

IN THE COURT OF COMMON PLEAS OF LAWRENCE COUNTY, PENNSYLVANIA

SDSSL TUXEPO, LP, a Pennsylvania
Limited Partnership, individually and on
behalf of ENDEKA ENTERTAINMENT,
LP, a Pennsylvania Limited Partnership

Plaintiffs,

v.

PENN NATIONAL GAMING INC., a
Pennsylvania Corporation, and WESTERN
PA GAMING VENTURES, LLC, a
Delaware Limited Liability Company

Defendants.

) CIVIL DIVISION

) No. 10302 of 2015

) Code: 98, 114

) **COMPLAINT**

) Filed on Behalf of Plaintiffs:

) SDSSL Tuxepo Investors, LP, individually
) and on behalf of Endeka Entertainment, LP

) Counsel of Record for This Party:

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) PA I.D. No.: 16413

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) PA I.D. No.: 208433

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) **JURY TRIAL DEMANDED**

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PENN NATIONAL GAMING INC., a)	
Pennsylvania Corporation, and WESTERN)	
PA GAMING VENTURES, LLC, a)	
Delaware Limited Liability Company)	
)	
Defendants.)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lost money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**Office of Lawyer Referral
Third Floor
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430 Court Street
New Castle, PA 16101
(724) 656-1921**

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Defendants.)	

COMPLAINT

AND NOW comes the Plaintiff, SDSSL Tuxepo, LP, a Pennsylvania Limited Partnership, individually and on behalf of Endeka Entertainment, LP, by and through its attorneys, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, who hereby submits the following Complaint against Defendants Penn National Gaming, Inc., a Delaware Corporation, and Western PA Gaming Ventures, LLC, a Delaware Limited Liability Company, averring in support as follows:

EXECUTIVE SUMMARY

1. This action arises from a fraudulent scheme and fraudulent misrepresentations perpetrated by the Defendants Penn National Gaming Inc. (“Penn National”), a publically traded gaming conglomerate, and its wholly owned subsidiary Western PA Gaming Ventures, LLC (“Western PA Gaming”), all to the harm, devastation, and disadvantage of the Plaintiffs SDSSL Tuxepo, LP (“Tuxepo”) and Endeka Entertainment, LP (“Endeka”), and indirectly and

correspondingly, to the citizens of the Commonwealth of Pennsylvania and the people of Lawrence County, Pennsylvania.

2. Defendant Penn National, as a result of its misrepresentations, was trusted to secure a Category 1 Gaming License in favor of Endeka Entertainment, LP, of which Tuxepo owns a majority limited partnership interest, and to develop and operate a Category 1 casino on a 250-acre parcel owned by Endeka in Lawrence County, known as Lawrence Downs (“Lawrence Downs” or “the Project”), complete with a horse racing track, slot machines, and table games.

3. Penn National also owns and operates a racetrack and casino in Austintown, Ohio, a mere 25 miles away from the intended Lawrence Downs development site.

4. Upon information and belief, Penn National sought to control the application for a gaming license and the development of a casino in Lawrence County, derailed the project from the outset through fraud, and ultimately destroyed the project, all to protect Penn National’s own financial interest in its Austintown, Ohio casino.

5. In the simplest of terms, and upon information and belief, Penn National did not want to lose patrons from its Austintown, Ohio casino, so it intentionally misrepresented facts, delayed action, and destroyed any chance for the development of a casino in Lawrence County by the Plaintiffs.

6. In so doing, Penn National has harmed not only the Plaintiffs, but also the Commonwealth of Pennsylvania, Lawrence County, and their residents, depriving them of tax revenue, economic stimulus, and jobs that would accompany the development and operation of a racetrack and casino in Lawrence County.

7. Through this action, Plaintiff SDSSL Tuxepo, LP, individually and, as the owner of the majority limited partnership interests, on behalf of Endeka Entertainment LP, seeks to

recover the damages caused by Penn National's fraudulent misrepresentations and to hold Penn National accountable for its willful, wanton and reckless conduct through the imposition of compensatory and exemplary/punitive damages.

PARTIES

8. Plaintiff, SDSSL Tuxepo, LP ("Tuxepo") is a Pennsylvania Limited Partnership with a registered address of 1111 W. Dekalb Pike, Wayne, PA 19087.

9. SD Tuxepo GP, LLC, the general partner of Tuxepo, is a Pennsylvania Limited Liability Company with a registered address of 1111 W. Dekalb Pike, Wayne, PA 19087. Manual N. Stamatakis, a Pennsylvania resident, is the sole and managing member of SD Tuxepo GP, LLC.

10. Plaintiff Endeka Entertainment, LP ("Endeka") is a Pennsylvania Limited Partnership with a registered address of 1111 W. Dekalb Pike, Wayne, PA 19087.

11. Tuxepo is a limited partner of Endeka Entertainment, LP, owning 89.99% of the partnership interests as of May 31, 2013 and as of the filing of this Complaint.¹

12. Endeka LLC, the general partner of Endeka Entertainment, LP, is a Pennsylvania Limited Liability Company, and maintains a registered office address at 1111 W. Dekalb Pike, Wayne, PA 19087.

13. Defendant Penn National is a Pennsylvania Corporation and maintains a principal place of business at 825 Berkshire Blvd., Wyomissing, PA 19610.

¹ As of May 31, 2013 and as of the filing of this Complaint, AHT Land, LP, a Pennsylvania Limited Partnership, owned 10% of the limited partnership interests in Endeka Entertainment, LP.

14. Defendant Western PA Gaming is a Delaware Limited Liability Company that maintains a registered office address in the Commonwealth of Pennsylvania at 825 Berkshire Blvd., Suite 200, Wyomissing, PA 19610.

15. Penn National is the sole member of Western PA Gaming.

16. Penn National is a publically held company and its common stock is traded on the NASDAQ stock exchange.

17. In its own words, "Penn National Gaming, through its subsidiaries, owns, operates or has ownership interests in gaming and racing facilities with a focus on slot machine entertainment. The Company presently operates twenty-six facilities in seventeen jurisdictions, including Florida, Illinois, Indiana, Kansas, Maine, Massachusetts, Maryland, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, Texas, West Virginia, and Ontario. In aggregate, Penn National's operated facilities feature approximately 31,000 gaming machines, 800 table games and 3,000 hotel rooms."²

18. Prior to May 31, 2013, Manual N. Stamatakis and Peter DePaul, both limited partners of Tuxepo, were the members of Endeka, LLC, the general partner of Plaintiff Endeka Entertainment, LP.

19. As a result of the fraudulent misrepresentations set forth herein, as of May 31, 2013, Western PA Gaming became the managing member of Endeka, LLC, owning a 51% interest, while SD Tuxepo GP, LLC, of which Manual N. Stamatakis is the sole and managing member, owned a 49% interest.

20. As set forth above, Penn National is the sole member of Western PA Gaming.

² See Penn National's Investor Relations, <http://phx.corporate-ir.net/phenix.zhtml?c=120420&p=irol-irhome>. (last accessed March 23, 2015).

21. Thus, Penn National fraudulently gained control of the sole general partner of a limited partnership seeking an application for a Category 1 gaming license with the Pennsylvania Gaming Control Board.

22. Pursuant to 15 Pa. C.S.A. § 8593, Tuxepo, as a limited partner of Endeka, avers that a demand of Endeka LLC (the general partner of Endeka) to initiate the within action would have been futile, as the managing member of Endeka LLC (Western PA Gaming) is a defendant herein, as is the sole member of Western PA Gaming (Penn National).

JURISDICTION AND VENUE

23. Jurisdiction is proper in the Commonwealth of Pennsylvania, as, *inter alia*, Defendant Penn National is a Pennsylvania Corporation.

24. Defendant Western PA Gaming maintains a principal place of business in Pennsylvania, has maintained systematic and continuous contacts with Pennsylvania, and has engaged in conduct directly related to the subject claims which took place in Pennsylvania and caused harm in Pennsylvania.

25. Venue is proper in Lawrence County pursuant to Rules 1006(a)(1), 2179(a)(3) and (a)(4) of the Pennsylvania Rules of Civil Procedure, as the cause(s) of action and a transaction or occurrence out of which the cause(s) of action arose took place in Lawrence County.

FACTUAL BACKGROUND

26. The legislation governing the issuance of casino licenses in Pennsylvania provides the backdrop for the factual background of this action.

Gaming Licenses and Casinos in Pennsylvania

27. The Pennsylvania Gaming Control Board (“PGCB”) is the Pennsylvania regulatory body charged with regulating gaming activities in the State of Pennsylvania pursuant to the Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S. § 1101 et seq. (“Act”).

28. The Act authorizes the Gaming Control Board to license and regulate three (3) categories of casinos:

- a. A Category 1 facility must operate a licensed horse or harness track and be subject to the regulatory authority of the Pennsylvania Horse and Harness Racing Commission (“PHHRC”). A Category 1 casino may operate up to 3,000 slot machines and an unlimited number of table games.
- b. A Category 2 facility is an independent “stand alone” traditional casino that is not compelled to conduct any racing activities on site but that, as may a Category 1 facility, may operate up to 3,000 slot machines and an unlimited number of table games.
- c. A Category 3 facility may operate only 500 slot machines and up to 50 table games. There are only two (2) Category 3 licenses, reserved for a “well established resort hotel.” A Category 3 facility has an additional restriction that only “patrons of the resort amenities” – defined as an individual who participates in a hotel amenity with a value in excess of \$10 – are allowed access to the gaming floor.

29. Endeka intended and desired to develop a Category 1 gaming and race track facility in Lawrence County, known as Lawrence Downs.

30. Before it may submit an application for a Category 1 gaming license, the applicant must obtain a racing license from the PHHRC.

31. As of October 25, 2012, Endeka held a harness license issued by the PHHRC.

32. However, the PHHRC conditioned the award of a harness license to Endeka on Endeka’s submission of a Category 1 gaming application and the PGCB’s approval of the same.

33. The PHHRC’s issuance of a racing license to Endeka expressly states that “if Endeka fails to obtain a Category 1 slot machine license from the [PGCB] for whatever reason,

the harness license issued to Endeka ... shall be automatically and immediately terminated, revoked and surrendered to the [PHHRC] without necessity of any further proceeding or actions of this [PHHRC].

34. As set forth herein, Endeka, at the direction of Penn National, and in justifiable reliance upon the misrepresentations of Penn National and its upper most management, filed an application for a Category 1 gaming license with the PGCB on May 31, 2013.

35. Following its receipt of an application for a gaming license, the PGCB conducts two distinct phases of investigation to determine whether the applicant (here, Endeka) and all of its associate entities and principles (individual investors) are both eligible and suitable for licensure.

36. The first evaluation is conducted by the PGCB's Bureau of Licensing, which assesses the application to insure completeness and identifies whether all of the necessary submissions have been attached and incorporated into the application.

37. Upon determination that the application is complete, the Bureau of Licensing certifies the application as such and forwards the entire application and the applications of associated entities and principles to the Bureau of Investigations and Enforcement ("BIE") for the second phase of investigations.

38. The BIE, which conducts a separate role in the processing of an application, then conducts an investigation into the financial and personal background of each and every individual and entity that is associated with Endeka, as well and the financial viability of the proposed casino and the applicant's ability to construct, operate and fund the proposed facility.

39. Following its investigation, the BIE is tasked with providing a final report and recommendation as to whether the applicant should be issued a gaming license from the PGCB.

40. The PGCB then makes the final determination of whether to issue the requested gaming license.

Penn National's Austintown, Ohio Casino

41. As set forth above, Penn National owns and operates gaming and racing facilities throughout the country.

42. One such facility owned and/or operated by Penn National is the Hollywood Gaming Mahoning Valley Race Course, located in Austintown, Ohio ("Austintown Hollywood Casino").

43. The Austintown Hollywood Casino is one (1) of four (4) casinos owned and/or operated by Penn National in Ohio.

44. It is located approximately 25 miles from the site of Endeka's Lawrence Downs project.

45. Upon information and belief, Penn National has invested at least \$250,000,000 into the Austintown Hollywood Casino.

46. Since it opened for business in September 2014, the casino has generated average revenue of \$7 million per month.

47. The Austintown Hollywood Casino offers thoroughbred racing and slot machines. However, it does not offer table games and its patrons are not, under law, allowed to smoke in the facilities.

48. By contrast, the Lawrence Downs project would offer thoroughbred racing, slot machines, **and** both table games and the ability for its patrons to smoke in the facilities.

49. Thus, not only would Lawrence Downs compete with the Austintown Hollywood Casino based on the proximity of the locations, but it also provides a better gaming destination with more accommodations to offer patrons.

50. Moreover, while Penn National retains 100% of the profit from the Austintown Hollywood Casino, its profit from the Lawrence Downs Casino is limited to a consulting fee.

51. Thus, the Lawrence Downs project provided a significant threat to Penn National's investment in the Austintown Hollywood Casino.

**Endeka's Preparation of a Category 1 Gaming License Application
and the First of Many Intentional Misrepresentations by Penn National**

52. In preparation for the submission of its gaming license application for the Lawrence Downs project, Endeka conducted several meetings with individuals, organizations, and elected officials regarding the procurement of the gaming license and the development, construction, financing, and day to day operation of Lawrence Downs.

53. With respect to financing of the project, Endeka secured a commitment from CanAm Regional Center, LLC ("CanAm"), an EB-5 lender previously approved and in good standing with the PGCB, for a loan in the amount of \$60 million.

54. Endeka also secured a commitment from elected officials that Lawrence County would provide a \$50 million grant to Endeka upon issuance of the gaming license.

55. Tuxepo, as a limited partner, committed to loan Endeka \$10 million for the project.

56. These three sources alone provided funding of \$120 million towards the development of the Lawrence Downs casino, all in competition with the Austintown Hollywood Casino.

57. In preparation for the submission of a category 1 gaming license application, Endecka also received multiple market studies outlining the anticipated financial results of the proposed Lawrence Downs casino, each identifying the project as profitable. One such market study, the most conservative of them all, was conducted by Penn National.

58. From December 2012 until May 31, 2013, Endecka and its majority limited partner Tuxepo engaged in a series of discussions, meetings, and/or communications with Penn National concerning the Lawrence Downs project.

59. The Penn National representatives involved in the discussions, meetings, and/or communications with Endecka and its majority limited partner Tuxepo include, but are not limited to:

- a. Mr. Peter Carlino – Chairman of the Board;
- b. Mr. Steven T. Snyder – Senior Vice President of Corporate Development;
- c. Mr. William (“B.J.”) Fair – Senior Vice President, Chief Development Officer;
- d. Mr. Carl Sottosanti , Esquire – Vice President, Deputy General Counsel, and, as of February 1, 2014, Senior Vice President, General Counsel;
- e. Mr. Chris Rogers, Esquire – Vice President, Senior Corporate Counsel;
- f. Mr. Eric Schippers – Senior Vice President, Public Affairs;
- g. Mr. Chris McErlean – Vice President, Racing Operations;
- h. Mr. Robert Ippolito – Vice President, Secretary, Treasurer;
- i. Mr. Frank Donahue – Director of Corporate Compliance; and
- j. Mr. Steven E. Courty – Penn National’s outside counsel at Kasowitz, Benson, Torres & Friedman, LLP.

60. During these discussions, meetings, and/or communications with Endecka and its majority limited partner Tuxepo, Penn National made multiple misrepresentations of material

fact that were intended to and did cause Endeka and Tuxepo to act and refrain from acting in justifiable reliance thereon with respect to the Lawrence Downs project.

61. Specifically, Penn National, through its authorized agents and representatives, made the following false representations:

- a. Penn National's ownership and/or operational interests in the Austintown Hollywood Casino would have no effect on Penn National's conduct or actions in furtherance of the development of the Lawrence Downs project;
- b. Penn National could and would take all action necessary to secure a Category 1 gaming license for Endeka;
- c. Penn National could and would use its reputation and relationship with the PGCB to secure a Category 1 gaming license for Endeka;
- d. Penn National could and would take all action necessary to construct and finance the construction of the Lawrence Downs;
- e. Penn National could obtain and/or would provide the financing required for the project, anticipated at \$225 million;
- f. Penn National could and would secure financing from EB-5 lenders and potential construction lenders to allow the project to be constructed immediately upon the issuance of a license award by the PGCB;
- g. Penn National conducted a market study of the Lawrence Downs project, which projected profitability and an internal rate of return to Penn National of 3.2%; and
- h. An internal rate of return of 3.2% was acceptable to Penn National as it relates to the Lawrence Downs project.

62. Penn National continued to publically and privately represent commitment to the Lawrence Downs project until it was too late for Endeka and Tuxepo to do anything material to save the project. At no point in time did Penn National represent any hesitancy or questions regarding the ability to obtain financing for the Lawrence Downs project or concerns over the revenue projections and/or market assessments for the Lawrence Downs project.

63. As a direct and proximate result of and in justifiable reliance upon Penn National's intentional misrepresentations,

- a. Endeka, at Penn's direction, submitted an application for a gaming license based on and containing Penn National's misrepresentations;
- b. Tuxepo and Endeka provided Penn National with a controlling interest in the general partner of Endeka – *i.e.* with the ability to direct the interaction with the PGCB surrounding the gaming license application;
- c. Endeka and Tuxepo refrained from securing other sources of financing for the Lawrence Downs project;
- d. Endeka and Tuxepo refrained from negotiating and/or entering into agreements with other individuals and entities that would further the development of the Lawrence Downs project;
- e. Endeka and Tuxepo refrained from acting during the 18-month time period between the submission of the gaming application and Penn National's withdrawal from the project.

64. As a direct and proximate result of Penn National's reckless, wanton, and intentional misrepresentations, the PGCB has and/or will deny Endeka's gaming license application.

65. As a direct and proximate result of Penn National's intentional misrepresentations, Endeka and Tuxepo have incurred multiple and substantial pocket expenses.

66. As a direct and proximate result of Penn National's intentional misrepresentations, Endeka and Tuxepo have been deprived of their substantial expectation interests and have lost the revenue and profits associated with the Lawrence Downs project.

Endeka's Gaming Application filed with the PGCB

67. As stated above, at Penn National's direction, and as a direct and proximate result of and in justifiable reliance upon Penn National's intentional misrepresentations, Endeka filed a gaming application with the PGCB on May 31, 2013.

68. The gaming application advises applicants that "failure to answer any question completely and truthfully will result in denial of your application and/or revocation of your

license, registration, certificate or permit and subject you to criminal penalties under 18 Pa. C.S.A. § 4903.”

69. Section 4903 relates to “false swearing” to a public official. Accordingly, the making of false representations in a gaming application subjects the applicant criminal prosecution for perjury.

70. While the gaming application was executed by Manual N. Stamatakis as the managing member of Endeka, LLC, the general partner of Endeka, it was reviewed and approved by Penn National prior to its execution and submission to the PGCB. In fact, Penn National took control of the application process prior to that date and assisted Endeka’s counsel to compile the data required to be submitted to the PGCB as part of the application. Upon delivery of the application to the PGCB, Penn National acquired control of the general partner of Endeka, as hereinafter set forth.

71. Moreover, as a direct and proximate result of Penn National’s intentional misrepresentations, effective May 31, 2013 – the date of the submission of the gaming application to the PGCB – Penn National, as the sole member of Western PA Gaming, became and was the managing member of the general partner of Endeka with full and total control of the operations and actions of Endeka, including the submission of its application to the PGCB.

72. Further, as the managing member in control of Endeka, Penn National had a duty to correct any statements in the gaming application that Penn National did not believe to be true.

73. As a component of this application, Penn National made various representations, all subject to penalty of perjury, regarding its intentions and the actions that Penn National would undertake in furtherance of the procurement of a Category 1 gaming license and the development, construction, and operation of the Lawrence Downs.

74. As a component of the gaming application with the PGCB, Penn National represented that it had and would accept full control, responsibility and oversight of the project.

75. With respect to the sufficiency of the business ability of Endeka to operate its proposed casino, Penn National stated specifically that “Penn National currently has the available financing, marketing experience and seasoned project development team to get large casino/racing projects financed and built on time and on budget.”

76. In further support of its position, Penn National also included as part of the application a proposed site plan with detailed drawings of the anticipated gaming floor design, draft internal controls which dictate the day-to-day operations of a licensed casino, and a preliminary marketing plan outlining the anticipated scope of both the marketing efforts and tactics that Penn National would utilize to secure gaming customers in an initial and ongoing basis including a detailed player rewards program.

77. As an additional component of the gaming application, Penn National submitted a cost summary indicating a total project cost for the Lawrence Downs project to be approximately \$225 million. In support of this budget, Penn National acknowledged a \$15 million loan by its wholly owned subsidiary Western PA Gaming to Endeka, along with a \$100 million real estate purchase and lease back agreement between Penn National (or its Real Estate Investment Trust (REIT) and Endeka.

78. Thus, Penn National made formal commitments without qualification or restriction to the PGCB, Endeka, and Tuxepo that it could and would be funding this Category 1 facility.

79. With respect to projected profits, the gaming application reflects Penn National’s adoption of projections that would result in nearly \$131 million in gaming revenue and

approximately \$14.8 million in EBITDA when the facility reaches its stabilized period of operation in year five. This level of revenue would result in approximately \$70.9 million in annual gaming tax revenue for the state and local governments and projected annual gross terminal revenue of \$112.6 million.

80. At the time of submission of the gaming application, the anticipated internal rate of return was approximately 3.2%, an amount that Penn represented to the PGCB, Endeka and Tuxepo established that the project was financially viable and desirable for Penn National from both a financial and operational perspective.

81. As set forth above and herein, this representation by Penn National was intentionally false, as evidenced by Penn National's new representation that it will only participate in the project if it can be guaranteed an internal rate of return of 7% - over twice the initially acceptably amount.

82. This remarkable 11th hour change of its publicly stated position is evidence of its fraudulent intention to derail the Lawrence Downs project in favor of its Austintown Hollywood Casino.

83. Following the pre-submission representations by Penn National concerning the acceptable internal rate of return and the submission of the gaming application to the PGCB, there have been no significant changes in the gaming market that would reflect or warrant a demand for an additional 4% internal rate of return. To the contrary, over the last year the Pennsylvania gaming markets have increased, as reflected by the on the whole increase of table gaming and slot revenue at Pennsylvania casinos.

84. Penn National made false representations of material fact to Endeka, Tuxepo, and the PGCB concerning the financial viability of the Lawrence Downs project and Penn National's willingness to accept the levels of return as first contemplated.

85. Moreover, while Penn National represented that it could and would secure independent financing for the project by way of construction loans and EB-5 loans, Penn National has failed to do so in the 18 months since the submission of Endeka's gaming application.

86. Following its review of Endeka's application, the Bureau of Licensing of the PGCB certified Endeka's application as complete and forwarded the entire application and the applications of Endeka's associated entities and principles to the BIE for the second phase of investigations.

87. As a component of its investigation, the BIE has made a number of requests to Endeka (Penn National) for full and complete financial documents supporting Endeka's ability to construct, operate and fund the proposed race track and gaming facility in Lawrence County.

88. Penn National represented to Endeka and Tuxepo that it could and would take all actions necessary to secure a Category 1 gaming license on behalf of Endeka, which representations necessarily include an offer and agreement by Penn National to appropriately respond to all requests by the BIE.

89. However, and upon information and belief, Penn National never intended to fulfill these representations, as evidenced by its outright failure to take any action in furtherance of the Lawrence Downs project over 18 months.

90. Moreover, sensing that the PGCB will deny Endeka's application based, at least in part, on the 18 month period of inactivity – and therefore Penn National's goal of destroying

the project and avoiding competition will be achieved – Penn National has advised that it is withdrawing.

Penn National's Continued Misrepresentations of Fact

91. To accomplish its desired result of destroying any chance of the development of a racetrack and casino in Lawrence County that would compete with its Austintown Hollywood Casino, Penn National continued to misrepresent material facts and make empty promises during the 18 months that followed the May 31, 2013 submission of the gaming application by Endeka to the PGCB.

92. These misrepresentations were made not only to Endeka and Tuxepo, but also to the PGCB, commissioners and elected officials of Lawrence County, and the public.

93. Specifically, on May 14, 2014, a public input hearing was held in Lawrence County, Pennsylvania, as required by the Pennsylvania Race Horse Development and Gaming Act.

94. At the hearing, the applicant is required to discuss details of the project, including its location, timeline for completion, cost and the general affect the project will have on the local community.

95. As with the representations made in a gaming application, the representations made by an applicant at a public hearing are also subject to criminal violations of the Act as it relates to perjury, false searing and unsworn falsification to authorities as the Act covers both written and oral representations.

96. At the public hearing, Penn National was responsible for and did draft the majority of the content of the information and graphical slide presentation as well as the oral representations made to the PGCB and the public.

97. During this presentation, Penn National's Senior Vice President and Chief Development Officer B.J. Fair stated that Penn National anticipated a 15 to 18 month construction period following the issuance of a license to Endeka.

98. During this public meeting, Penn National further represented that it was "committed to the community [] in terms of hiring locally."

99. In this respect, and on that date, Penn National committed to developing the Lawrence Downs project through hiring women owned businesses (WBEs) and minority owned businesses (MBEs).

100. Further on that date, Penn National represented that it would work with the PGCB to finalize the financing and suitability of the project while also confirming the details of a phased construction of the project that will allow the facility to open with 1,000 slot machines and later move forward with additional slot machines to meet the state minimum of 1,500 slot machines within 48 months of operation.

101. At no point in the May 8, 2014 presentation did Penn National ever represent any hesitancy or questions regarding the ability to obtain financing for the project or concerns over the revenue projections and market assessments for the proposed facility.

102. As such, Penn National firmly represented to the PGCB, Endeka, Tuxepo, and the public that the project was financially sound and that it could and would be completed within a maximum of 18 months from the date of license issuance.

103. Moreover, Penn National has affirmatively misrepresented its intentions regarding the project to Lawrence County Commissioner, Dan Vogler.

104. As stated above, Lawrence County has committed a \$50 million grant towards the Lawrence Downs project that will be funded through the issuance of bonds.

105. In or about 2013, Lawrence County Commissioner, Dan Vogler, met with representatives for Penn, including Penn's Chairman Mr. Carlino, at their home office in Wyomissing, Pennsylvania to discuss the status and future of the Lawrence Downs project.

106. During this meeting, Penn stated unequivocally to Commissioner Vogler that it would move forward with the development and construction of the Lawrence Downs project and expressed no concerns, restrictions, or qualifications on this representation.

107. To the contrary, Penn, through its Chairman Mr. Carlino, looked Mr. Vogler in the eye and said that Penn was committed to this project.

108. As evidenced herein, this representation was false.

Penn National's Unilateral Abandonment of Approved EB-5 Financing

109. As discussed above, part of the investigation process with a gaming license requires the BIE to conduct a financial suitability investigation into each applicant's proposed facility and the funding sources for the same.

110. Throughout the investigation, there is an ongoing dialogue between the applicant and the financial task force for the BIE regarding the production of additional financial documents which support the applicant's ability to construct and operate its proposed racing and gaming facility.

111. As early as March 13, 2014, BIE Chief Enforcement Counsel Cyrus Pitre wrote to counsel for Endeka and counsel for Penn National and requested financial information regarding (1) the specific identity of the sources of all funds to be utilized in the development, construction and opening of the proposed Category 1 facility; (2) documents illustrating the existence, availability and dedication of such funds or that such funds exist, are available and are dedicated upon awarding of a Category 1 license to Endeka; and (3) executed agreements between the

funding sources and Endeka or its representatives or if the funding source is a financial institution, near final drafts of the loan/financing agreement.

112. At Penn National's direction, Endeka responded with a "sources and uses" summary for a total of \$225 million, including (1) a \$50 million EB-5 loan from CanAm Regional Center, LLC ("CanAm"); (2) a \$50 million grant from Lawrence County; (3) a \$15 million loan from Penn National (Western PA Gaming); and (4) a \$10 million loan from Tuxepo.

113. Endeka, at Penn National's direction, also advised the BIE that the final terms of these agreements were not in final form, but that Endeka was working to confirm the final details of all project funding and would advise them of the same in the future. As such, further time to respond to the inquiry was requested.

114. At no point did Penn National ever indicate that the project was not financially sound or that the funding sources of the project could not be secured, including Penn National's \$100 million loan through a real estate purchase as well as a \$50 million direct loan to Endeka.

115. Moreover, Endeka, at Penn National's direction, referenced an EB-5 loan of \$50 million from CanAm, when in fact the EB-5 commitment for the project by CanAm, provided in advance of Penn National's acquisition of its managerial control, was for a total of \$60 million.

116. As late as April 14, 2014, Penn National never indicated any unwillingness to move forward with CanAm as the regional EB-5 lender in the project or that there were concerns regarding the terms of such loan.

117. On June 6, 2014, BIE requested production and submission of the final financial documents confirming all funding sources for the project.

118. By correspondence dated July 7, 2014, Endeka, at Penn National's direction, responded to the second round of inquiries regarding financial term sheets and documentation confirming the funding for the project.

119. Through this July 7, 2014 correspondence, Penn National for the first time acknowledged that it would not be utilizing CanAm as the EB-5 lender for the project, but rather would be moving forward with the Maryland Center for Foreign Investment, LLC (the "Maryland Center") to provide EB-5 financing. At no point in time has Endeka ever been invited to participate or even meet with the Maryland Center.

120. Penn National indicated that EB-5 funding would be increased based on the participation of the Maryland Center from \$50 million to approximately \$65 million, stating that "this change benefits the overall project because the EB-5 financing carries a significantly lower interest rate than the loan from [Penn National's REIT] GLPI."

121. The stated reason why the new EB-5 loan had not been finalized was that there were concerns that the lender would not be able to obtain collateral for the EB-5 loan. Penn National stated that once the collateral issue was resolved, the loan terms would be finalized and the project would move forward.

122. There were no representations by Penn National of any other concerns regarding funding for the project other than securing the appropriate collateral for the EB-5 loan.

123. Thus, the remaining portion of the \$225 million for the project was represented to be secured and of no concern to Penn National.

124. Endeka, at Penn National's direction, therefore requested a further extension to work out the final details of the proposed EB-5 loan from the newly identified Maryland Center, which was granted by the BIE.

125. Penn's unilateral determination to abandon CanAm as the EB-5 Lender is further evidence of its intention and desire to delay, impede, and destroy the Lawrence Downs project.

126. As stated above, CanAm was committed to providing a loan of \$60 million prior to the submission of the gaming application, as evidenced by its February 22, 2013 financial commitment letter.

127. While Penn National has rejected CanAm as an EB-5 Lender in favor of the Maryland Center, there has been no action taken to finalize any terms with the Maryland Center, nor has the Maryland Center expressed any agreement or even proposed a structure for its licensing that would be required under existing PGCB regulations.

128. This is particularly important because even if the Maryland Center had agreed to finance the Lawrence Downs project up to \$65 million, such funding cannot take place unless the Maryland Center, as the EB-5 Lender, is deemed suitable for licensure by the PGCB.

129. Licensure of an EB-5 lender can take a significant amount of time (often over one year) to complete, a fact that was and is well known to Penn National.

130. Thus, it is significant that CanAm, the entity selected by Endeka prior to Penn National's involvement who committed to lend \$60 million, is already a licensed EB-5 lender with the PGCB, and is in fact the only EB-5 lender so licensed.

131. The Maryland Center, by contrast, is not so licensed, and to date has been unwilling to submit an application to the PGCB for licensure.

132. Moreover, while Penn National represented that there are collateral issues surrounding the Maryland Center lending, Penn National has never offered or provided a proposed collateral plan to the PGCB for review or approval, despite representations to the contrary.

133. Thus, in rejecting CanAm in favor of the Maryland Center, Penn National has delayed and/or destroyed the Lawrence Downs project.

Penn National Unilaterally Commissions a Flawed Financial Report in an Intentional Effort to Destroy the Lawrence Downs Project and Provide Cover for Penn National's Misrepresentations of Fact

134. On November 12, 2014, a third request was made to Endecka again seeking financial documentation to support Endecka's ability to fund, construct and operate its proposed gaming facility.

135. As a result of the prior delay by Penn National in providing responsive information, the BIE demanded the production of documents within thirty (30) days of its letter.

136. In a December 11, 2014 response, Endecka, at Penn National's direction, stated that during the course of financial discussions, "questions have arisen regarding the ability of the facility to repay in full any financing obligations incurred in connection with the project and the sufficiency of collateral available to secure such obligations."

137. This December 11, 2014 response – 18 months after the May 31, 2013 submission of the gaming application and the engagement of Penn National – is the first time any such statements regarding the ability to repay any financial obligations was ever raised by Penn National.

138. Moreover, none of these concerns had ever been shared by Penn National as of December 11, 2014 with any of the other owners of the project, including Tuxepo.

139. Notably, Penn never indicated in its response to the BIE that there were concerns or changes in the Pennsylvania gaming market from the date of its initial engagement in the project through December 11, 2014 that gave it pause for concern regarding potential return on its investment.

140. This is not surprising, as there were no significant economic changes in the gaming market in Pennsylvania at any point during Penn National's involvement. In fact, the Pennsylvania gaming market has improved.

141. In response to the "concerns" first raised in its December 11, 2014 submission to the BIE, Penn National, at its own expense, independently engaged a Canadian corporation, HLT Advisory Inc., ("HLT") to perform a "market and financial assessment of Lawrence Downs Casino and Racing Resort Project."

142. Upon information and belief, HLT has no prior nor any subsequent involvement with the Pennsylvania gaming market.

143. Upon information and belief, Penn National engaged HLT to conduct a new financial study and submitted this study to the PGCB in an intentional effort to delay, impede, and/or prevent the issuance of a Category 1 gaming license to Endeka and the development of a casino in Lawrence County that would compete with Penn National's Austintown Hollywood Casino.

144. Moreover, and upon information and belief, Penn National engaged HLT to conduct a new financial study to provide a smokescreen to which Penn National would later reference when advising Endeka and Tuxepo that Penn National would disregard, ignore, and fail to comply with the Penn National's numerous representations and promises surrounding the procurement of a Category 1 gaming license and the development, funding, construction, and operation of the Lawrence Downs casino.

145. The PGCB did not require Endeka (Penn National) to secure the HLT report.

146. The HLT Report was never necessary for any part of the Lawrence Downs project, and was never required to be submitted to the PGCB.

147. To the contrary, prior to its commission of the HLT Report, Penn National advised the PGCB orally that it would be securing a new study.

148. In light of its retention of HLT, Penn National directed Endeka to request an additional extension until January 31, 2015 to provide final financing documents for the project, a request that was ultimately granted by the BIE.

149. Thereafter, on January 26, 2015, Penn National provided BIE with a copy of the HLT report, which, based on flawed methodology and secret assumptions, showed financial projections lower than any other projections completed to date, despite the fact that the Pennsylvania gaming market has steadily improved and is producing increased revenue year after year.

150. Tellingly, the financial projections contained in the HLT report were even lower than Penn National's own internal calculations, which Penn National had acknowledged were very conservative.

151. Penn National's submission of the HLT Report to the BIE has made that document a part of official record surrounding Endeka's application.

152. Accordingly, Endeka must now account for the HLT Report in seeking a Category 1 gaming license from the PGCB.

153. In light of the HLT report, on January 30, 2015, Penn National submitted an additional extension request to the BIE to produce final financial documents for the project.

154. Here, for the first time on January 30, 2015 (just weeks ago), Penn National also represented that it and Endeka "may have differing views on how to proceed with the project" in light of the HLT report.

155. The requested extension by Penn National was represented as needed to provide sufficient time for Penn and Endeka to mutually agree as to the next steps of the project. However, at no time has Endeka ever stated or believed that the project was anything but financially sound and Endeka was and has remained committed to the development of the project as proposed in the May 31, 2013 application to the PGCB.

156. It is only Penn who has recently raised questions regarding the financial viability of the project as a basis to not move forward with the same.

***Penn National's Latest Misrepresentations to Endeka, Tuxepo and the PGCB
and its Withdrawal from the Lawrence Downs Project***

157. In response to Penn National's January 30, 2015 letter, Chief Enforcement Counsel for BIE Cyrus Pitre conducted an in person meeting on February 23, 2015 with representatives of Penn National, Endeka, and Tuxepo, among others, attended an in person meeting with Attorney Cyrus Pitre, Chief Enforcement Counsel for the BIE in the offices of the PGCB.

158. At the time of this meeting, Penn National's counsel represented specifically that it had plans to continue to explore possible funding sources for the project as well as satisfy all further questions raised by the EB-5 lender to allow that portion of the financing of the project to be secured and have the necessary applications filed with the PGCB to insure that the EB-5 lender could be licensed by the PGCB.

159. At this meeting of February 23, 2015, Penn National, for the first time, represented that it may at a future point decide that the Lawrence Downs project is no longer viable from its perspective. However, Penn National did not state that it would not continue to further explore securing final financing for the project and attempt to move forward with the project as previously proposed in the May 31, 2013 gaming application.

160. Penn National then requested another six (6) month extension to respond to the BIE's request for final form financing documentation.

161. Immediately after the February 23, 2015 meeting in the offices of the PGCB – no less than ten (10) minutes after it concluded – Penn National shockingly changed course in marked contrast to what it said to the PGCB, and advised Endeka that it had no intention to move forward with the Lawrence Down project and that there were no further documents, reports or studies that Endeka could provide to change Penn's position on this matter.

162. On March 10, 2013, the BIE rejected Penn National's request for an additional six (6) month extension to respond to the BIE's request for documentation, advising that if documentation was not provided within deadlines of thirty (30) or sixty (60) days following its letter, the BIE would recommend to the PGCB that Endeka's application for a Category 1 gaming license be denied in whole.

163. Penn National has not taken any action to respond to the BIE's latest request, let alone any of the prior requests, effectively dooming the application.

164. Against this backdrop, on March 23, 2015, Mr. William J. ("B.J.") Fair, Penn National's Senior Vice President and Chief Development Officer, provided oral notice to Tuxepo that Penn National was withdrawing from the project. On March 24, 2015, Penn National confirmed this fact in writing.

COUNT I – FRAUD

Tuxepo, individually and on behalf of Endeka v. Penn National and Western PA Gaming

165. Plaintiffs incorporate by reference the preceding averments as if set forth more fully herein.

166. Penn National, through its authorized agents and representatives, made the following false representations prior to May 31, 2013 and throughout the 18 months that followed:

- a. Penn National's ownership and/or operational interests in the Austintown Hollywood Casino would have no effect on Penn National's conduct or actions in furtherance of the development of the Lawrence Downs project;
- b. Penn National could and would take all action necessary to secure a Category 1 gaming license for Endeka;
- c. Penn National could and would use its reputation and relationship with the PGCB to secure a Category 1 gaming license for Endeka;
- d. Penn National could and would take all action necessary to construct and finance the construction of the Lawrence Downs;
- e. Penn National could obtain and/or would provide the financing required for the project, anticipated at \$225 million;
- f. Penn National could and would secure financing from EB-5 lenders and potential construction lenders to allow the project to be constructed immediately upon the issuance of a license award by the PGCB;
- g. Penn National conducted a market study of the Lawrence Downs project, which projected profitability and an internal rate of return to Penn National of 3.2%; and
- h. An internal rate of return of 3.2% was acceptable to Penn National as it relates to the Lawrence Downs project.

167. In making these false representations of material fact, Penn National intended to induce action and inaction on the part of Endeka and Tuxepo.

168. As a direct and proximate result of and in justifiable reliance upon Penn National's intentional misrepresentations made to them, the PGCB, and the public,

- a. Endeka, at Penn's direction, submitted an application for a gaming license based on and containing Penn National's misrepresentations;
- b. Tuxepo and Endeka provided Penn National with a controlling interest the general partner of Endeka – *i.e.* with the ability to direct the interaction with the PGCB surrounding the gaming license application;
- c. Endeka and Tuxepo refrained from securing other sources of financing for the Lawrence Downs project;
- d. Endeka and Tuxepo refrained from negotiating and/or entering into agreements with other individuals and entities that would further the development of the Lawrence Downs project;
- e. Endeka and Tuxepo refrained from acting during the 18-month time period between the submission of the gaming application and Penn National's withdrawal from the project.

169. As a direct and proximate result of Penn National's intentional misrepresentations, the PGCB has denied and or will deny Endeka's gaming license application, and Endeka has lost or will lose its harness license upon the denial by the PGCB.

170. As a direct and proximate result of Penn National's intentional misrepresentations, Endeka and Tuxepo have incurred significant out of pocket expenses.

171. As a direct and proximate result of Penn National's intentional misrepresentations, Endeka and Tuxepo have been deprived of their substantial expectation interests and have lost the revenue and profits associated with the Lawrence Downs project.

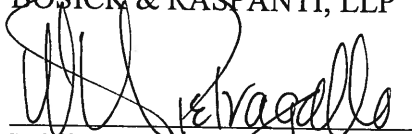
172. As a direct and proximate result of Penn National's intentional misrepresentations, and upon the denial of the gaming application by the PGCB, Endeka and Tuxepo will be further damaged through the immediate loss of the horseracing license from the PHHRC upon denial of the gaming license application by the PGCB, and correspondingly, the Commonwealth of Pennsylvania, and the citizens of Lawrence County, will lose substantial tax revenue, jobs, and economic growth.

WHEREFORE, Plaintiff SDSSL Tuxepo, LP, respectfully requests that this Honorable Court enter judgment in its favor for compensatory damages in an amount in excess of the jurisdictional arbitrational limits of this Honorable Court, plus punitive damages, and for such other relief as the Court deems just and appropriate.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

By:



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Doc. # 2913548v1

IN THE COURT OF COMMON PLEAS OF LAWRENCE COUNTY, PENNSYLVANIA

SDSSL TUXEPO, LP, a Pennsylvania
 Limited Partnership, individually and on
 behalf of ENDEKA ENTERTAINMENT,
 LP, a Pennsylvania Limited Partnership

) CIVIL DIVISION
)
) No. _____ of 2015
)
) Code: 98, 114
)
)
)
)

Plaintiffs,

v.

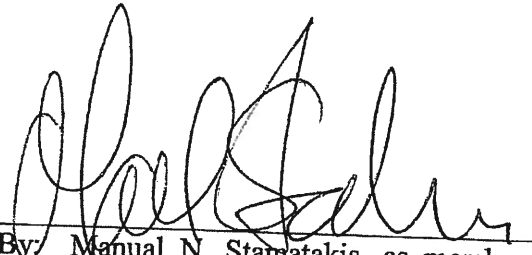
)
) PENN NATIONAL GAMING INC., a
) Pennsylvania Corporation, and WESTERN
) PA GAMING VENTURES, LLC, a
) Delaware Limited Liability Company

Defendants.

VERIFICATION

I, Manuel N. Stamatakis, in my position as member of SD Tuxepo GP, LLC, the general partner of SDSSL Tuxepo Investors, LP, have read the foregoing COMPLAINT. The averments of fact made therein are true and correct based on knowledge, information and belief. I understand that false statements herein are made subject to penalty of 18 Pa. Cons. Stat. Ann. §4904 relating to unsworn falsification to authorities.

Date: 3/30/15


 By Manuel N. Stamatakis, as member of SD
 Tuxepo GP, LLC the general partner of SDSSL
 Tuxepo Investors, LP