering activity,” as that term is defined in 18 U.S.C. § 1961 (5) in
4 that Defendants committed acts indictable under 18 U.S.C. § 1952 and 18 U.S.C. §
5 1955, on two or more occasions where Plaintiffs and the Class Members personally
6 lost money as a result of the racketeering activity. The number of individual violations
7 was more than 1,000.

8 82. As a proximate result of Defendants’ violations of RICO, Plaintiffs and Class Members
9 have suffered damages through the payment of sums of money as previously alleged.

10 83. Defendants’ conduct was intentional, malicious and intended to harm Plaintiffs and
11 the Class Members. Consequently, Plaintiffs and Class Members are entitled to
12 recover an award of exemplary and punitive damages.

13 **REQUEST FOR JURY TRIAL**

14 WHEREFORE, Plaintiffs request trial by jury.

15 **PRAYER FOR RELIEF**

16
17 WHEREFORE, Plaintiffs pray for judgment on all causes of action against
18 Defendants as follows:

- 19 1. For an order certifying this matter as a class action;
- 20 2. For a declaration of the rights and liabilities of the parties including a declaration that
- 21 the Favorite Chef contest was an illegal lottery;
- 22 3. For preliminary and permanent injunctive relief pursuant to Business and Professions
- 23 Code § 17203 restraining and enjoining Defendants from continuing the acts of
- 24 unlawful competition set forth above, requiring Defendants to take any acts needed to
- 25 prevent further violations, and to stop from disposing any of the collected moneys;
- 26 4. For an order requiring Defendants to provide an accounting of all moneys which they
- 27 may have received as a result of the acts and practices found to constitute unfair
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- 1 competition under Business and Professions Code § 17200;
- 2 5. For an order that Defendants identify, locate and make restitution to affected
- 3 members of the general public, and specifically Plaintiffs and the members of the class,
- 4 and all additional orders necessary to accomplish this purpose, pursuant to Business
- 5 and Professions Code § 17203;
- 6 6. For distribution of any moneys recovered on behalf of members of the Class, via fluid
- 7 recovery or cy pres recovery where necessary to prevent Defendant from retaining the
- 8 benefits of their wrongful conduct as provided in California v. Levi Strauss & Co.
- 9 (1986) 41 Cal.3d 460 and People v. Thomas Shelton Powers, M.D. Inc. (1992) 2
- 10 Cal.App.4th 330;
- 11 7. For compensatory damages on the first cause of action not to be less than the amount
- 12 paid by Plaintiffs and each Class Member and not to exceed three times any damages.
- 13 8. For compensatory damages, said sum to be trebled pursuant to 18 U.S.C. § 1964 (c),
- 14 on the second cause of action;
- 15 9. For punitive or exemplary damages on the second causes of action;
- 16 10. For reasonable attorney's fees pursuant to 18 U.S.C. § 1964 (c), pursuant to the Private
- 17 Attorney General doctrine in Code of Civil Procedure § 1021.5, pursuant to the
- 18 “common fund” doctrine, and pursuant to the “substantial benefit” doctrine;
- 19 11. For interest on the sum of money awarded as restitution;
- 20 12. For costs of suit incurred herein; and
- 21 13. For such other and further relief as the court may deem proper.

22 DATED: April 16, 2021

23 Respectfully submitted,

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By



JEFFREY WILENS
Attorney for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: ['Hero Votes': Favorite Chef Contest Is an Illegal Lottery, Class Action Alleges](#)
